



Thursday, 18 October 2007

GoldLink GrowthPlus Limited - Panel Declines to Commence Proceedings

The Panel has declined to commence proceedings on an application dated 14 October 2007 from Gulf Resources Limited (**Applicant**) regarding the affairs of GoldLink GrowthPlus Limited (**GoldLink**) (see [TP 07/75](#)).

The Applicant is a Goldlink shareholder (currently holding 8.6% of the shares on issue), and has requisitioned an extraordinary general meeting of GoldLink to be held on 18 October 2007 (**EGM**). The EGM was called pursuant to section 249D of the *Corporations Act 2001* (Cth) to consider changes to the board proposed by the Applicant. The changes were that four of GoldLink's directors be removed and two nominees of the Applicant be appointed.

Subsequent to dispatch of the notice of meeting for the EGM, three members of GoldLink's board resigned and two nominees of Tidewater Investments Limited (**Tidewater**) have been appointed to fill the casual vacancies (**Tidewater Nominee Directors**). Tidewater is also a Goldlink shareholder (currently holding 7.96% of the shares on issue), and has recently made a proposal to "expand the capital base" of Goldlink via steps that would involve Goldlink acquiring a wholly owned subsidiary of Tidewater for scrip consideration, and entering a management agreement with Tidewater.

The Applicant submitted that GoldLink's Board restructuring amounted to "frustrating action" as it:

- (a) prevented GoldLink shareholders from considering the Applicant's proposal to take control of the Goldlink Board and conduct an internal investigation into the affairs of the company; and
- (b) may result in the transfer of significant control over Goldlink to Tidewater, in the absence of shareholder approval.

It sought a declaration of unacceptable circumstances, and final orders that the two nominees of Tidewater resign as directors of GoldLink and that GoldLink use its best endeavours to appoint a non-executive director independent of Tidewater. Alternatively, the Applicant sought orders that:

- (c) an independent legal practitioner be appointed as a "delegate of the Chairman of [Goldlink] to chair the [EGM]" on 18 October 2007;
- (d) no Goldlink shares be issued, or assets of GoldLink (or any related party) be sold, transferred or otherwise disposed of to Tidewater (or any related party) before the conclusion of the EGM; and
- (e) Goldlink (or any related party) not acquire, assume or receive or accept assignment of any assets or liabilities of Tidewater (or any related party) before the conclusion of the EGM.

The Panel considered the application did not give rise to a question of control for the purposes of Chapter 6, as set out in s.602. Further, on the material provided, the Panel did not consider there was any reasonable prospect it would conclude Tidewater Investments Limited (**Tidewater**) had obtained "control" of Goldlink. The Panel noted that:

- (a) shareholders would have an opportunity to vote on the appointment of the Tidewater Nominee Directors at the imminent Goldlink AGM (due by 30 November 2007); and
- (b) no evidence was presented to suggest the Tidewater Nominee Directors were acting other than in accordance with their duty to act in the best interests of all shareholders of Goldlink.

The Panel also had concerns as to whether there were any appropriate orders it could reasonably make in respect of the matters raised in the application, since:

- (c) the Tidewater Nominee Directors are subject to re-election at the imminent AGM;
- (d) the company is attempting to identify a suitable person for appointment as an independent chairman;
- (e) the company was in the process of engaging (and has now engaged) an independent person to chair the 18 October EGM;
- (f) any issue of shares to Tidewater or any of its related parties, or any acquisition, assumption or assignment of assets or liabilities from Tidewater would be subject to Goldlink shareholder approval; and
- (g) the resolutions to be considered at the EGM will have the same legal effect regardless of whether the EGM is held on 18 October, or adjourned for a week.

Finally, the Panel noted it was concerned by the delay between announcement of the 'restructure' and lodgement of the application. However, having concluded that the application did not properly relate to control within the Panel's jurisdiction, it did not need to consider whether the delay had a material impact on the application.

For the above reasons, the Panel concluded there was no reasonable prospect that it would make a declaration of unacceptable circumstances if it commenced proceedings. Accordingly, the Panel declined to commence proceedings.

The President of the Panel appointed Marie McDonald (Sitting President), Robyn Ahern (Deputy President) and Robert Sultan as the Panel to consider the Application.

The Panel will publish its reasons for decision in due course on its website.

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