



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: 45/2010

Thursday, 12 August 2010

## Mamba Minerals Limited – Panel Application Withdrawn

The Panel has consented to a request by Perizia Investments Pty Ltd and Kapiri Holdings Pty Ltd (the **applicants**) to withdraw their application to the Panel dated 23 July 2010, in relation to the affairs of Mamba Minerals Limited. The application concerned a 1 for 1 underwritten non-renounceable rights issue announced by Mamba on 6 July 2010 (see [MR 41/2010](#) and [MR 43/2010](#)).

The applicants sought to withdraw their application after Mamba announced on 10 August 2010 that the underwriting and the rights issue had been withdrawn. The Panel is satisfied that it is not against the public interest to consent to the applicants withdrawing their application.

The applicants are shareholders of Mamba. On 14 June 2010, they served a notice on Mamba under s249D of the *Corporations Act 2001* (Cth).<sup>1</sup> They requisitioned the meeting of shareholders to consider resolutions for the removal of the current directors of Mamba and the appointment of new directors.

On 6 July 2010, an offer document and a notice under s708AA were lodged with ASX regarding the proposed rights issue, which was to be fully underwritten by Carmichael Corporate Pty Ltd. The underwriting was subject to a number of conditions, including Carmichael securing sub-underwriters for the underwritten amount on or before the date the offer document was despatched to shareholders.

On 7 July 2010, Mamba announced that it had convened the meeting of shareholders for 13 August 2010. On 21 July 2010, Mamba confirmed despatch of the rights issue offer document to shareholders. No further information about the underwriting was announced.

The applicants submitted that:

- (a) there were information deficiencies, particularly in relation to the underwriting and

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<sup>1</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

- (b) there was a serious risk that there would be a significant shortfall to the rights issue and that, if fully sub-underwritten, the rights issue would have the effect or likely effect that sub-underwriters would acquire substantial interests in Mamba.

The Panel was minded to conduct proceedings as there were information deficiencies and there was potential for a significant shortfall under the rights issue. The Panel considered that there appeared to be a potential control effect given the terms of the rights issue and underwriting. It requested that Mamba provide further information, some of which it provided on 2 August 2010. At the close of the offer, information in relation to details of the applications received, allocations proposed to the sub-underwriters and details of over-allotments was to be provided to the Panel. The Panel also invited Mamba to consider revising the terms of the rights issue to minimise its potential control impact.

To deal with the Panel's concerns, Carmichael agreed to appoint at least 5 sub-underwriters to the rights issue. Mamba announced on 2 August 2010 that this was done with the intention of ensuring that no single sub-underwriter would hold substantially greater than 5% of Mamba's fully diluted issued capital following completion of the rights issue (which would have met the Panel's concerns).

After the close of the rights issue on 4 August 2010, the shortfall was 45,607,301 shares (approximately an 81.6% shortfall). On 10 August 2010, Mamba announced that the underwriter had "exercised its discretion to withdraw" and that the rights issue would not proceed.

The Panel expects rights issues and underwriting arrangements to be structured to minimise the risk of the creation of new controlling blocks. It also expects issuers to clearly articulate the position regarding allocation of additional shares applied for under a shortfall facility (although the Panel noted that the discretion in this case had been retained by a professional underwriter).

While the applicants submitted that the structure and timing of the rights issue was intended to affect the outcome of the s249D meeting, the Panel had not considered this issue.

The sitting Panel appointed to consider this matter was Martin Alciaturi, Peter Hay (sitting President) and Rodd Levy.

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