



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP12/03**

**Monday, 13 February 2012**

## **RCL Group Limited - Panel Receives Application**

The Panel has received an application from Payce Industries Pty Ltd in relation to the affairs of RCL Group Limited.

Details of the application, as submitted by the applicant, are below.

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

### **Details**

On 14 December 2011, Payce Industries, together with LTHC Pty Ltd and Lanox Pty Ltd (which collectively hold approximately 18.5% of the shares in RCL Group), requisitioned a general meeting of RCL Group to seek the removal of two directors of RCL Group and the appointment of two directors.

On 3 January 2012, in a letter to RCL Group shareholders, the board advised shareholders that any proposed changes to the composition of the board of RCL Group can be subject to review by RCL Group's primary lender and, if it is not satisfied with the review, the primary lender can declare an 'event of default'.

On 7 February 2012 (released 8 February 2012), RCL Group's primary lender, Torchlight Real Estate Fund Limited, informed RCL Group's board, among other things, that the changes to the board sought by the requisitioning shareholders will result in a 'review event' and may lead to an 'event of default' under the terms of the finance facilities.

The applicant submits that:

- Torchlight's refusal to consent to, or waive, the relevant clauses in respect of any director or management personnel of RCL Group or group companies ceasing to hold office (including, in relation to the requisition) are circumstances which are likely to have an effect on the control or potential control of RCL Group

- both the entry into, and the non-disclosure of, the clauses acts as a ‘poison pill’ which hinders an active market for corporate control, as no bidder would seek to acquire any influential shareholding in RCL Group if, as a practical matter, it could not effect changes to the board and
- implementing the clauses would “very strongly tend to” entrench the board and management of, and discourage competition for the control of, RCL Group.

The applicant has sought:

- an interim order that, if a Panel decision cannot be reached by Tuesday, 14 February 2012 (the day before the scheduled general meeting), the Chairman of the meeting be ordered to adjourn the meeting for one week and
- final orders that Torchlight be prevented from exercising any rights in connection with the relevant clauses which may be triggered by any removal or appointment of directors at the general meeting.

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