



Wednesday, 09 November 2005

Collateral Benefits – Issues Paper for Comment

The Takeovers Panel has today released an Issues Paper seeking public comment on the circumstances in which the Panel may consider whether or not unacceptable circumstances exist in relation to collateral benefits in takeovers transactions. The purpose of the Issues Paper is to facilitate discussion among, and obtain feedback from, market participants and investors who may be affected by any guidance which the Panel publishes on collateral benefits, or otherwise have an interest in such guidance.

Collateral benefits are benefits offered, given, or agreed to be given, by a bidder or its associates, to a shareholder or shareholders of a target company, which are not offered as part of the bid consideration. Where the benefits are offered or given selectively or unequally between target shareholders, or to some but not others, the equality of opportunity principle set out in section 602(c)¹ and the specific provisions set out in section 623, of the Corporations Act (*Cth*) 2001² are likely to be infringed.

The Panel's Issues Paper sets out the issues and principles involved in considering collateral benefits in the context of sections 602(c) and 623 and whether or not a collateral benefit is likely to give rise to unacceptable circumstances.

In the Issues Paper the Panel raises the threshold issue of whether collateral benefits are, inherently and unavoidably, unacceptable.

The Panel then goes on to discuss various ways of looking at collateral benefits, and the criteria for doing so, where collateral benefits may not be unavoidably unacceptable. For example, collateral benefits that are of immaterial size are unlikely to have an effect on control or potential control of a company, or of an acquisition of a substantial interest, so are unlikely to give rise unacceptable circumstances. In other cases, substantial shareholders in a company may have pre-existing relationships or contracts with the target company, which, if a bidder were precluded from dealing with them, would, commercially, prevent any takeover bid for the target company.

The Issues Paper discusses issues relating to:

- unacceptable circumstances;
- intentions of the bidder, or benefit offeror;

¹ The equality of opportunity principle in section 602(c) does not specifically relate to any particular time period. However, section 623 specifically relates to the offer period of a takeover bid.

² All section references are to the Corporations Act unless otherwise noted.

Responses

It is the Panel's policy to publish or otherwise make available all responses to formal consultation, unless respondents indicate that they do not consent. It is also the Panel's policy to publish a "Consultation Response" document after the consultation period setting out the main comments that the Panel has received and the reasons why the Panel has taken up, or not taken up, the comments or suggestions received.

Comments should be addressed to the Panel's Director, Mr Nigel Morris at the address below, or to the Panel's Counsel, Mr George Durbridge at the same address.

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