



Tuesday, 13 January 2009

Perilya Limited 02 – Panel Receives Application

The Takeovers Panel has received an application from Broken Hill Operations Pty Ltd in relation to the affairs of Perilya Limited. Perilya is the subject of an off-market scrip takeover bid by BHO, a wholly owned subsidiary of CBH Resources Limited.

On 9 December 2008, Perilya announced that it had agreed a placement of shares to, and strategic partnership with, Shenzhen Zhongjin Lingnan Nonferret Co Ltd. The placement is subject to, among other things, the approval of Perilya shareholders in general meeting. On 5 January 2009 Perilya scheduled that meeting for 5 February 2009. Shenzhen has paid a \$10 million refundable deposit in connection with the placement. Perilya has also separately provided Shenzhen with a call option which allows Shenzhen to require Perilya to sell one of its major assets, Mt Oxide, if the placement does not proceed and Perilya is unable to repay the deposit. The call option is not subject to shareholder approval.

BHO submits that Perilya's entry into the call option without shareholder approval is a frustrating action which constitutes unacceptable circumstances. BHO also submits that shareholder approval for the placement in circumstances where there is a deficiency of information constitutes unacceptable circumstances. BHO submits that its supplementary bidder's statement represents important information which Perilya shareholders need so that they can decide, on an informed basis, between its bid and the alternative proposal involving Shenzhen.¹

BHO also submits that the placement, when combined with the call option, is an anti-competitive and coercive lock-up device which is unacceptable. BHO also submits that Perilya's target's statement and notice of meeting make unsubstantiated and unqualified statements regarding Shenzhen's involvement with Perilya.

BHO seeks interim orders, and final orders including that the meeting be deferred until 24 March 2009, the call option be terminated and Perilya dispatch a supplementary target's statement correcting the statements regarding Shenzhen's involvement with Perilya.

¹ In *Perilya Limited 01*, CBH undertook to release its financial statements for the half year ended 31 December 2008 by 27 February 2009 and BHO undertook to dispatch a supplementary bidder's statement shortly thereafter which updated information provided earlier to Perilya shareholders to reflect those latest financial statements (see [TP08/112](#)).

A sitting Panel has not been appointed at this stage and no decision has been made as to whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Allan Bulman
Director, Takeovers Panel
Level 47, 80 Collins Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au