



Australian Government

Takeovers Panel

Reasons for Decision
GoldLink IncomePlus Limited 04
[2009] ATP 2

Catchwords:

Proportional takeover bid – unmarketable parcel – marketable parcel – share splitting– creation of trusts – policy of provisions - offer terms and conditions – declaration of unacceptable circumstances – interim orders - final orders

Companies and Securities Legislation Amendment Bill 1986 Explanatory Memorandum - Companies and Securities Law Review Committee Report to the Ministerial Council on Partial Takeover Bids August 1985 – Consolidated Minerals 03R [2007] ATP28 – GoldLink IncomePlus Limited 03 [2008] ATP 21

*GoldLink IncomePlus Limited – Emerald Capital Limited – Bell IXL Investments Limited – Fortina Pty Ltd
Corporations Act 2001 – 602, 618(2), 653B(1)(b), 657A, 657D,657E*

INTRODUCTION

1. The sitting Panel, Garry Besson, Robert Johanson and Karen Wood (sitting president), made a declaration of unacceptable circumstances in relation to the affairs of GoldLink IncomePlus Limited. Fortina creating trusts of small parcels and accepting them into Emerald's bid in reliance on ss 653B and 618(2) gave rise to unacceptable circumstances.

2. In these reasons, the following definitions apply.

Term	Meaning
Bell	Bell IXL Investments Limited
bidder's statement	Replacement bidder's statement by Emerald dated 22 July 2008
Fortina	Fortina Pty Ltd
GLI	GoldLink IncomePlus Limited
Emerald	Emerald Capital Limited
Offer	Offer to acquire 45% of each GLI shareholder's shares pursuant to the bidder's statement
target's statement	target's statement by GLI dated 18 August 2008

3. In these proceedings, the Panel:

- (a) adopted the Panel's published procedural rules and
- (b) consented to parties being represented by their commercial lawyers.

FACTS

4. GLI is an Australian public company listed on ASX (ASX code: GLI).

5. Emerald made an off-market proportional takeover bid to acquire 45% of each GLI shareholder's shares.
6. In the bidder's statement, Emerald stated that if, as a result of accepting the Offer, a GLI shareholder would be left with a balance of GLI shares that had a market value of less than \$500 (a 'non-marketable parcel'), the Offer extended to the whole of that shareholder's parcel of GLI shares and that shareholder would be deemed to have accepted the Offer for 100% of their GLI shares.
7. GLI's independent directors recommended that shareholders reject the Offer, but suggested that shareholders who would hold a non-marketable parcel of GLI shares if they were to accept should consider accepting the Offer because it gave them the opportunity to receive cash for all of their shares. The target's statement contained the following statement:

*"You should be aware that this opportunity will not be available to all GLI Shareholders and you are advised not to accept the Proportional Offer if you are not able to accept Emerald's Proportional Offer for all of your GLI Shares."*¹
8. Further on, the target's statement said:

*"If you have not already accepted Emerald's Proportional Offer, you may be able to "split" your GLI shareholding into parcels of GLI Shares and become a Non-marketable Parcel Shareholder in respect of some or all of those parcels by becoming a trustee or nominee for, or otherwise holding one or more parcels on account of, different persons or entities. You should consult your legal and tax adviser for assistance on how you might be able to do this and the consequences of doing so."*²
9. The Offer was declared unconditional by Emerald on 17 December 2008.
10. Bell, and associated companies including Fortina, held 22,944,000 shares in GLI (approximately 18% of GLI's issued capital). Bell and Fortina are associated with Mr Massimo Cellante, a director of GLI.
11. On 21 December 2008, Fortina established 1,912 trusts. The trusts each held 12,000 shares (total of 22,944,000 shares). The beneficiaries of the trusts included Bell IXL and associated companies.
12. On 23 December 2008, Emerald made an announcement to ASX stating that it had come to its attention that *"certain shareholders in GLI have been intentionally splitting their shareholdings in order to take advantage of the ability to accept Emerald's offer for 100% of their shares"*.
13. On 24 December GLI made an announcement to ASX that it was *"not aware of any basis upon which Emerald would be able to disallow, or refuse to honour, duly completed acceptances"* of the Offer. The announcement also reiterated that GLI shareholders should seek their own advice in relation to this issue.

