



Quarterly Bulletin on Takeovers Matters

(Fourth Quarter 2023)

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 centralised 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

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.

TAKEOVERS BULLETIN – Issue No. 67 – December 2023

In its December 2023 issue, the following matters were highlighted:

- Submission of documents to the Executive
- Quarterly update on the activities of Takeovers Team

TAKEOVERS PANEL OF AUSTRALIA

Southern Cross Media Group Limited 02R and 03R – Review Panel Affirms Declaration of Unacceptable Circumstances

22 December 2023 – The review Panel has affirmed the initial Panel's decision to make a declaration of unacceptable circumstances in Southern Cross Media Group Limited. The review Panel proposes to seek further submissions from the parties on orders in the first week of January 2024. The review Panel is Bruce Cowley, Richard Hunt (sitting President) and John McGlue. The review Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Southern Cross Media Group Limited

21 December 2023 – The Panel, Michael Borsky KC (sitting President), Sylvia Falzon and Marina Kelman, made a declaration of unacceptable circumstances in relation to the affairs of Southern Cross Media Group Limited. The application concerned contraventions of section 606 by ARN Media Limited (ARN) and Allan Gray Australia Pty Limited (Allan Gray) and a contravention of the substantial holder provisions in section 671B by Allan Gray. The Panel declared the circumstances unacceptable having regard to (among other things) the effect the contraventions were likely to have on the control or potential control of Southern Cross. The Panel made orders, which included vesting Southern Cross shares held by ARN in ASIC for sale. The Panel also accepted undertakings from Allan Gray to make corrective disclosure and sell the number of Southern Cross shares it acquired in contravention of section 606.

Mighty Kingdom Limited – Panel Accepts Undertakings and Declines to Make a Declaration

15 December 2023 – The Panel has accepted undertakings from Mighty Kingdom Limited (Mighty Kingdom), Gamestar Studios Pty Ltd (Gamestar) and entities controlled by Mr Shane Yeend (Yeend Entities) and declined to make a declaration of unacceptable circumstances in response to an application dated 20 November 2023 from Mighty Kingdom in relation to its affairs. In its application, Mighty Kingdom submitted that Gamestar had failed to pay the subscription price for certain shares in Mighty Kingdom that it had acquired pursuant to a share subscription agreement dated on or about 4 August 2022 (as amended) (Relevant Shares), that the Yeend Entities had failed to provide updated disclosure of their relevant interest and voting power in Mighty Kingdom, and that Gamestar had made false and misleading statements to the market. The Panel considers that the undertakings sufficiently address the circumstances regarding the Relevant Shares held by Gamestar (including concerns that the Panel had in relation to the approval of the acquisition of the Relevant Shares over 20% by Gamestar under item 7 of section 611) and disclosure of substantial holdings by the Yeend Entities and that it is not against the public interest to decline to make a declaration of unacceptable circumstances. The sitting Panel was Bill Koeck (sitting President), Emma-Jane Newton and James Stewart. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Southern Cross Media Group Limited 03R – Panel Makes New Interim Orders

12 December 2023 – The President of the Panel previously made interim orders in response to a request from ARN Media Limited (ARN) in relation to a review of the Panel’s decision in Southern Cross Media Group Limited (Southern Cross) to make orders. In response to a request for additional interim orders by ASIC, the review Panel has made new interim orders. The interim orders do not substantively change the interim orders previously made but are made to deal with administrative concerns on the part of ASIC. The interim orders stay orders 1, 2, 3, 4 and 5 of the orders made in Southern Cross and also prevent ARN from dealing with the relevant sale shares that it holds in Southern Cross. The interim orders have effect until the earliest of further order of the Panel, determination of the proceedings or 2 months from the date of the interim orders. The review Panel is Bruce Cowley, Richard Hunt (sitting President) and John McGlue.

Southern Cross Media Group Limited 03R – Panel Receives Review Application and President Makes Interim Orders

6 December 2023 – The Panel has received an application from ARN Media Limited seeking a review of the Panel’s decision in Southern Cross Media Group Limited to make orders. A review Panel has not been appointed and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application. The President of the Panel has also made interim orders in response to the review application. The interim orders stay orders 2, 3, 4 and 5 of the orders made in Southern Cross Media Group Limited. The interim orders have effect until the earliest of further order of the President or review Panel, determination of the proceedings or 2 months from the date of the interim orders.

