



MEDIA RELEASE

No: 23/2011

21 March 2011

CMI Limited 01R – Panel Receives Request for Stay of Final Orders

On 15 March 2011, the review Panel declined to conduct proceedings on a review application received on 24 February 2011 from Tinkerbell Enterprises Pty Ltd and Ms Leanne Catelan in relation to the affairs of CMI Ltd (see [TP21/11](#)).¹

As a result, the final orders of the initial Panel, to vest the shares in CMI Ltd held by Tinkerbell for sale through ASIC, took effect (Annexure A).

The review Panel has received a request from Tinkerbell and Ms Leanne Catelan for a stay of the initial Panel's final orders, on the basis that they are considering making an application for judicial review of the Panel's decision.

The review Panel has stayed orders 2, 3, 4 and 7 (Annexure B). The main effect of the orders is that the process of selling the shares will be stayed. This will allow time for Tinkerbell and Ms Catelan to consider whether to seek a review. If they do, the orders will continue to be stayed until the conclusion of the application for review. The stay may also be lifted by further order of the Panel.

The Panel makes no comments on the merits of the review.

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

¹ The initial Panel considered that Ms Leanne Catelan and Mr Raymond Catelan are associated in respect of CMI (see [TP15/11](#) and [TP16/11](#)).



Australian Government

Takeovers Panel

Annexure A

**CORPORATIONS ACT
SECTION 657D
ORDERS**

CMI LIMITED

The Panel made a declaration of unacceptable circumstances on 22 February 2011.

THE PANEL ORDERS

Divestment order

1. The Sale Shares are vested in the Commonwealth on trust for Tinkerbell.
2. ASIC must:
 - (a) sell the Sale Shares in accordance with these orders and
 - (b) account to Tinkerbell for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
3. ASIC must:
 - (a) retain an Appointed Seller to conduct the sale and
 - (b) instruct the Appointed Seller -
 - (i) to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale.
 - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares
 - (iii) unless the Appointed Seller sells Sale Shares on market, that it obtain from any prospective purchaser of Sale Shares a statutory declaration that the prospective purchaser is not associated with any of the Associated Parties
 - (iv) that none of the Associated Parties may directly or indirectly purchase any of the Sale Shares, except to the extent that they are

allowed to acquire additional shares under item 9(b) of s611 and the Appointed Seller sells those shares on market and

- (v) to dispose all of the Sale Shares within 3 months from the date of its engagement.
- 4. CMI and the Associated Parties must do all things necessary to give effect to these orders, including:
 - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Sale Shares in the form approved by ASIC and
 - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Sale Shares.
- 5. The Associated Parties must not otherwise dispose of, transfer, charge or vote any Sale Shares (except those acquired on market under paragraph 3(b)(iv)).
- 6. None of the Associated Parties may take into account any relevant interest or voting power that any of them or their respective associates had, or have had, in the Sale Shares when calculating the voting power referred to in Item 9(b) of s611 of the *Corporations Act 2001* (Cth), of a person six months before an acquisition exempted under Item 9 of s611. Any Sale Shares acquired on market under paragraph 3(b)(iv) must be taken into account in any subsequent calculation for item 9 purposes, taking the date of acquisition as the date they were acquired on market under paragraph 3(b)(iv).

Substantial holding disclosure order

- 7. The Associated Parties must as soon as practicable give notice of their substantial holding in relation to their voting power in CMI and their association, including disclosing:
 - (a) the name of each associate who has a relevant interest in voting shares in CMI
 - (b) the nature of their association
 - (c) the relevant interest of each associate and
 - (d) details of any relevant agreement through which they have a relevant interest in CMI shares.

Interpretation

Term	Meaning
Appointed Seller	An investment bank or stock broker
ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth
Associated Parties	Ms Leanne Catelan and Mr Raymond Catelan or any of their associates
CMI	CMI Limited

on market	in the ordinary course of trading on Australian Stock Exchange and not by crossing or special crossing
Sale Shares	3,112,422 shares held by Tinkerbell in CMI
Tinkerbell	Tinkerbell Enterprises Pty Ltd as trustee for the Leanne Catelan Trust

Alan Shaw
Counsel
with authority of John Keeves
President of the sitting Panel
Dated 25 February 2011



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657D
VARIATION OF ORDERS**

CMI LIMITED

Pursuant to section 657D(3) of the *Corporations Act 2001* (Cth) the Takeovers Panel varies the orders in CMI Limited dated 25 February 2011 by staying orders 2, 3, 4 and 7 until the earliest of:

1. 8 April 2011 or
2. if Tinkerbell or Ms Leanne Catelan apply for judicial review on or before 7 April 2011, the conclusion of the application for judicial review or
3. further order of the Panel.

Alan Shaw
Counsel
with authority of Kathleen Farrell
President of the review Panel
Dated 21 March 2011