¹ Target's statement paragraph 1.1(b)

² Target's statement paragraph 4.1(d)

14. On 2 January 2009, Fortina lodged acceptances in respect of 12,000 shares for each of the 1,912 Fortina trusts. The shares remaining in each of the trusts after 45% had been accepted would be an unmarketable parcel within the meaning of s618(2) of the Corporations Act³ and Chapter 19 of the ASX Listing Rules. By doing this Fortina sought to accept Emerald's offer in respect of all 22,944,000 shares in the 1,912 trusts.
15. On 4 January 2009 Bell lodged a form 605⁴ in respect of its holding of GLI shares stating that its relevant interest had ceased by virtue of acceptance of the Offer by Fortina "as trustee of various trusts".
16. Emerald identified a number of other shareholdings in which numerous separate accounts had been created during the offer period.

APPLICATION

Declaration sought

17. By application dated 8 January 2009, Emerald submitted that unacceptable circumstances existed in relation to the actions of Fortina and other GLI shareholders "*who have split by actively transferring parts of their holdings into new registry accounts ... or constructed their holdings ... in an apparent effort to abuse the intent and purpose of section 618(2)*".⁵
18. Emerald submitted that shareholders had:
 - (a) purchased shares in numerous separate entities or separate parcels in the same name
 - (b) split their holdings into smaller parcels or
 - (c) in the case of Fortina, "split" its substantial holding into small parcels in the names of separate trusts.
19. It sought a declaration of unacceptable circumstances and interim and final orders.

Orders sought

Interim Order

20. Emerald sought an interim order that it not be required to complete processing acceptances from (or pay any bid consideration to) identified parties until after the determination of the proceedings.
21. The Panel made an interim order,⁶ but based on the information available, limited that order to Fortina. The effect of the order was that Emerald must not deliver any payment due to Fortina until after the determination of the proceedings. When Emerald would otherwise have been required to pay Fortina, Emerald was required to place all of the funds that would be payable to Fortina in an interest bearing account until the determination of the proceedings.

³ All references are to the Corporations Act unless otherwise indicated

⁴ Notice of ceasing to be a substantial holder

⁵ Application, part 1

⁶ See [TP 09/04](#) or Annexure B

Final Order

22. Emerald sought a final order that it be entitled to aggregate the holdings of identified GLI shareholders who have either split their holdings of GLI shares or bought multiple small parcels (in the same name or through different controlled entities) in an attempt to subvert the intent of ss 618(1) and 618(2) and only process their acceptances in respect of 45% of that aggregated holding.

DISCUSSION

Section 618(2)

23. Section 618(2)⁷ provides that if a person accepts an off-market bid and is left with less than a marketable parcel of securities the offer extends to that parcel.
24. Emerald submitted that the wording of s618(2) required that any GLI shareholder who split a holding or bought multiple small parcels (in the same name or through controlled entities) nevertheless be treated as the one “person” and the holdings aggregated for the purpose of s618(2). It submitted that, to allow shareholders to split their shareholdings and take advantage of s618(2) removed the ability of a bidder to bid for a specified proportion of a target’s securities less than 100%.
25. ASIC made similar submissions. ASIC submitted that the underlying policy intention of s618(2) was to prevent a small shareholder being left with a small parcel of shares which was disproportionately expensive to dispose of. It also submitted that its preferred interpretation of the provision was that it did not operate unless the total number of securities in which a person had an ultimate beneficial interest was less than a marketable parcel.
26. GLI submitted that there was no distinction between creating multiple parcels by transfer or declaration of trust. It submitted that, while the use of s618(2) to, in effect, convert a proportional bid into a full bid may be unfair to a bidder, this is no greater than the unfairness inherent in a proportional bid under which a bidder can obtain control without offering an adequate control premium for all shares. The submission also suggested a distinction between creating multiple parcels out of an existing holding and acquiring new holdings, but we do not need to consider this.
27. When s618(2) was introduced, it was to ensure that no shareholder was left with an unmarketable parcel of shares⁸. It appears that it was inserted as a practical measure to ensure that small shareholders were not discouraged from participating in the benefits to shareholders from a proportional bid because of the inconvenience and relative cost of dealing with an unmarketable parcel, having accepted into the proportional bid.

