



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/33

Thursday, 6 June 2024

Ringers Western Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 26 April 2024 by Bombora Investment Management Pty Ltd in its own capacity and as manager of the Bombora Special Investments Growth Fund, Evolution Trustees Limited, as responsible entity for the Bombora Special Investments Growth Fund, Brebec Pty Ltd as trustee for the Chenoweth Family Trust, Bryan Zekulich, Salam Nader Pty Ltd, Wyaga Investments Pty Ltd as trustee for the TNR Investments Trust, Jarumitoti Superannuation Fund Pty Ltd as trustee for Jarumitoti Super Fund, and Malolo Holdings Pty Ltd (together the **Applicants**) in relation to the affairs of Ringers Western Limited (see [TP24/020](#)).

Background

Ringers Western Limited (formerly known as BrandUp Limited) (**Ringers Western**) is an unlisted public company which has approximately 106 shareholders including:¹

- the Applicants² and
- Emma Salerno and James Salerno Junior as trustees for the Ringers Western Discretionary Trust (**RW Trust**).

Prior to March 2022, the Bombora Group owned a majority of the shares in, and controlled, Ringers Western and the RW Trust owned and controlled Ringers Western Pty Ltd (**RW Proprietary**).

On 19 February 2022, Ringers Western entered into a “Share Sale Deed” (**Share Sale Deed**) with the RW Trust pursuant to which Ringers Western agreed to acquire RW Proprietary (**Share Sale**). As consideration, Ringers Western agreed to pay

¹ As at 15 May 2024

² Evolution Trustees Limited as responsible entity for the Bombora Special Investments Growth Fund (**Evolution Trustees**) does not legally own shares in Ringers Western. However, Evolution Trustees does have a relevant interest in the shares legally owned by Apex Fund Services Pty Ltd as custodian for the Bombora Special Investments Growth Fund

\$15,000,000³ to the RW Trust and to issue 697,410,068 ordinary voting shares in Ringers Western to the RW Trust (**Consideration Shares**).

Ringers Western also entered into a “Bonus Share Deed” (**Bonus Share Deed**) with the RW Trust pursuant to which Ringers Western agreed to issue additional Ringers Western shares (**Bonus Shares**) to the RW Trust providing an additional \$7.7 million⁴ in value in connection with the Share Sale in the event that an “Exit Event” (defined under the Bonus Share Deed to include an initial public offering or other 100% share sale) did not occur within 24 months following completion of the Share Sale. The Bonus Share Deed also contemplated that Bonus Shares would be issued to minority Ringers Western shareholders “*other than the BrandUp Foundation Members⁵ and other shareholders identified by BrandUp who are not entitled to receive the Bonus Shares*” to “*make whole*” their shareholding proportions “*that would otherwise have been adversely impacted*” by the issue of Bonus Shares to the RW Trust (as detailed in the Bonus Share Deed).

At the time of entry into the Share Sale Deed and Bonus Share Deed, Ringers Western had less than 50 shareholders.

Following entry into the Share Sale Deed, between 19 February 2022 and late March 2022, Ringers Western undertook a \$15,000,000 capital raising pursuant to which certain external investors were issued shares in Ringers Western.

On 30 March 2022, completion occurred under the Share Sale Deed and:

- Ringers Western acquired all of the issued shares in RW Proprietary, becoming the sole shareholder of RW Proprietary
- Ringers Western issued the Consideration Shares to the RW Trust and
- immediately following completion, Ringers Western had 106 shareholders with the following shareholdings:
 - the RW Trust had 63.31%
 - the Bombora Group had 23.05% and
 - other shareholders had 13.64%.

The RW Trust was aware that Ringers Western had more than 50 shareholders by 21 June 2022 at the latest.

³ As amended by the parties on 29 March 2022

⁴ This value was increased by \$640,000 before completion

⁵ Brebec Pty Ltd as trustee for the Chenoweth Family Trust, Bryan Zekulich, Salam Nader Pty Ltd, Wyaga Investments Pty Ltd as trustee for the TNR Investments Trust, Jarumitoti Superannuation Fund Pty Ltd as trustee for Jarumitoti Super Fund, and Malolo Holdings Pty Ltd

No Exit Event in relation to Ringers Western has occurred.

On 2 April 2024, Ringers Western issued 687,959,705,932 Bonus Shares to the RW Trust purportedly in connection with the Bonus Share Deed. Bonus Shares were not issued to any other Ringers Western shareholder.

As a result of the issue of the Bonus Shares, the RW Trust's relevant interest and voting power in Ringers Western increased from 63.31% to 99.94%, other than as permitted by one of the exceptions in section 611⁶, resulting in a contravention of section 606.

