



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP17/57

Monday, 27 November 2017

MMA Offshore Limited - Declaration of Unacceptable Circumstances and Undertaking

The Panel has made a declaration of unacceptable circumstances (Annexure A) and accepted an undertaking (Annexure B) in relation to an application dated 17 November 2017 by Halom Investments Pte Ltd in relation to the affairs of MMA Offshore Limited (**MMA**) (see [TP17/56](#)).

Background

Notice was given on 27 October 2017 that MMA's 2017 AGM would be held on 30 November 2017 and that persons who were registered holders of fully paid ordinary shares of MMA at 4:00pm (Perth time) on 28 November 2017 would be entitled to attend and vote at the AGM. The business to be considered at the AGM included resolutions regarding changes to the MMA board, which were requisitioned by the applicant.

On 16 November 2017, MMA announced an equity raising (**Equity Raising**) consisting of a 1 for 1 accelerated non-renounceable pro-rata entitlement offer to raise approximately \$74.6 million and a \$22.4 million institutional placement to existing and new investors.

A timetable for the Equity Raising provided that allotment and normal trading of new shares issued under the placement and institutional entitlement offer would occur on 27 November 2017 and allotment of new shares under the retail entitlement offer would occur on 11 December 2017. Therefore, shares issued under the placement and institutional entitlement offer could be voted at the AGM while shares issued under the retail entitlement offer could not.

Declaration

The Panel considered that the timing of, and the quantum of new shares issued under, the placement and the institutional entitlement offer will have the effect of disenfranchising part of the share register of MMA.

The Panel considered that the circumstances were unacceptable:

1. 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 MMA or
 - (b) the acquisition, or proposed acquisition, by a person of a substantial interest in MMA or
2. in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth).

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).

Undertaking

MMA has undertaken to:

1. announce to ASX, before the market opens on 27 November 2017, that the AGM will be postponed to 19 December 2017, the proxy cut-off time will be extended to 10:30am (Perth time) on 17 December 2017 and entitlement to vote at the AGM will be determined at 7:00pm (Sydney time) on 17 December 2017
2. conduct a poll on all resolutions to be considered at the AGM and
3. otherwise do all that is reasonably necessary to postpone the AGM as described above.

While the Panel has accepted this undertaking from MMA in relation to the application (in lieu of making orders), it agrees with the concerns expressed in ASIC policy¹ regarding the potential for early allotment to institutional investors in an accelerated rights issue to distort voting at a meeting. The Panel would be concerned if the timetable initially adopted by MMA in this case were to occur again.

The sitting Panel was Bruce Cowley, James Dickson (sitting President) and Bruce McLennan.

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

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au

¹ See ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition*, at [RG 6.80]



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ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

MMA OFFSHORE LIMITED (MMA)

CIRCUMSTANCES

1. On 25 September 2017, MMA announced that it had received correspondence from Halom Investments Pte Ltd (**Halom**), giving notice that Halom intended to move resolutions at the next AGM of MMA to:
 - (a) remove Mr Anthony Howarth and Mr Jeffrey Weber from the office of director of MMA and
 - (b) appoint Mr Jeffrey Mews and Mr Ajaib Hari Dass as directors of MMA.
2. On 27 October 2017, MMA issued a notice of annual general meeting to be held on 30 November 2017 (the **AGM**), which included the proposed resolutions in paragraph 1. The notice of meeting disclosed that:

The Company has determined that persons who are registered holders of fully paid ordinary shares of the Company (Shares) at 4.00pm (Perth time) on Tuesday, 28 November 2017 will be entitled to attend and vote at the AGM.
3. On 16 November 2017, MMA announced a \$97 million equity raising (**Equity Raising**) which included a 1 for 1 accelerated non-renounceable pro-rata entitlement offer at \$0.20 per share to raise approximately \$74.6 million and a \$22.4 million institutional placement to existing and new investors at \$0.20 per share. A timetable for the Equity Raising provided that allotment and normal trading of new shares issued under the placement and institutional entitlement offer would occur on Monday, 27 November 2017 and allotment of new shares under the retail entitlement offer would occur on Monday, 11 December 2017. Therefore, shares issued under the placement and institutional entitlement offer could be voted at the AGM while shares issued under the retail entitlement offer could not.

4. Institutional and other shareholders who were considered sophisticated or professional investors were invited to participate in the institutional entitlement offer, including MMA directors and senior management and Halom.² Applications were received under the placement and institutional entitlement offer totalling approximately 27.1% of the total number of shares which could be voted at the AGM. By participating in the institutional entitlement offer, one shareholder's voting power will increase from 10.4% to 13.8%. By participating in both the placement and the institutional entitlement offer, another shareholder's voting power will increase from 3.1% to 6.4%.

EFFECT

5. The timing of, and the quantum of new shares issued under, the placement and the institutional entitlement offer will have the effect of disenfranchising part of the share register of MMA.

CONCLUSION

6. It appears to the Panel that the circumstances are unacceptable circumstances:
 - (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of MMA or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in MMA or
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (Act).
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 MMA.

Allan Bulman
Director
with authority of James Dickson
President of the sitting Panel
Dated 26 November 2017

² Halom chose not to participate in the institutional entitlement offer and has been offered the opportunity to subscribe under the retail entitlement offer



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ANNEXURE B

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 (Cth) SECTION 201A UNDERTAKING

MMA OFFSHORE LIMITED (MMA)

Pursuant to section 201A of the ASIC Act, MMA undertakes that it will:

1. announce to ASX, before market open on Monday, 27 November 2017:
 - (a) that the AGM (currently scheduled to be held at 10.30am (Perth time) on 30 November 2017) will be postponed to the Applicable Date, subject only to the approval of the Extension Application by ASIC;
 - (b) the Proxy Cut-Off Time for the Postponed AGM; and
 - (c) the Voting Entitlements Determination Time for the Postponed AGM;
2. conduct a poll on all resolutions to be considered at the Postponed AGM; and
3. otherwise do all that is reasonably necessary to postpone the AGM until the Applicable Date and give effect to these undertakings.

In these undertakings the following terms have the corresponding meaning:

Applicable Date means 10.30am (Perth time) on 19 December 2017.

AGM means the annual general meeting of shareholders of MMA in respect of the financial year ended 30 June 2017.

ASIC means the Australian Securities & Investments Commission.

ASIC Act means the *Australian Securities & Investments Commission Act 2001* (Cth).

ASX means ASX Limited or the financial market conducted by it, as the context requires.

Corporations Act means the *Corporations Act 2001* (Cth).

Extension Application means the application made by MMA to ASIC on 22 November 2017 under 250P of the Corporations Act, pursuant to which MMA seeks to extend the period within which section 250N of the Corporations Act requires that MMA hold its Annual General Meeting to a date no earlier than 14 December 2017 and no later than 21 December 2017.

MMA means MMA Offshore Limited ACN 083 185 693.

Proxy Cut-Off Time means the date and time by which an appointment of a proxy for the AGM must be received by the Company to be effective. In the case of the postponed AGM, that is 10.30am (Perth time) on 17 December 2017.

Voting Entitlements Determination Time means the date and time for determining the entitlements of MMA shareholders to vote at the AGM. In the case of the postponed AGM, this is 7.00pm (Sydney time) on 17 December 2017.

**Signed by Jeffrey Weber, Managing Director of MMA Offshore Limited
with the authority, and on behalf, of
MMA Offshore Limited
Dated 26 November 2017**