



Thursday, 10 July 2008

MacarthurCook 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 25 June 2008 by AMP Capital Investors Limited in relation to the affairs of MacarthurCook Limited ([TP 08/64](#)).

Background

On 16 April 2008, AMP contacted MacarthurCook to express its interest in making a takeover for MacarthurCook.

On 6 June 2008, AMP wrote to MacarthurCook outlining the terms of a proposal to make a takeover offer for MacarthurCook at \$1.35 per share.

On 13 June 2008, MacarthurCook entered into the following transactions:

- (a) a strategic investment management and distribution alliance with IOOF Holdings Limited;
- (b) IOOF became a substantial shareholder of MacarthurCook by subscribing for 3.45 million MacarthurCook shares under a private placement at a price of \$1.15 per share, representing approximately 13% of MacarthurCook after completion of the placement;
- (c) a contractual restriction on IOOF disposing of the MacarthurCook shares acquired under the placement for a period of 24 months, except where a takeover or scheme was recommended by the MacarthurCook board or a third party acquired greater than 50% of the voting rights in MacarthurCook; and
- (d) an option for IOOF to underwrite MacarthurCook's dividend reinvestment plan until 31 December 2009.

MacarthurCook did not seek shareholder approval prior to entering into these transactions.

Items (b), (c) and (d) of the transactions listed above, taken together, constituted frustrating action in relation to the proposed AMP offer.

The absence of shareholder approval gave rise to unacceptable circumstances.

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 to the effect that MacarthurCook seek shareholder approval for items (b), (c) and (d) of the transactions (see Annexure B).

The sitting Panel for the proceedings was Geoff Brunsdon, Teresa Handicott and Norman O'Bryan AM SC (sitting President).

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

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Annexure A

Corporations Act Section 657A Declaration of Unacceptable Circumstances

In the matter of MACARTHURCOOK LIMITED

WHEREAS

1. On 6 June 2008, AMP Capital Investors Limited (**AMP**) wrote to MacarthurCook Limited (**MacarthurCook**) outlining the terms of a proposal to make a takeover offer for MacarthurCook at \$1.35 per share.
2. On 13 June 2008, MacarthurCook entered into the following transactions:
 - (a) a strategic investment management and distribution alliance with IOOF Holdings Limited (**IOOF**);
 - (b) IOOF became a substantial shareholder of MacarthurCook by subscribing for 3.45 million MacarthurCook shares under a private placement at a price of \$1.15 per share (the **Placement**), representing approximately 13% of MacarthurCook after completion of the Placement;
 - (c) a contractual restriction on IOOF disposing of the MacarthurCook shares acquired under the Placement for a period of 24 months, except where a takeover or scheme was recommended by the MacarthurCook board or a third party acquired greater than 50% of the voting rights in MacarthurCook; and
 - (d) an option for IOOF to underwrite MacarthurCook's dividend reinvestment plan until 31 December 2009.(together the **Transaction**).
3. MacarthurCook did not seek shareholder approval prior to entering into the Transaction, or any aspect of it.
4. Items 2 (b), (c) and (d) of the Transaction, taken together, constituted frustrating action in relation to the proposed AMP offer (the **Circumstances**).
5. It appears to the Panel that the Circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied that the Circumstances have had, are having, and will have or be likely to have on:
 - (i) the control or potential control of MacarthurCook; or

- (ii) the acquisition or proposed acquisition of a substantial interest in MacarthurCook; or
 - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act.
- 6. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of MacarthurCook.
- 7. The Panel has had regard to the matters in section 657A(3) of the Act.

DECLARATION

Under section 657A of the Act, the Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of MacarthurCook.

Allan Bulman
Director
with authority of Norman O'Bryan AM SC
President of the Sitting Panel
Dated 9 July 2008



Annexure B
Corporations Act
Section 657D
Orders

IN THE MATTER OF MACARTHURCOOK LIMITED

PURSUANT TO

1. A declaration of unacceptable circumstances in relation to the affairs of MacarthurCook Limited (**MacarthurCook**) on 9 July 2008.
2. Section 657D of the Corporations Act 2001 (Cth).

THE PANEL ORDERS

1. MacarthurCook seek shareholder approval for the following aspects of the strategic investment management and distribution alliance with IOOF Holdings Limited (**IOOF**), announced on 13 June 2008, as a package:
 - (a) the placement to IOOF of 3.45 million MacarthurCook shares (**Placement**);
 - (b) the restriction on IOOF disposing of the MacarthurCook shares acquired as part of the Placement for a period of 24 months (except where a takeover or scheme is recommended by the MacarthurCook board or a third party acquires greater than 50% of the voting rights in MacarthurCook); and
 - (c) the option of IOOF to underwrite MacarthurCook's dividend reinvestment plan for the period to 31 December 2009,
(together the **Transaction**).
2. MacarthurCook disregard any votes cast on any resolution to approve the Transaction by IOOF and its associates (as defined in the Corporations Act 2001 (Cth)).
3. MacarthurCook dispatch a notice of meeting and explanatory memorandum for the shareholder meeting referred to in paragraph 1 in a form approved by the Panel.
4. In the event that shareholder approval for the Transaction is not obtained by 1 September 2008:
 - (a) all agreements that form part of the Transaction are cancelled; and
 - (b) shares issued under the Placement are cancelled with subscription moneys repaid to IOOF.

Allan Bulman
Director
with authority of Norman O'Bryan AM SC
President of the Sitting Panel
Dated 9 July 2008