⁷ Section 618(2) states: *If accepting an offer under an off-market bid for quoted securities would leave a person with a parcel of the securities that is less than a marketable parcel (within the meaning of the rules of the relevant financial market), the offer extends to that parcel.*

⁸ Companies and Securities Legislation Amendment Bill 1986 Explanatory Memorandum para 41

28. Section 618(1)⁹ is an example of the equal opportunity principle enshrined in section 602. It requires all the offers to be the same for all holders. ASIC submitted that splitting was fundamentally inconsistent with the purpose underlying section 618(1). It noted that pro-rata partial bids¹⁰ had been abolished in 1986. ASIC also submitted that it had previously modified sections 618(2) and 653B to limit their operation to unmarketable parcel holders whose share parcels existed before the announcement of the bid. It said that while it would consider any application on its merits, it was likely it would have granted a modification in this case, had Emerald applied before announcing the bid.
29. Fortina submitted that there was no legislative policy evident “*that supports the contention that the conduct complained of comprises unacceptable circumstances*” because:
- (a) a proportional takeover bid was defined in terms of an offer, not the outcome of the offer. The outcome may vary substantially, depending on the number of shareholders who accepted and how many of those shareholders were small shareholders who relied on s618(2) and
 - (b) each shareholder had an identical opportunity to arrange their shareholdings so as to achieve higher acceptance. GLI’s target’s statement notified them of the opportunity.
30. We think Fortina’s interpretation would create ambiguity surrounding how much of the target company the bidder was likely to acquire and how much funding it would need for its bid. While these may vary a bit depending on how many small holders accepted the bid, we think they are reasonably capable of approximation. This was the basis on which the Panel in GoldLink IncomePlus Limited 03 could say:
- Following a review of the GLI register, Emerald submitted that, taking into account parcels which would be less than a marketable parcel, and those held by nominees, the total amount of extra funding that could be required for the bid was \$750,000 . The Panel considers that Emerald had a reasonable basis to determine that \$750,000 will cover any likely additional funding requirements.*¹¹
31. In our view, section 618(2) was not intended to allow a shareholder to undermine a proportional bid by forcing the bidder to purchase all that shareholder’s shares, or a proportion above what the bidder has offered to purchase, by creating many holdings from an existing holding. The law allows proportional bids and adopts a practical solution to the problem of unmarketable parcels that remain after acceptance. This also assists a bidder as it removes an obstacle for small shareholders from accepting. In our view the law was not intended to be used as an option for a shareholder to choose between accepting for the proportion offered by the bidder or some higher proportion. Using the section in this way is “*at odds with*

⁹ Section 618(1) states: *An offer for securities under an off market bid must be an offer to buy ... (b) a specified proportion of the securities in the big class. The proportion ... must be the same for all holders....*

¹⁰ Bids for less than 100% that could be accepted on a first-come first-served basis

¹¹ [2008] ATP 21 at [18]

the basic principles and policies underlying takeovers regulation in Australia and Chapter 6".¹²

Section 653B

32. Section 653B(1)(b)¹³ provides that a person who holds one or more parcels of securities as a trustee or nominee for another person may accept as if a separate offer has been made in relation to each of those parcels.
33. Section 653B deals with treating the offer on a "per fund" basis. The evident purpose of s653B(1)(b) is to give the ultimate beneficial owner a chance to execute its decision in respect of the shares. Prior to the introduction of this provision, a takeover offer made to a nominee or trustee was only capable of being accepted in relation to the whole of the nominee's or trustee's holding, even though the nominee or trustee held the shares on behalf of different persons. The provision gave the nominee or trustee the ability to protect the different interests of the "underlying beneficial owners".¹⁴ Indeed, an offence was created for a trustee or nominee knowingly to give the offeror a notice it was not entitled to give.¹⁵
34. ASIC submitted that conduct in the nature of splitting was not authorised under section 653B(1)(a) on the basis that, once the offer was accepted in respect of the first parcel, it could not be accepted in respect of subsequent parcels: ss653B(1)(a)(ii) and (2)(c). It also submitted that s653B(1)(b) operated for different principals, thus in determining whether particular securities formed part of a parcel held for another person to which an offer was deemed to have been made, all securities with the same underlying beneficial holder should be aggregated.
35. Fortina submitted, in effect, that s653B(1)(b) was the only mechanism by which s618(1)(b) might result in a shareholder being able to accept for more than one parcel in which it had an interest. We do not need to decide this. The circumstances we are concerned with involve the creation of parcels during the bid period. In Fortina's case, "*The separate trusts were established in order to maximise the value of the shareholding in GLI to the beneficiaries by creating parcels which would each come within s618(2) and in relation to which separate acceptances could be given pursuant to s653B*".¹⁶
36. In our view, a shareholder seeking to use s653B(1)(b) following the splitting of an individual beneficial owner's holding into separate parcels is quite different to what the provision was intended for and using it in this way is "*at odds with the basic principles and policies underlying takeovers regulation in Australia and Chapter 6*".¹⁷

