



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP21/25

Thursday, 14 October 2021

Gascoyne Resources Limited – Panel Receives Application

The Panel has received an application from Westgold Resources Limited (**Westgold**) in relation to the affairs of Gascoyne Resources Limited (**Gascoyne**).

Details of the application, as submitted by the applicant, are below.

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.

Details

On 16 June 2021, Gascoyne announced on ASX that it had agreed to merge with Firefly Resources Limited (**Firefly**) by way of a scheme of arrangement whereby Gascoyne would acquire 100% of the fully paid ordinary shares in Firefly, with Firefly shareholders to receive 0.34 Gascoyne shares for each Firefly share (**Firefly Scheme**).¹ The announcement noted that Gascoyne and Firefly had entered into a binding Scheme Implementation Deed (**SID**) in relation to the Firefly Scheme, a copy of which was also released that day.

The SID contains mutual exclusivity provisions, including a no talk restriction on Gascoyne subject to a ‘fiduciary out’.

On 30 September 2021, Westgold announced its intention to make an off-market takeover offer for the issued shares in Gascoyne, offering 1 Westgold share for every 4 Gascoyne shares (**Westgold Offer**).

The Westgold Offer is conditional on, among other things, the Firefly Scheme not proceeding.

¹ The announcement noted that this represents an implied offer price of \$0.145 per share based on Gascoyne’s 5-day volume weighted average price.

On 8 October 2021, Westgold announced that it intended to lodge its bidder's statement with ASIC during the week commencing 10 October 2021. As at the date of this media release Westgold has not lodged its bidder's statement.

On 13 October 2021, Gascoyne announced its updated business plan and its recommendation to Gascoyne shareholders that they reject the Westgold Offer, stating that the Westgold Offer "*undervalues Gascoyne shares and does not represent a superior alternative for Gascoyne shareholders when compared to the Scheme*".

Westgold submits (among other things) that:

- the 'fiduciary out' to the exclusivity provisions in the SID is "*ultimately illusory and does not achieve what it is intended to achieve (i.e. an ability for the Gascoyne Board to support a superior offer to the Scheme which requires the Scheme to not proceed)*", in particular Gascoyne "*has no express contractual ability of its own volition to in fact terminate the Scheme and instead would need to argue that there exists some form of implied right of termination where such termination would be in accordance with their equitable fiduciary obligations to Gascoyne Shareholders*"
- the SID operates as an unacceptable lock-up device such that "*an entity that wishes to acquire a stand-alone or pre-merger Gascoyne is practically prevented from doing so*" and
- Gascoyne shareholders "*are being denied any opportunity to consider the Westgold Offer within a reasonable time period and with reasonable Board recommendation and disclosure*".

Westgold seeks interim orders including that the scheme meeting in relation to the Firefly Scheme currently scheduled for 2:00pm (Perth time) on 21 October 2021 be adjourned, deferred, or postponed until a date not less than 14 days after the conclusion of the Panel proceedings the subject of this application.

Westgold seeks final orders including that (in summary):

- the SID be amended to include a termination right for Gascoyne in the event of a "Gascoyne Superior Proposal" and
- the scheme meeting in relation to the Firefly Scheme be adjourned, deferred, or postponed until a date that is not less than 14 days after the date of the Gascoyne target's statement in response to the Westgold Offer.

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