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Tuesday, 14 February 2006

### **Dromana Estate Limited - Decision**

The Takeovers Panel (**Panel**) advises that it has declined the application by Mr John Hempton, a shareholder in Dromana Estate Limited (**Dromana**), and Mr Simon Maher, a director of a corporate trustee for a trust that is a shareholder of Dromana (together known as **Shareholders**), in relation to a 1 for 1 non-renounceable rights issue (**Rights Issue**) to be conducted by Dromana (see [TP06/09](#)).

During the Panel's proceedings, Dromana advised that a proposed underwriting of the Rights issue would not proceed, and Dromana revised certain aspects of disclosure in the prospectus for the Rights Issue. Following Dromana's advice concerning the underwriting and after receiving a revised draft of the Rights Issue Prospectus, the Panel decided to decline the application.

### **Background - Initial Terms of Prospectus**

The initial terms of the Rights Issue were set out in a prospectus dated 11 January 2006. If fully subscribed, the Rights Issue sought to raise \$1.5m by the issue of 22,382,705 ordinary shares at 7 cents each. The Rights Issue was to be jointly underwritten by entities associated with three of the four directors of Dromana and was initially underwritten by these Directors (and associated entities) to the extent of \$1m. The Rights Issue also contained a shortfall facility under which Dromana shareholders could apply for additional ordinary shares in excess of their entitlement. Under the shortfall facility, Directors retained a discretion to reject an application for additional shares should the shortfall be insufficient to meet all applications for additional shares.

The Shareholders' application alleged that unacceptable circumstances existed in relation to the Rights Issue and the above underwriting agreement. The Shareholders submitted that the Rights Issue and the underwriting agreement were likely to deliver control of Dromana to the Directors at a deflated price.

### **Decision**

The Panel has declined to make a declaration of unacceptable circumstances in relation to the application as a result of:

- (a) Dromana advising that the underwriting agreement will be terminated, with the consent of the underwriters, and without cost to Dromana. The

Panel was concerned that the disclosure in the prospectus in relation to the underwriting agreement did not sufficiently disclose the potential effect of the underwriting agreement on control of Dromana, for instance by giving examples of the size and significance of the effect of the underwriting on control of Dromana if shareholders do not take up the Rights Issue and the underwriters were required to subscribe for all the underwritten shares. On the information supplied by Dromana in its submissions and based on a conservative assumption that the Rights Issue proceeds and only the underwritten shares were issued, the voting power of two of the directors would increase above 20%. On Dromana advising it would terminate the underwriting agreement, the Panel considered that the concerns which it had in relation to the underwriting agreement were no longer relevant.;

- (b) in relation to the shortfall facility, Dromana advising that it will:
  - (i) remove the retention of a discretion by Dromana's directors in relation to the operation of the shortfall facility; and
  - (ii) give shareholders the right to apply for additional shares up to a maximum of 300,000 each, on the basis that if there are insufficient shortfall shares to satisfy all applications for additional shares, applications will be scaled back pro rata.

The Panel was initially concerned that the section in the Prospectus which described the shortfall facility did not clearly state how the Dromana board intended to allocate shares under the shortfall facility and what factors the board intended to take into account when exercising such a discretion. As a result, Dromana shareholders who wished to apply for ordinary shares in excess of their entitlement would not know how the directors would exercise their discretion in relation to their application.

- (c) Dromana including in a replacement prospectus additional information in relation to the Tuerong Park Unit Trust (**Tuerong Trust**) to allow Dromana shareholders to make an informed decision on whether or not to take up their rights or subscribe for additional rights. Other than inventory and property, plant and equipment, the units held by Dromana in the Tuerong Trust are its most significant existing asset. In addition, the property on which Dromana conducts the majority of its business and on which its cellar door and winery was constructed is rented from the Tuerong Trust. The trustee of the Tuerong Trust is Jinalec Pty Ltd (**Jinalec**). Jinalec has two shareholders and two directors, both of whom are directors of Dromana. The Panel believed that Dromana shareholders would not be able to make an informed decision on the basis of the disclosure in relation to the Tuerong Trust to date has been inadequate. The prospectus represents the largest offering of shares in Dromana since its inception and as such, shareholders who are thinking of subscribing for shares under the Rights Issue are entitled to know the financial details of one of its most significant assets. This would include the disclosure which discloses

Dromana's dependence on the Tuerong Trust in order to operate its business including issues such as the relationship between Dromana (and its directors) and the Tuerong Trust and any material contracts between Dromana (including its directors and their associates) and the Trust. At the Panel's request, Dromana has included in the prospectus additional information about the finances of the Tuerong Trust and Dromana's commercial relationship with an investment in the Tuerong Trust.

As a result of the above structural changes to the Rights Issue and the additional disclosures which Dromana undertook to make, Dromana withdrew its prospectus dated 11 January 2006 and provided the Panel with a revised draft incorporating the above information. The Panel advised Dromana that it would not object to Dromana issuing the revised prospectus.

The sitting Panel which considered the application was Nerolie Withnall (Sitting President), Robyn Ahern and Chris Photakis.

The Panel will publish its reasons for this decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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