



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 15/2011

Tuesday, 22 February 2011

CMI Limited - Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 6 January 2011 by Mr Gerry Pauley and Mr Gordon Elkington, in relation to the affairs of CMI Limited (see [TP11/01](#)).

Background

CMI Limited is a listed company (ASX Code: CMI). Mr Raymond Catelan is the Managing Director of CMI. RP Prospects Pty Ltd, as trustee for the M&L Trust, has a relevant interest in 36.8% of CMI. RP Prospects is owned by Mr Raymond Catelan. Ms Leanne Catelan (Mr Raymond Catelan's daughter) and Mr Raymond Catelan are identified in the trust deed as beneficiaries of the trust.

On 23 November 2010, Tinkerbelle Enterprises Pty Limited, as trustee for the Leanne Catelan Trust, acquired a relevant interest in 9.22% of CMI. Ms Leanne Catelan and Mr Raymond Catelan are identified in the trust deed as beneficiaries of the trust. Tinkerbelle is wholly owned by Ms Leanne Catelan. The applicants submitted that this was the principal transaction that they wanted the Panel to investigate.

Declaration

The Panel considers that the Ms Leanne Catelan and Mr Raymond Catelan (the **Associated Parties**) are associated:

1. under section 12(2)(b) for the purpose of controlling or influencing the conduct of CMI's affairs, or
2. under section 12(2)(c) in relation to the affairs of CMI.

The Panel further considered that the Associated Parties' voting power in CMI was previously above the 20% threshold in s606 and the share acquisition by Tinkerbelle occurred without using one of the exceptions in section 611 and that the combined voting power of the Associated Parties was not disclosed in the substantial shareholding notice lodged by Tinkerbelle on 24 November 2010.

The factors taken into account by the Panel included:

- (a) that the funds to acquire the 9.22% interest in CMI by Tinkerbell were provided by Mr Raymond Catelan as a gift to Ms Leanne Catelan
- (b) the conduct of the Associated Parties and the directors of CMI in relation to the Tinkerbell acquisition
- (c) the family relationship between the Associated Parties and
- (d) structural and financial links between the Associated Parties.

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 is considering what final orders to make and will publish details in due course.

The sitting Panel for the proceedings is Peter Day, John Keeves (sitting President) and Andrew Sisson.

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

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Takeovers Panel

ANNEXURE A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

CMI LIMITED

1. CMI Limited (**CMI**) is an ASX listed company (ASX code: CMI).
2. Mr Raymond Catelan is the Managing Director of CMI.
3. Ms Leanne Catelan is Mr Raymond Catelan's daughter.
4. RP Prospects Pty Limited, as trustee for the M&L Trust, has a relevant interest in 36.80% of CMI. Ms Leanne Catelan and Mr Raymond Catelan are identified in the trust deed as beneficiaries of the trust. RP Prospects Pty Ltd is wholly owned by Mr Raymond Catelan.
5. On 23 November 2010, Tinkerbelle Enterprises Pty Ltd (**Tinkerbelle**), as trustee for the Leanne Catelan Trust, acquired a relevant interest in 9.22% of CMI. Ms Leanne Catelan and Mr Raymond Catelan are identified in the trust deed as beneficiaries of the trust. Tinkerbelle is wholly owned by Ms Leanne Catelan.
6. The funds for Tinkerbelle's acquisition came from Mr Raymond Catelan. He made a gift of the money to Ms Leanne Catelan.
7. The negotiations for Tinkerbelle's acquisition were done by persons other than Ms Leanne Catelan. Each of Mr Richard Catelan (a director of CMI and Ms Leanne Catelan's cousin), Mr Colin Ryan (Chairman of CMI) and Mr Danny Herceg (a director of CMI) was involved in discussions concerning the acquisition or aspects of the negotiations for the acquisition.
8. The Panel considers that Ms Leanne Catelan and Mr Raymond Catelan are associated:
 - (a) under section 12(2)(b)¹ for the purpose of controlling or influencing the conduct of CMI's affairs, or
 - (b) under section 12(2)(c) in relation to the affairs of CMI.
9. The voting power in CMI of the associated parties has increased as a result of Tinkerbelle's acquisition other than through one of the exceptions in section 611.
10. A notice of initial substantial holder lodged by Tinkerbelle on 24 November 2010 did not disclose the association.
11. It appears to the Panel that the circumstances are unacceptable:

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

- (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 the control, or potential control, of CMI
 - (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (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 CMI.

Alan Shaw
Counsel
with authority of John Keeves
President of the sitting Panel
Dated 22 February 2011