Southern Cross Media Group Limited – Orders and Undertakings

4 December 2023 – The Panel has made final orders and accepted undertakings from Allan Gray Australia Pty Limited (Allan Gray) in relation to an application dated 24 October 2023 by Keybridge Capital Limited in relation to the affairs of Southern Cross Media Group Limited (Southern Cross). On 22 November 2023, the Panel made a declaration of unacceptable circumstances in relation to the affairs of Southern Cross. The Panel has made orders to the effect that the 6.83% of Southern Cross shares acquired by ARN Media Limited in contravention of s606 are vested in ASIC for sale. The Panel has also accepted undertakings from Allan Gray to the following effect:

- Allan Gray provide a corrective substantial holder notice in relation to its holding in Southern Cross in a form approved by the Panel.
- Allan Gray sell within 3 months the further 0.08% of Southern Cross shares acquired by Allan Gray in contravention of s606.

The sitting Panel was Michael Borsky KC (sitting President), Sylvia Falzon and Marina Kelman. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Whitehaven Coal Limited 02R – Panel Application Withdrawn

29 November 2023 – The Acting President of the Panel has consented to a request by Bell Rock Capital Management LLP (Bell Rock) to withdraw its review application to the Panel dated 23 November 2023, in relation to the affairs of Whitehaven Coal Limited (Whitehaven). In Whitehaven Coal Limited, the Panel made a declaration of unacceptable circumstances and made orders that Bell Rock give to Whitehaven and ASX a corrective notice under Guidance Note 20 – Equity Derivatives in a form approved by the Panel. Bell Rock has since complied with such orders and has sought to withdraw its review application. The Acting President of the Panel is satisfied that it is not against the public interest to consent to the applicant withdrawing its application.

Mighty Kingdom Limited – Undertaking

29 November 2023 – The Panel has accepted an undertaking from Gamestar Studios Pty Ltd (Gamestar), Imagination Entertainment Pty Ltd (Imagination) and their associates in relation to the application dated 20 November 2023 by Mighty Kingdom Limited. Gamestar, Imagination and their associates undertake that they will not, and will ensure that no steps are taken by any person to, vote, sell, transfer or otherwise dispose of any shares in Mighty Kingdom which have not been paid for in full pursuant to the share subscription agreement between Gamestar and Mighty Kingdom dated on or about 4 August 2022 (as amended). The undertaking has effect until the determination of the proceedings.

Southern Cross Media Group Limited 02R – Panel Receives Review Application

27 November 2023 – The Panel has received an application from ARN Media Limited seeking a review of the Panel’s decision in Southern Cross Media Group Limited to make a declaration of unacceptable circumstances. A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Whitehaven Coal Limited 02R – Panel Receives Review Application

24 November 2023 – The Panel has received an application from Bell Rock Capital Management LLP seeking a review of the Panel’s decision in Whitehaven Coal Limited. A review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Southern Cross Media Group Limited – Declaration of Unacceptable Circumstances

23 November 2023 – The Panel has made a declaration of unacceptable circumstances in relation to an application dated 24 October 2023 by Keybridge Capital Limited in relation to the affairs of Southern Cross Media Group Limited. The Panel had regard to the matters in s657A(3) and did not consider it against the public interest to make the declaration. Submissions in relation to orders are due by 5.00pm (Melbourne time) on Wednesday, 29 November 2023. The sitting Panel is Michael Borsky KC (sitting President), Sylvia Falzon and Marina Kelman. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Whitehaven Coal Limited – Declaration of Unacceptable Circumstances and Orders

22 November 2023 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 24 October 2023 by Whitehaven Coal Limited (ASX: WHC) (Whitehaven) in relation to its affairs. The Panel has made orders that Bell Rock give to Whitehaven and ASX a corrective notice under GN 20 in a form approved by the Panel. The sitting Panel was Jeremy Leibler, Ron Malek (sitting President) and Deborah Page. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Mighty Kingdom Limited – Panel Receives Application