¹² Consolidated Minerals 03R [2007] ATP 28 at [23]

¹³ Section 653B(1)(b) states: *A person who holds 1 or more parcels of those securities as trustee or nominee for, or otherwise on account of, another person may accept as if a separate offer had been made in relation to:*

(i) *each of those parcels; and*

(ii) *any parcel they hold in their own right.*

If a person accepts an offer under a proportional takeover bid for securities, no-one else may accept an offer under the bid in respect of those securities.

¹⁴ Companies and Securities Legislation Amendment Bill 1986 Explanatory Memorandum para 38

¹⁵ See now s653B(5)

¹⁶ Response to brief para 7(a)

¹⁷ Consolidated Minerals 03R [2007] ATP 28 at [23]

Efficient market principle

37. ASIC submitted that share splitting inhibited an efficient, competitive and informed market because it:
- (a) had ambiguous legal status (which we took to mean in terms of acceptances)
 - (b) created funding uncertainty and
 - (c) left the market without a clear idea of the maximum proportion that a bidder could end up with.
38. We agree. The market is likely to make investment decisions based on an estimation of the expected 'minority' holdings that will remain in the target company.¹⁸ Uncertainty is likely to exist if shareholders can choose to accept for the stated proportion or some higher portion. The market will not be able to estimate whether there will be a remaining minority or (potentially) compulsory acquisition. It will also be uncertain about the prospects of the bid unless the bidder has committed funding for 100% of the target.
39. The intentions of directors with respect to the bid is also relevant information. The fact that a company associated with one of GLI's directors intended to sell all of its holdings into the proportional bid (through the share splitting by Fortina) was not disclosed.
40. We consider share splitting to be unacceptable having regard to the purposes of chapter 6, because the acquisition of control over voting shares does not take place in an efficient, competitive and informed market.

Equal treatment principle

41. ASIC submitted that all shareholders do not have reasonable and equal opportunity to participate in the benefits of a proposal if share splitting is allowed because:
- (a) it favours larger, more sophisticated shareholders. They have more ready access to necessary legal advice, are more easily able to establish the requisite devices, such as trusts, and because of the size of their holdings it is more economic and
 - (b) shareholders who split their shares receive any control premium in respect of all, rather than a portion, of their shares.
42. Fortina submitted that each shareholder had an identical opportunity to arrange their shareholdings so as to achieve the relevant effect and were notified of this opportunity in GLI's target's statement. However the cost of establishing the required devices is likely to be uneconomic for a small shareholder. Moreover, the commercial or legal risk surrounding the efficacy of such devices is disproportionately greater for a small shareholder than for a large shareholder. In this case, we note that the target's statement was equivocal about the ability to use the device (see statements extracted from the target's statement in paragraph 8)

¹⁸ We note that listed (target) companies have to provide in each annual report details of the number of holders holding less than a marketable parcel of the target's shares.

43. We agree that share splitting is contrary to the reasonable and equal opportunity principle in s602. Also, assuming splitting is effective, because shareholders may split at the last minute (leaving a minority very different from what was expected), other shareholders will not have an opportunity to respond by doing likewise. They may therefore be left with a shareholding in a company that has a very different minority than expected. Perhaps most importantly, shareholders who split secure more of the control premium than other shareholders.
44. For these reasons, we consider share splitting to be unacceptable having regard to the purposes of chapter 6, because not all shareholders, as far as practicable, have a reasonable and equal opportunity to participate in any benefits accruing to holders through a proposal.

Breach of Chapter 6

45. ASIC also submitted that ss 618(2) and 653B may not permit a person to accept more than the bid proportion by share splitting and that such an outcome may result in contraventions of chapter 6. We do not need to make a decision on this point. We are satisfied that the splitting gave rise to unacceptable circumstances because it is contrary to the principles and policies on which the provisions are based, and the purposes of chapter 6 in s602, having regard to its effect on the control or potential control of, or the acquisition of a substantial interest in, GLI, and the purposes of chapter 6 in s602.

