



**In the matter of GoldLink IncomePlus Limited**

**[2008] ATP 5**

**Catchwords:**

*appointment of directors - board control - association - requisition of meeting*

*GoldLink IncomePlus Limited - Bell IXL Investments Limited - Cellante Securities Pty Limited - K Pagnin Pty Limited - Lewis Securities Limited - Mr Anthony Lewis*

*Corporations Act 2001 (Cth) sections 249D, 602, 606, 657A, 657C, 657E, 671B*

## **INTRODUCTION**

1. The Panel, Robyn Ahern, Garry Besson (sitting President) and Robert Johanson declined to commence proceedings.
2. In these reasons the following definitions apply:

| <b>Term</b>      | <b>Meaning</b>   |
|------------------|--|
| Application      | application by NOP dated 26 March 2008 concerning the affairs of GoldLink                  |
| Bell Associates  | Bell IXL, Cellante Securities Pty Limited and K Pagnin Pty Limited                         |
| Bell IXL         | Bell IXL Investments Limited   |
| General Meeting  | general meeting of GoldLink requisitioned by the Bell Associates and NOP                   |
| GoldLink         | GoldLink IncomePlus Limited  |
| Lewis Associates | Mr Anthony Lewis and entities associated with Mr Lewis, including Lewis Securities Limited |
| NOP              | New Opportunity Limited  |
| Trojan           | Rocket Science Pty Limited as trustee for the Trojan Capital Fund                          |
| Trojan Agreement | share purchase agreement between Trojan and NOP dated 6 December 2007                      |

## **DISCUSSION**

### **Facts**

3. GoldLink is a public company listed on ASX (ASX code: GLI). GoldLink has 127,344,800 ordinary shares on issue. The company's principal activity is investing in structured gold financial instruments<sup>1</sup>.

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<sup>1</sup> Goldlink 2007 Annual Report, p6

4. NOP has voting power in GoldLink of 20%, holding 9,340,000 GoldLink Shares with a right to acquire 16,127,843 GoldLink shares under a share purchase agreement (Form 604 dated 10 March 2008).
5. Bell Associates have voting power in GoldLink of 20%, holding 19,468,960 GoldLink shares with a right to acquire 6 million GoldLink shares under the Trojan Agreement (Form 604 dated 25 February 2008).
6. Lewis Associates have voting power in GoldLink of approximately 1.9%.
7. On or about 5 February 2008, Bell Associates lodged a request that GoldLink convene a meeting of shareholders (under section 249D). The resolutions to be considered concerned the removal of the existing board of directors and the appointment of various nominees, one of whom was Mr Anthony Lewis.
8. On 13 February 2008, NOP lodged a request that GoldLink convene a meeting of shareholders (under section 249D). The resolutions to be considered concerned the removal of two of the existing three directors and the appointment of various nominees.
9. GoldLink announced on 25 February 2008 that the General Meeting would be held on 4 April 2008.
10. On 12 March 2008 Bell IXL announced a conditional off-market takeover bid for all of the shares in NOP. The bid is conditional on (among other things) NOP not completing a share purchase agreement in respect of 16,127,843 GoldLink shares.
11. On 14 March 2008, NOP (through its legal representatives) sent a letter to the Bell Associates and the Lewis Associates alleging an association between the two groups and giving them until 5pm (Perth time) on 18 March 2008 to sell down their aggregate shareholding in GoldLink to less than 20%.
12. On 17 March 2008, Bell Associates (through their legal representatives) sent a letter to NOP denying any association and indicating that they would not divest any GoldLink shares.
13. On 17 March 2008, Mr Lewis sent a letter to NOP denying any association. In this letter, Mr Lewis stated:  
*'There are no agreements or understandings between Lewis [Securities Limited], Bell [IXL Investments Limited] and myself in relation to GLI other than if we were to obtain board control that a voluntary equal access off-market buyback at 95% of NTA should be made to all GLI shareholders'.*

#### **Application**

14. NOP alleged that Lewis Associates are associated with Bell Associates as:
  - a) in accepting nomination as a director, Mr Lewis must have entered into a relevant agreement with Bell Associates in relation to controlling or influencing the composition of the GoldLink board of directors; and
  - b) Mr Lewis has admitted that he is acting in concert or is proposing to act in concert with Bell Associates in relation to the affairs of GoldLink.

15. NOP submitted that together the Bell Associates and the Lewis Associates have voting power in GoldLink in excess of 20% and as a result the following constitute unacceptable circumstances:
- a) the failure of each of the Bell Associates and the Lewis Associates to lodge a Substantial holder Notice, in contravention of Section 671B of the Corporations Act;
  - b) the failure of each of the Bell Associates and the Lewis Associates to lodge a notice of change of substantial holding, in contravention of Section 671B of the Corporations Act;
  - c) contravention of Section 606 of the Corporations Act by each of the Bell Associates and the Lewis Associates, by virtue of the fact that they together hold more than 20% of the voting power of GoldLink; and
  - d) the acquisition of control over GoldLink had not taken place in an efficient, competitive and informed market.

#### **Interim Orders**

16. NOP sought interim orders that the Bell Associates and the Lewis Associates not transfer, dispose of or otherwise deal with any of their shareholdings in GoldLink, including exercising any voting rights..

#### **Final Orders**

17. NOP sought final orders that:
- a) the Bell Associates and the Lewis Associates comply with the substantial holder provisions;
  - b) legal title to and beneficial ownership of the GoldLink shareholding of the Bell Associates and the Lewis Associates be vested in ASIC; and
  - c) the Bell Associates and the Lewis Associates be restrained from voting their GoldLink shares at the General Meeting.

#### **Divesting**

18. On 28 March 2008, Bell IXL advised the Panel that:
- a) at the time of the Application, the Bell Associates voting power of 20% was partly attributable to the Trojan Agreement that related to 6 million GoldLink shares;
  - b) while Bell IXL denies any association, for commercial reasons the Trojan Agreement was terminated and a new agreement that related to 3.5 million GoldLink shares was executed by Trojan and Bell IXL on 28 March 2008 (**New SPA**); and
  - c) as a result of the New SPA, even if the Panel deemed the Bell Associates and the Lewis Associates to be associated, their aggregated voting power in GoldLink would be 19.94%.

## **DECISION**

19. The Panel was minded to commence proceedings. The Panel had concerns whether there were any appropriate orders it could reasonably make, were it to commence proceedings, since:
- (a) the New SPA which completed on 2 April 2008 gave the Bell Associates and the Lewis Associates combined voting power of 19.94%; and
  - (b) the Panel was satisfied that no proxies had been given in relation to the 2.5 million shares which are no longer subject to the New SPA.
20. 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.

**Garry Besson**  
**President of the Sitting Panel**  
**Decision dated 7 April 2008**  
**Reasons published 9 April 2008**