21 November 2023 – The Panel has received an application from Mighty Kingdom Limited (ASX: MKL) (Mighty Kingdom) in relation to its affairs. The application concerns the alleged conduct of Gamestar Studios Pty Ltd (Gamestar) and its alleged associates. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Bullseye Mining Limited 06

15 November 2023 – The Panel, Ruth Higgins SC, Christian Johnston (sitting President) and Michael Lishman made a declaration of unacceptable circumstances in relation to the affairs of Bullseye Mining Limited. The application concerned (among other things) an alleged collateral benefit in relation to two shareholders who received shares in connection with the settlement of litigation and gave shareholder intention statements to accept into a takeover bid. The Panel declared the circumstances unacceptable as it considered that the takeover bid, settlement of the litigation and the shareholder intention statements were part of the one interconnected commercial transaction; the bidder contravened section 606 through acquiring a relevant interest in the shares of the two shareholders; and shareholders have not been provided with sufficient information about the transaction, including whether the two shareholders have been provided with a benefit that has not otherwise been provided to other shareholders. The Panel made orders including (among other things) voting and acquisition restrictions on the bidder and required that an independent expert's report be commissioned to provide an opinion as to whether the two shareholders had been provided with a net benefit in connection with the takeover bid that had not been provided to other shareholders.

Whitehaven Coal Limited – Acting President Declines to Make Interim Orders

25 October 2023 – The Panel refers to the application dated 24 October 2023 by Whitehaven Coal Limited (ASX: WHC) (Whitehaven) in relation to its affairs. The Acting President of the Panel has declined to make the interim orders sought by Whitehaven. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Whitehaven Coal Limited – Panel Receives Application

25 October 2023 – The Panel has received an application from Whitehaven Coal Limited (ASX: WHC) (Whitehaven) in relation to its affairs. The application concerns an alleged failure by Bell Rock Capital Management LLP to disclose a derivative interest it holds in Whitehaven. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Southern Cross Media Group Limited – Panel Receives Application

25 October 2023 – The Panel has received an application from Keybridge Capital Limited (ASX: KBC) in relation to the affairs of Southern Cross Media Group Limited (ASX: SXL) (Southern Cross). Southern Cross is currently subject to a non-binding indicative proposal from a consortium comprising ARN Media Limited (ASX: A1N) and Anchorage Capital Partners Pty Limited to acquire 100% of Southern Cross by way of a scheme of arrangement announced on 18 October 2023. A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Bullseye Mining Limited 06 – Declaration of Unacceptable Circumstances and Orders

6 October 2023 – The Panel has made a declaration of unacceptable circumstances and final orders in relation to an application dated 21 August 2023 by Mr Desmond Mullan in relation to the affairs of Bullseye Mining Limited.

NEW ZEALAND TAKEOVERS PANEL

Code Word – Issue 55 (November 2023)

- [Revisions to the Panel’s Guidance Notes on Misleading or Deceptive Conduct, Independent Advisers and Schemes of Arrangement](#)
- [Panel Consults on Regulatory Alignment of Schemes and Code Offers and Deal Protection Devices](#)
- [Christmas Closedown 2023](#)
- [Reminder of How Market Participants Should Engage with the Panel](#)
- [The Panel welcomes new Panel Members](#)

SECURITIES AND EXCHANGE BOARD OF INDIA

Order under Regulation 11 of SEBI (SAST) Regulations, 2011 in the matter of Shakti Pumps (India) Ltd

23 August 2023 – Shakti Pumps (India) Ltd. (“Target Company”) is a company incorporated under the Companies Act, 1956. It was incorporated on April 21, 1995. The equity shares of the Target Company are listed on BSE Ltd. and National Stock Exchange of India Ltd.. An application dated May 29, 2023 was received from three Trusts, viz. Shakti Sons Trust, Shakti Brothers Trust and Shakti Future Trust seeking exemption from the Exemption Order in the matter of Shakti Pumps (India) Limited applicability of Regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the proposed direct acquisition of shares in the Target Company.