Conclusion

46. Fortina's aggregated shareholding was approximately 18% of GLI. The shares held by other shareholders identified in the application totalled approximately 2%. If Fortina had accepted the offer for 45% of its aggregated holdings, it would have accepted for approximately 8.1%, leaving it with approximately 9.9%.
47. Emerald's bid closed on 19 January 2009. While it has not confirmed its final voting power,¹⁹ on 14 January 2009 it released a substantial holding notice indicating that it had voting power in 52.71% of GLI (assuming a 45% acceptance in respect of the disputed acceptances).
48. In our view a 9.9% parcel is a substantial interest and has, or is likely to have, an effect on the control or potential control of GLI. It would take Emerald above 60%. Alternatively, if Fortina were not to accept at all if its acceptances are for only 45%, Emerald's voting power would be below 50%.
49. Emerald provided data in respect of other shareholders who, it appeared, had created multiple parcels in numbered accounts or differently named accounts. Some of those shareholders had similar names and shared addresses. However, there was insufficient information for us to conclude that these shareholders were necessarily the same people. For example, 'Mr John Smith' and 'Mr John Frederick Smith' could be father and son. Accordingly we were not prepared on the information available to make findings in respect of shareholders other than Fortina.

¹⁹ ASX announcement dated 20 January 2009

50. One shareholder, Mr Kyle Haynes, became a party to the application and made a submission. Although there was some evidence of splitting, Mr Haynes refuted that share splitting had occurred and many of the accounts linked to Mr Haynes retained a marketable parcel after acceptance. We do not consider the evidence provided in relation to these accounts allows us to conclude that there was splitting and subsequent acceptances that gave rise to unacceptable circumstances.

Alternatives available to Emerald

51. Fortina submitted that we should decline to make a declaration because Emerald could have avoided the alleged unacceptable circumstances through its own actions. GLI identified at least 3 possible actions. It submitted that Emerald could have:
- (a) included a suitable defeating condition in the Offer
 - (b) required an appropriate warranty with any acceptances or
 - (c) applied to ASIC for a modification of the Act which would have addressed the possibility of any GLI shareholders splitting their shareholding or acquiring small parcels of GLI shares to take advantage of the s618(2) mechanism.
52. Fortina noted that Emerald had been aware of the possibility of GLI shareholders splitting their shareholdings.
53. Emerald's application could have been avoided by it taking action such as seeking ASIC relief. In our view the better course of action for a bidder making a proportional bid is to seek that relief. However, we must still consider whether or not unacceptable circumstances exist. That Emerald failed to take action to adequately protect itself from potentially unacceptable circumstances does not answer whether unacceptable circumstances now exist. We do not consider, as Fortina submitted, that the application is an abuse of process.

DECISION

Declaration

54. It appears to us that the circumstances, in Annexure A, constituted unacceptable circumstances in relation to the affairs of GLI, having regard to:
- (a) the effect that the Panel is satisfied that the circumstances have had, are having, will have, or are likely to have, on:
 - (i) the control, or potential control, of GLI
 - (ii) the acquisition, or proposed acquisition, of a substantial interest in GLI
 - (b) the purposes of chapter 6 of the Act as set out in s602.
55. We considered that it was not against the public interest to make a declaration of unacceptable circumstances.
56. We had regard to the matters set out in s657A(3).
57. We made a declaration of unacceptable circumstances under s657A in relation to the affairs of GLI.

Orders

58. Under s657D, we are empowered to make any order²⁰ including a remedial order, subject to 4 requirements being satisfied (in summary):
- (a) a declaration under s657A. We made a declaration on 21 January 2009.
 - (b) being satisfied that the order would not unfairly prejudice any person. The prospect of an order against Fortina that limited its acceptance to 45% of its aggregated holdings was the subject of submissions. ASIC supported such an order. Emerald and GLI made no submissions. Fortina submitted that such an order should have effect equally on each trust without distinguishing between them. We are satisfied that our orders do not unfairly prejudice Fortina or any other GLI shareholder.
 - (c) any person to whom the proposed order would be directed, parties and ASIC are given an opportunity to make submissions. The parties, including Fortina, and ASIC, were invited to make submissions on proposed orders.
 - (d) being satisfied the orders are appropriate to protect rights and interests or ensure the takeover proceeds as it would have if the circumstances had not occurred. Persons affected by the circumstances include Emerald, GLI and other shareholders in GLI. We are satisfied that our orders protect the rights and interests of those persons. Also, the order will ensure that the 45% proportional takeover by Emerald proceeds as it would have if the circumstances had not occurred.
59. A copy of our interim order and final orders is set out in Annexures B and C respectively.
60. Emerald did not seek, and we do not make, any order as to costs.

