



Tuesday, 8 April 2008

GoldLink IncomePlus Limited – Panel Declines to Commence Proceedings

The Panel has declined to commence proceedings on an application dated 26 March 2008 from New Opportunity Limited (Applicant) regarding the affairs of GoldLink IncomePlus Limited (GoldLink) (see [TP 08/20](#)).

The Applicant is a GoldLink shareholder with voting power of 20%.

A general meeting of GoldLink was held on 4 April 2008. The general meeting was called pursuant to section 249D of the Corporations Act to consider changes to the board proposed by Bell IXL Investments Limited, Cellante Securities Pty Limited and K Pagnin Pty Limited (together Bell Entities). The resolutions concerned the removal of the existing board of directors and the appointment of various nominees, one of whom is Mr Anthony Lewis.

At the date of the application, the Bell Entities had voting power in GoldLink of 20%, holding 19,468,960 GoldLink shares with a right to acquire 6 million GoldLink shares under a share purchase agreement (SPA).

The Applicant alleged that entities associated with Mr Lewis, which had voting power in GoldLink of approximately 1.9%, are associated with the Bell Entities as:

- a) in accepting nomination as a director, Mr Lewis must have entered into a relevant agreement with the Bell Entities in relation to controlling or influencing the composition of the GoldLink board of directors; and
- b) Mr Lewis has admitted that he is acting in concert or is proposing to act in concert with the Bell Entities in relation to the affairs of GoldLink.

The Bell Entities denied being associated with Mr Lewis in the manner alleged.

The Applicant submits that there are unacceptable circumstances because:

- a) of a contravention of s 606 of the Corporations Act;
- b) of contraventions of s 671B of the Corporations Act; and
- c) the acquisition of control over GoldLink shares had not taken place in an efficient, competitive and informed market.

The Panel was minded to commence proceedings. The Panel had concerns whether there were any appropriate orders it could reasonably make, were it to commence proceedings, since:

- (a) the SPA was terminated on 28 March 2008 and a subsequent share purchase agreement was entered into in respect of 3.5 million GoldLink share (rather than 6 million) (New SPA). The New SPA gave the alleged associates combined voting power of 19.94%; and
- (b) the Panel was satisfied that the New SPA completed on 2 April 2008 and that no proxies had been given in relation to the 2.5 million shares which are no longer subject to the New SPA.

For the above reasons, the Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances if it commenced proceedings. Accordingly, the Panel declined to commence proceedings.

The President of the Panel appointed Robyn Ahern, Garry Besson (Sitting President), and Robert Johanson as the Panel to consider the application.

The Panel will publish its reasons for decision in due course on its website.
www.takeovers.gov.au.

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