Request for Informal Guidance by way of an Interpretative Letter sought by Kreon Financials Services Ltd. in relation to Regulation 3(2) read with Regulation 3(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

25 October 2023 – Kreon Financial Services Limited is a public limited company registered as a NBFC with the Reserve Bank of India and has its equity shares listed on the BSE Limited (“BSE”). The Board of Directors of the company in its meeting dated October 28, 2021 had approved to issue 95,00,000 warrants to Mr Jaijash Tatia, Ms. Henna Jain and other public investors on preferential basis and the same was approved by the shareholders. The company has also received in-principle approval by BSE, to allot 95,00,000 warrants convertible into 95,00,000 equity shares of Rupees. The Board of Directors in the meeting held on January 24, 2022 allotted the warrants. Subsequently, vide meeting held on March 28, 2023, the board allotted 28,77,000 equity shares against partial conversion of warrants. Since the warrants are valid for a period of 18 months, the remaining warrants would be converted and equity shares will be allotted on conversion. The said acquisition will not result into any change in management and/or control of the target company. Based on the facts represented, it is noted that since the individual shareholding of Mr Jaijash Tatia and Ms. Henna Jain are below 25%, open offer obligations shall not be triggered for them under Regulation 3(3) read with Regulation 3(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Exemption Order under Regulation 11 of SEBI (SAST) Regulations, 2011 in the matter of Gujarat Lease Financing Limited

17 October 2023 – Gujarat Lease Financing Limited (“Target Company”) is a company incorporated under the Companies Act, 1956. It was incorporated on July 13, 1983. The equity shares of the Target Company are listed on BSE Ltd. and the National Stock Exchange of India Ltd.. An application dated July 31, 2023 has been received from Mehta Family Trust 1, Mehta Family Trust 2, Mehta Family Trust 3 and Mehta Family Trust 4, seeking exemption from the applicability of Exemption Order in the matter of Gujarat Lease Financing Limited. Regulations 3 and 5 read with Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 with respect to the proposed indirect acquisition of shares in the Target Company.

Exemption Order under Regulation 11 of SEBI (SAST) Regulations, 2011 in the matter of Torrent Pharmaceuticals Limited

17 October 2023 – Torrent Pharmaceuticals Limited (“Target Company”) is a company incorporated under the Companies Act, 1956. It was incorporated on July 15, 1972. The equity shares of the Target Company are listed on BSE Ltd. and the National Stock Exchange of India Ltd.. An application dated July 31, 2023 has been received from Mehta Family Trust 1, Mehta Family Trust 2, Mehta Family Trust 3 and Mehta Family Trust 4 seeking exemption from the applicability of Regulations 3 and 5 read with Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 with respect to the proposed indirect acquisition of shares in the Target Company.

Exemption Order under Regulation 11 of SEBI (SAST) Regulations, 2011 in the matter of Torrent Power Limited

17 October 2023 –Torrent Power Limited (“Target Company”) is a company incorporated under the Companies Act, 1956. It was incorporated on April 29, 2004. The equity shares of the Target Company are listed on BSE Ltd. and the National Stock Exchange of India Ltd. An application dated July 31,2023 has been received from Mehta Family Trust 1, Mehta Family Trust 2, Mehta Family Trust 3 and Mehta Family Trust 4 seeking exemption from the applicability of Regulations 3 and 5 read with Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 with respect to the proposed indirect acquisition of shares in the Target Company.

Relaxation from Compliance with Certain Provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 – Reg

7 October 2023 – SEBI Master Circular dated July 11, 2023 on compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 by listed entities (“Master Circular”) inter-alia relaxed the applicability of regulation 36(1)(b) of the LODR Regulations for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till September 30, 2023 (section VI-J of the Master Circular) In view of the above, it has been decided to extend the relaxations mentioned at para 1 above till September 30, 2024.

Shri Biranchi Narayan Sahoo Takes Charge as Executive Director, SEBI

3 October 2023 – Shri Biranchi Narayan Sahoo took charge as Executive Director, Securities and Exchange Board of India in Mumbai. He will handle Corporation Finance Investigation Department (CFID).