Karen Wood
President of the Sitting Panel
Decision dated 21 January 2009
Reasons published 29 January 2009

²⁰ Other than an order requiring a person to comply with a provision of Chapter 6, 6A, 6B or 6C

Annexure A

Corporations Act

Section 657A

Declaration of Unacceptable Circumstances

GoldLink IncomePlus Limited 04

CIRCUMSTANCES

1. GoldLink IncomePlus Limited (**GLI**) is a listed public company. It is the subject of an off-market 45% proportional takeover bid (**Bid**) by Emerald Capital Limited (**Emerald**)
2. Bell IXL Ltd (**Bell**) and its associates (including Fortina Pty Ltd (**Fortina**)) held approximately 18% of GLI, being 22,944,000 shares
3. Section 618(2) of the Corporations Act (the **Act**) provides that if a person accepts an off-market bid and is left with less than a marketable parcel of securities the offer extends to that parcel. Section 653B(1)(b) provides that a person who holds one or more parcels of securities as a trustee or nominee for another person may accept as if a separate offer has been made in relation to each of those parcels
4. Fortina established trust arrangements involving 1,912 trusts during the offer period under Emerald's takeover bid. The trusts each held 12,000 shares (total of 22, 944,000 shares)
5. The beneficiaries of the trusts include Bell and associated companies
6. Fortina lodged acceptances with Emerald in respect of each of those trusts for 12,000 shares each. The shares remaining in each of the trusts after 45% has been accepted would be an unmarketable parcel within the meaning of s618(2) of the Act and Chapter 19 of the ASX Listing Rules
7. By doing so Fortina sought to accept Emerald's offer in respect of all 22,944,000 shares in the 1,912 trusts, at odds with basic principles and policies underlying ss 618(2) and 653B and the purposes of Chapter 6 as set out in s602
8. 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, will have, or are likely to have, on:
 - (i) the control, or potential control of GLI
 - (ii) the acquisition, or proposed acquisition of a substantial interest in GLI
 - (b) the purposes of Chapter 6 of the Act as set out in s602
9. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act

DECLARATION

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

**Alan Shaw
Counsel
with authority of Karen Wood
President of the Sitting Panel
Dated 21 January 2009**

Annexure B
Corporations Act
Section 657E
Interim Orders

IN THE MATTER OF GOLDLINK INCOMEPLUS LIMITED 04

Emerald Capital Limited made an application to the Panel dated 8 January 2009 in relation to the affairs of GoldLink IncomePlus Limited.

The Panel ORDERS that:

1. Emerald establish an interest bearing bank account for the sole purpose of carrying out these interim orders
2. at the time the consideration under its bid is to be paid to each person named in the Schedule, Emerald deposit in the account the consideration payable to that person pursuant to their acceptance of Emerald's offer
3. the funds in the account be released by Emerald in accordance with the Panel's determination of the proceedings

These interim orders have effect until the earliest of:

- (i) further order of the Panel
- (ii) the determination of the proceedings and
- (iii) 2 months from the date of these interim orders.

Schedule

Fortina Pty Ltd ACN 133 592 631

Alan Shaw
Counsel
with authority of Karen Wood
President of the Sitting Panel
Dated 14 January 2009

Annexure C

**Corporations Act
Section 657D
Orders**

GOLDLINK INCOMEPLUS LIMITED 04

PURSUANT TO:

1. A declaration of unacceptable circumstances in relation to the affairs of GoldLink IncomePlus Ltd made by the Panel on 21 January 2009
2. Section 657D of the *Corporations Act 2001* (Cth)

THE PANEL ORDERS THAT:

1. Emerald Capital Limited only process the acceptances in the Schedule to the effect that 45% of the total of 22,944,000 shares in those acceptances are accepted under its takeover.
2. As soon as practicable, Emerald make an announcement to ASX of:
 - (a) the effect of these orders on its takeover and
 - (b) its final holding in GoldLink.

Schedule

Acceptances lodged by Fortina Pty Ltd under Emerald's takeover on behalf of the 1,912 trusts named 'Fortina No 2 Trust' to 'Fortina No 1,913 Trust' referred to in the Form 605 dated 4 January 2009 lodged by Bell IXL Investments Limited and persons referred to in paragraph 2 of the Form.

**Alan Shaw
Counsel
with authority of Karen Wood
President of the Sitting Panel
Dated 28 January 2009**