Declaration

The Panel considered that the RW Trust's acquisition of the Bonus Shares:

- did not take place in an efficient, competitive and informed market,
- had a significant effect on control of Ringers Western, with the interests of Ringers Western shareholders other than the RW Trust being diluted effectively to nominal percentages, and
- provided the RW Trust with the opportunity to compulsorily acquire any Ringers Western shares it does not own under Part 6A.2.

The Panel considered that the circumstances were unacceptable because:

- having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - the control, or potential control, of Ringers Western or
 - the acquisition by a person of a substantial interest in Ringers Western
- having regard to the purposes of Chapter 6 set out in section 602 or
- because they constituted or constitute a contravention of a provision of Chapter 6.

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).

Orders

The Panel has made orders that the Bonus Shares are cancelled and that Ringers Western and the RW Trust take all steps necessary to give effect to that order.

⁶ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

The sitting Panel was Marissa Freund, Neil Pathak and Nicola Wakefield Evans (sitting President).

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

Allan Bulman
Chief Executive, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au



Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

RINGERS WESTERN LIMITED

BACKGROUND

1. Ringers Western Limited (formerly known as BrandUp Limited) (**Ringers Western**) is an unlisted public company which has approximately 106 shareholders including:¹
 - (a) Bombora Investment Management Pty Ltd in its own capacity and as manager of the Bombora Special Investments Growth Fund, Evolution Trustees Limited, as responsible entity for the Bombora Special Investments Growth Fund, Brebec Pty Ltd as trustee for the Chenoweth Family Trust, Bryan Zekulich, Salam Nader Pty Ltd, Wyaga Investments Pty Ltd as trustee for the TNR Investments Trust, Jarumitoti Superannuation Fund Pty Ltd as trustee for Jarumitoti Super Fund, and Malolo Holdings Pty Ltd (collectively, the **Bombora Group**)² and
 - (b) Emma Salerno and James Salerno Junior as trustees for the Ringers Western Discretionary Trust (**RW Trust**).
2. Prior to March 2022, the Bombora Group owned a majority of the shares in, and controlled, Ringers Western and the RW Trust owned and controlled Ringers Western Pty Ltd (**RW Proprietary**).
3. On 19 February 2022, Ringers Western entered into a “Share Sale Deed” (**Share Sale Deed**) with the RW Trust pursuant to which Ringers Western agreed to acquire RW Proprietary (**Share Sale**). As consideration, Ringers Western agreed to pay \$10,000,000 to the RW Trust and to issue 697,410,068 ordinary voting shares in Ringers Western to the RW Trust (**Consideration Shares**).

¹ As at 15 May 2024

² Evolution Trustees Limited as responsible entity for the Bombora Special Investments Growth Fund (**Evolution Trustees**) does not legally own shares in Ringers Western. However, Evolution Trustees does have a relevant interest in the shares legally owned by Apex Fund Services Pty Ltd as custodian for the Bombora Special Investments Growth Fund

4. The Share Sale Deed included a condition precedent that Ringers Western receives sufficient funds from its pre-IPO capital raising to be able to fund the cash consideration payable for the Share Sale:

“(Buyer finance) the Buyer having received sufficient funds from its pre-IPO capital raising to be able to fund the Cash Consideration on terms acceptable to the Buyer and the Seller (acting reasonably);”³

5. Ringers Western also entered into a “Bonus Share Deed” (**Bonus Share Deed**) with the RW Trust pursuant to which Ringers Western agreed to issue additional Ringers Western shares (**Bonus Shares**) to the RW Trust providing an additional \$7.7 million in value in connection with the Share Sale in the event that an “Exit Event” (defined under the Bonus Share Deed to include an initial public offering or other 100% share sale) did not occur within 24 months following completion of the Share Sale. The Bonus Share Deed also contemplated that Bonus Shares would be issued to minority Ringers Western shareholders “other than the BrandUp Foundation Members⁴ and other shareholders identified by BrandUp who are not entitled to receive the Bonus Shares” to “make whole” their shareholding proportions “that would otherwise have been adversely impacted” by the issue of Bonus Shares to the RW Trust (as detailed in the Bonus Share Deed).

6. The Bonus Share Deed included a clause that provided that:

“Nothing in this Deed places an obligation on BrandUp to issue Bonus Shares, where to do so would cause BrandUp or any recipient of the Bonus Shares as applicable to breach or contravene any Law as a result of such issue.”⁵

7. At the time of entry into the Share Sale Deed and Bonus Share Deed, Ringers Western had less than 50 shareholders.

8. Following entry into the Share Sale Deed, between 19 February 2022 and late March 2022, Ringers Western undertook a \$15,000,000 capital raising pursuant to which certain external investors were issued shares in Ringers Western and became shareholders of Ringers Western.

