



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP12/19**

**Thursday, 15 March 2012**

## **Ludowici Limited 01 – Variation to Final Orders**

The Panel made a declaration and final orders on 28 February 2012 following an application from The Weir Group PLC in relation to the affairs of Ludowici Limited (see [TP12/09](#)).

On 14 March 2012, FLSmidth & Co. A/S requested a variation to the final orders so that the timing for performance of the final orders was referable to the date of the decision of the review Panel (9 March 2012, see [TP12/16](#)) rather than the date of the decision of the initial Panel (28 February, see [TP12/09](#)).

After seeking submissions from the parties, the Panel has agreed to vary the final orders (see Annexure A).

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)



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**Annexure A**  
**CORPORATIONS ACT**  
**SECTION 657D(3)**  
**VARIATION OF FINAL ORDERS**

**LUDOWICI LIMITED**

Pursuant to section 657D(3) of the *Corporations Act 2001* (Cth)

**THE PANEL ORDERS**

The final orders made on 28 February 2012 are varied as follows:

1. the words 'from the date of these orders' in order 1 are deleted and replaced with 'after 9 March 2012'
2. the words 'from the date of these orders' in order 8 are deleted and replaced with 'after 9 March 2012' and
3. a new definition be included in order 14:

'business day                      a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia',

so that the orders as varied read:

**CORPORATIONS ACT**  
**SECTION 657D**  
**FINAL ORDERS**

**LUDOWICI LIMITED**

The Panel made a declaration of unacceptable circumstances on 28 February 2012.

**THE PANEL ORDERS**

1. Within 15 business days after 9 March 2012, FLS must appoint an Arbitrator, who must be a retired justice of the Federal Court or a State Supreme Court, to assess claims made under these orders.

2. An Affected Shareholder is entitled to compensation if the Affected Shareholder can establish to the satisfaction of the Arbitrator that:
  - (a) the Affected Shareholder disposed of a net number of Ludowici shares during the Relevant Period
  - (b) the Affected Shareholder (or a market participant who advised an Affected Shareholder or operated a discretionary account) was aware of the Reuters article at the time the Affected Shareholder sold Ludowici shares and, at least in part, relied on it and
  - (c) some compensation is payable.
3. The Arbitrator must provide a copy to FLS of any material he or she receives from an Affected Shareholder under order 2 and allow FLS a fair opportunity to make written submissions to the Arbitrator.
4. The amount of compensation is to be determined by the Arbitrator but must not exceed the difference between A\$7.20 per Ludowici share and A\$9.87 (being the VWAP of Ludowici shares on the day of FLS's 16 February announcement). The Arbitrator must take into account:
  - (a) the Ludowici share price at the time of the sale
  - (b) the price obtained by the Affected Shareholder
  - (c) the reasons given in a sworn statement by the Affected Shareholder for selling and
  - (d) the likelihood that the Affected Shareholder would have sold irrespective of the Reuters article.
5. The compensation is payable for the net number of Ludowici shares in which an Affected Shareholder disposed of a beneficial interest during the Relevant Period.
6. FLS must compensate any Affected Shareholder the amount determined by the Arbitrator by a date not later than 10 business days after the determination of the amount.
7. The Arbitrator must make a decision within one month of FLS receiving a claim form from an Affected Shareholder.
8. FLS must, within 20 business days after 9 March 2012, cause to be published in one newspaper with a national circulation in Australia and one newspaper in each Australian State and Territory circulating in that State or Territory, a notice that is approved by the Panel and is not smaller than 15 cm by 20 cm and placed in the general or business news section of those newspapers which clearly states:
  - (a) the effect of, and a summary of the reasons for, the orders (including how the Arbitrator will determine claims and that claims must be supported by a sworn statement)
  - (b) a description of the group of persons likely to be Affected Shareholders

- (c) how Affected Shareholders qualify to receive payment
  - (d) what an Affected Shareholder must do to obtain a claim form
  - (e) the applicable time periods in which Affected Shareholders must act to receive payment under the orders
  - (f) the phone number of an enquiry line that can be called in relation entitlements under these orders and
  - (g) that the Affected Shareholders have 10 business days to register to receive a claim form.
9. The information in the notices published under order 8 must also be published on ASX and prominently on FLS's website and Ludowici's website no later than the first publication under order 8.
  10. The Panel must approve the claim form and the terms on which FLS appoints the Arbitrator.
  11. The claim form must be dispatched to claiming Affected Shareholders within 15 business days of the date of first publication under order 8.
  12. To be entitled to payment an Affected Shareholder must sign and return a claim form (together with a sworn statement) within 10 business days from the dispatch of the claim form.
  13. FLS must pay the costs of giving effect to these orders.

### **Definitions**

14. In these orders the following definitions apply.

<b>Term</b>	<b>Meaning</b>
16 February announcement	announcement on 16 February 2012 released to ASX that FLS has agreed to pay A\$10 per Ludowici share for all Ludowici shares, which it will acquire by scheme of arrangement, less any dividends Ludowici pays its shareholders prior to completion
Affected Shareholder	a person who disposed of a beneficial interest in a net number of Ludowici shares during the Relevant Period
business day	a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia
correction	the FLS media release dated 31 January 2012 titled " <i>FLS midth comments on Ludowici media coverage</i> " through the Thompson Reuters InPublic International Financial

	Wire - Denmark
FLS	FLSmidth & Co. A/S
Relevant Period	period from publication of: (a) the Reuters article to (b) the correction
Reuters article	the article published by Reuters dated 23 January 2012 titled " <i>FLSmidth says A\$7.20 per share Ludowici bid final</i> "

**Alan Shaw**  
**Counsel**  
**with authority of Robert Johanson**  
**President of the sitting Panel**  
**Dated 15 March 2012**