THE TAKEOVER PANEL, UNITED KINGDOM

Central Counterparty Recovery and Resolution

18 December 2023 – The Code Committee has published Instrument 2023/4 on the Panel’s website. Instrument 2023/4 makes amendments to Note 18 on Rule 9.1 of the Takeover Code to introduce a new paragraph (b). This provides that Rule 9.1 (the mandatory offer requirement) does not apply in relation to any change in interests in shares or other transaction which is effected by the use of CCP resolution tools, powers and mechanisms (within the meaning given in regulation 2 of The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023.

Fourteenth Edition of the Takeover Code and Amended Practice Statements

11 December 2023 – The fourteenth edition of the Takeover Code, which takes effect on even date, has been published on the Takeover Code website and hard copies have been sent to subscribers. The fourteenth edition has been published in conjunction with the launch of the digital version of the Code on 27 October 2023. The amendments incorporated into the fourteenth edition result from the consultation on PCP 2023/1 (Review of Rule 21 (Restrictions on frustrating action) and other matters). The amendments were set out in RS 2023/1 and made by Instrument 2023/3, which were published on 27 October 2023.

Fireangel Safety Technology Group Plc – Offer Timetable Suspended

8 December 2023 – Rule 31.8 of the Takeover Code provides that, except with the consent of the Panel, the board of an offeree company should not announce any material new information after Day 39 of the offer timetable. Normally, therefore, the last day for the announcement by FireAngel of material new information in the context of the offer by ISE would be 11 December 2023. ISE and FireAngel have jointly requested a suspension of the offer timetable in accordance with Rule 31.4(a)(i) on the basis that one or more conditions to the offer relating to an official authorisation or regulatory clearance will not be satisfied or waived by 5.00pm on 9 December 2023. The Panel Executive has agreed to this request and has therefore suspended the offer timetable.

OnTheMarket Plc – Ruling of the Chairman of the Hearings Committee

1 December 2023 – The Panel Statement sets out the Ruling of the Chairman of the Hearings Committee of 29 November 2023. The period for appeal to the Takeover Appeal Board has expired without any such appeal having been made. It is now published in accordance with paragraphs 6.5 and 6.6 of the Hearings Committee Rules of Procedure (with redactions where appropriate).

Amendments to Practice Statement No 5

27 October 2023 – The Panel Executive has today amended Practice Statement No 5 (Rule 13.5 – Invoking conditions and pre-conditions). In 2021, the Code Committee amended the Takeover Code following the consultation on PCP 2020/1 (Conditions to offers and the offer timetable). The amendments were set out in RS 2020/1 and made by Instrument 2021/1 with effect from 5 July 2021 (the “2021 Amendments”). At the same time, the Executive updated Practice Statement No 5 to reflect current practice.

Restrictions on Frustrating Action – Publication of Response Statement and Instrument

27 October 2023 – On 15 May 2023, the Code Committee published PCP 2023/1, which proposed amendments to the Takeover Code in relation to Rule 21 (Restrictions on frustrating action) and other matters. The consultation period ended on 21 July 2023. The Code Committee has today published on the Panel’s website Response Statement RS 2023/1, the individual responses received from the respondents to PCP 2023/1 and Instrument 2023/3, which makes the amendments to the Code set out in RS 2023/1. The amendments to the Code made by Instrument 2023/3 will take effect on Monday, 11 December 2023 and a new edition of the Takeover Code will be published on that date.

Launch of Takeover Code Website

11 October 2023 – The Takeover Panel has launched a digital version of the Takeover Code at <https://code.thetakeoverpanel.org.uk>. The functions of the new Takeover Code website include navigation between provisions of the Code, pop-up boxes for defined terms, and tabs linking Rules with related Practice Statements. The website also continues to include links to a copy of the Code (which was last amended on 22 May 2023) in PDF format as well as the ability to download individual Rules and sub-Rules in PDF format. The digital Code can also be accessed from the Panel's existing website at <https://www.thetakeoverpanel.org.uk>. Printed copies of the Code will continue to be available to subscribers for the foreseeable future.