9. On 7 March 2022, Ringers Western shareholders approved entry into the Share Sale Deed at an annual general meeting of Ringers Western shareholders. However, this approval was not an approval of the issue of the Bonus Shares to the RW Trust in accordance with item 7 of section 611.⁶

³ Share Sale Deed, clause 3.1(d)

⁴ Brebec Pty Ltd as trustee for the Chenoweth Family Trust, Bryan Zekulich, Salam Nader Pty Ltd, Wyaga Investments Pty Ltd as trustee for the TNR Investments Trust, Jarumitoti Superannuation Fund Pty Ltd as trustee for Jarumitoti Super Fund, and Malolo Holdings Pty Ltd

⁵ Bonus Share Deed, clause 4(a)

⁶ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

10. On 29 March 2022, Ringers Western and the RW Trust agreed to amend (a) the Share Sale Deed to increase the monetary consideration under the Share Sale Deed from \$10,000,000 to \$15,000,000 and (b) the Bonus Share Deed to increase the value of the Bonus Shares to be issued under the Bonus Share Deed by \$640,000.
11. On 30 March 2022, completion occurred under the Share Sale Deed and:
 - (a) Ringers Western acquired all of the issued shares in RW Proprietary, becoming the sole shareholder of RW Proprietary
 - (b) Ringers Western issued the Consideration Shares to the RW Trust and
 - (c) immediately following completion, Ringers Western had 106 shareholders with the following shareholdings:
 - (i) the RW Trust had 63.31%
 - (ii) the Bombora Group had 23.05% and
 - (iii) other shareholders had 13.64%.
12. On and from 31 March 2022, Ringers Western had more than 50 shareholders.
13. The RW Trust was aware that Ringers Western had more than 50 shareholders by 21 June 2022 at the latest.
14. From on or around 11 August 2023, the board of directors of Ringers Western comprised Emma Salerno, James Salerno Junior and Clifford Savala, all directors nominated by the RW Trust.
15. No Exit Event in relation to Ringers Western has occurred.

CIRCUMSTANCES

16. On 2 April 2024, Ringers Western issued 687,959,705,932 Bonus Shares to the RW Trust purportedly in connection with the Bonus Share Deed. Bonus Shares were not issued to any other Ringers Western shareholder.
17. As a result of the issue of the Bonus Shares, the RW Trust's relevant interest and voting power in Ringers Western increased from 63.31% to 99.94%, other than as permitted by one of the exceptions in section 611, resulting in a contravention of section 606.
18. The decision to issue the Bonus Shares was not made free of any influence or appearance of influence from the RW Trust.

EFFECT

19. As a result of the matters referred to above, it appears to the Panel that the RW Trust's acquisition of the Bonus Shares:
- (a) did not take place in an efficient, competitive and informed market,
 - (b) had a significant effect on control of Ringers Western, with the interests of Ringers Western shareholders other than the RW Trust being diluted effectively to nominal percentages, and
 - (c) provided the RW Trust with the opportunity to compulsorily acquire any Ringers Western shares it does not own under Part 6A.2.

CONCLUSION

20. 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 Ringers Western or
 - (ii) the acquisition by a person of a substantial interest in Ringers Western
 - (b) having regard to the purposes of Chapter 6 set out in section 602
 - (c) because they constituted or constitute a contravention of a provision of Chapter 6.
21. 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 Ringers Western Limited.

Tania Mattei
General Counsel
with authority of Nicola Wakefield Evans
President of the sitting Panel
Dated 4 June 2024



Australian Government

Takeovers Panel

ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

RINGERS WESTERN LIMITED

The Panel made a declaration of unacceptable circumstances on 4 June 2024.

THE PANEL ORDERS

1. The Bonus Shares are cancelled.
2. Ringers Western and the RW Trust take all steps necessary to give effect to Order 1.
3. Orders 1 and 2 come into effect three business days after the date of these orders.
4. Ringers Western and the RW Trust must not take any steps to compulsorily acquire any shares in Ringers Western for a period of three business days after the date of these orders.

Definitions

5. In these orders the following terms apply:

Bonus Share Deed	The "Bonus Share Deed" between Ringers Western and the RW Trust in relation to the acquisition by Ringers Western of Ringers Western Pty Ltd, as amended
Bonus Shares	687,959,705,932 Ringers Western shares issued to the RW Trust under the Bonus Share Deed
Ringers Western	Ringers Western Limited
RW Trust	Emma Salerno and James Salerno Junior as trustees for the Ringers Western Discretionary Trust

Tania Mattei
General Counsel
with authority of Nicola Wakefield Evans
President of the sitting Panel
Dated 4 June 2024