



Australian Government

Takeovers Panel

MEDIA RELEASE

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Wednesday, 16 June 2010

Mesa Minerals Limited 01R - Review Panel Affirms Initial Panel

The review Panel has affirmed the decision of the initial Panel in *Mesa Minerals Limited* (see [TP 10/20](#)). In that matter, the Panel had concluded that (in different combinations) Mr Yuzheng Xie, Mighty River International Limited, Auvex Resources Limited and Mr James Smalley held voting power in Mesa beyond the 20% threshold in s606 of the Corporations Act.

On 24 May 2010 Mighty River and Mr Xie sought a review of the initial Panel's decision (see [TP 10/21](#)).

The review Panel considered that the inferences and conclusions as to association drawn by the initial Panel were open to it on the evidence before it, and the review Panel reached the same conclusions. The review Panel also did not consider that any new material provided by the parties changed those conclusions.

The review Panel varied the initial Panel's declaration of unacceptable circumstances to clarify its operation (see annexure A).

The initial Panel had made orders, including that shares be vested in ASIC if not accepted into the Mineral Resources Limited takeover bid for Mesa. Auvex and Mr Smalley have accepted into the bid, reducing the combined voting power of the associates to below 20%. Disclosure was also required, and made. The review Panel considered that the initial Panel's orders had remedied the unacceptable circumstances and were no longer required. The review Panel therefore vacated the initial Panel's orders (see annexure B).

The sitting Panel was Tom Bathurst QC, Catherine Brenner and Andrew Lumsden. The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

Allan Bulman
Director, Takeovers Panel
Level 10, 63 Exhibition Street
Melbourne, VIC 3000
Ph: +61 3 9655 3597
allan.bulman@takeovers.gov.au



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ANNEXURE A

**CORPORATIONS ACT
SECTION 657EA
VARIATION OF DECLARATION OF UNACCEPTABLE
CIRCUMSTANCES**

MESA MINERALS LIMITED 01R

VARIATION

The declaration made on 21 May 2010 in relation to the matter of *Mesa Minerals Limited* is varied by deleting paragraphs 7 and 8 and substituting new paragraphs 7 and 8 so that the declaration reads as follows:

CIRCUMSTANCES

1. Mesa is a listed company (ASX Code: MAS) with issued capital of 617,270,831 ordinary shares.
2. Mighty River holds 118,294,255 Mesa shares and Mr Yuzheng Xie holds 12,500 Mesa shares. Mr Xie is the sole shareholder and director of Mighty River and controls it. Mighty River has approximately 19.17% voting power in Mesa.
3. Auvex holds 43,000,000 Mesa shares (approximately 6.97%).
4. Mr James Howard Nigel Smalley holds 7,000,000 Mesa shares (approximately 1.13%).
5. Mineral Resources has made a takeover bid for all the shares in Mesa, currently due to close on 2 June 2010.
6. Mighty River has requisitioned an extraordinary general meeting of Mesa under section 249D¹ to replace a majority of the board of Mesa scheduled to be held on 28 May 2010.
7. The Panel considers that:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the composition of Mesa's board or the conduct of Mesa's affairs, or
 - (b) under section 12(2)(c) in relation to the affairs of Mesathe following exist:
 - (c) Mr Xie is associated with Auvex
 - (d) Mr Xie is associated with Mr Premjit Roy and Mr Roy controls Auvex and

¹ References are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated

- (e) Mr Xie is associated with Mr Roy and companies that together own or control more than 20% of Auvex are owned or controlled by Mr Xie or Mr Roy or by persons associated with Mr Xie and/or Mr Roy.
8. Further, the Panel considers that Mr Xie and Mr Roy are associated:
- (a) under section 12(2)(b) for the purpose of controlling or influencing the conduct of Auvex's affairs, and
 - (b) under section 12(2)(c) in relation to the affairs of Auvex.
9. Further, the Panel considers that Mr Xie and Mr Smalley are associated:
- (a) under section 12(2)(b) for the purpose of controlling or influencing the composition of Mesa's board or the conduct of Mesa's affairs or
 - (b) under section 12(2)(c) in relation to the affairs of Mesa.
10. Mr Xie, Mighty River and Auvex's voting power in Mesa has increased as a result of acquisitions beyond the 20% threshold in section 606 other than through one of the exceptions in section 611 and without disclosure under Chapter 6C.
11. It appears to the Panel that the circumstances are unacceptable:
- (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Mesa or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Mesa or
 - (b) having regard to the purposes of Chapter 6 set out in section 602 or
 - (c) because they constitute or give rise to a contravention of sections 606 and 671B.
12. 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).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Mesa.

DEFINITIONS

In this declaration:

Auvex means Auvex Resources Limited

Mesa means Mesa Minerals Limited

Mighty River means Mighty River International Limited

Mineral Resources means Mineral Resources Limited

Alan Shaw
Counsel
with authority of Andrew Lumsden
Deputy President of the sitting Panel
Dated 16 June 2010



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ANNEXURE B

**CORPORATIONS ACT
SECTION 657EA
REVOCATION OF ORDERS**

MESA MINERALS LIMITED 01R

The Panel made a declaration of unacceptable circumstances and final orders in relation to the affairs of Mesa Minerals Limited on 21 May 2010 in *Mesa Minerals Limited*.

A review application was made 24 May 2010.

On 28 May 2010 interim orders were made staying orders 1, 2 and 3 of the orders made on 21 May 2010.

On 16 June 2010 the Panel varied the declaration of unacceptable circumstances made on 21 May 2010.

THE PANEL REVOKES:

1. the orders made on 21 May 2010 in *Mesa Minerals Limited* and
2. the interim orders made on 28 May 2010 in *Mesa Minerals Limited 01R*.

**Alan Shaw
Counsel
with authority of Andrew Lumsden
Deputy President of the sitting Panel
Dated 16 June 2010**