



Australian Government

Takeovers Panel

MEDIA RELEASE

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The President's Club Limited - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 26 June 2012 by The President's Club Limited in relation to its affairs (see [TP12/37](#)).

Background

President's Club, an unlisted public company with more than 50 members, operates a time share scheme at the Palmer Coolum Resort. At the date of the application, each President's Club shareholder held ordinary shares (which are voting shares) and a corresponding villa interest.

In July 2011, Queensland North Australia Pty Ltd (**QNA**) acquired 98% of Coeur de Lion Holdings Pty Ltd (**CDLH**), which owns all the shares in Coeur de Lion Investments Pty Ltd (**CDLI**). CDLI owns 3,107 shares (approximately 41.4%) in President's Club. Subsequently, QNA acquired another 2.9% of President's Club.

QNA lodged a bidder's statement, then supplementary and replacement bidder's statements, with ASIC in respect of an offer to acquire all of the shares and corresponding villa interests in President's Club. It has not despatched the bidder's statement and has not proceeded to make offers.

Declaration

The Panel considers that the first acquisition of President's Club shares was made in contravention of section 606. The Panel considers that the subsequent acquisitions of President's Club shares were made in purported reliance on item 9 of section 611 (the 'creep exception') but to the extent that the requirements of item 9 were met, it was only by reason of the first acquisition, which contravened section 606. Accordingly, the Panel considers that the first and subsequent acquisitions of President's Club shares give rise to unacceptable circumstances.

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). The Panel did not accept QNA's submission that any contraventions of section 606 were inadvertent.

Orders

The Panel is still considering what orders are appropriate to remedy the unacceptable circumstances.

The sitting Panel is Ewen Crouch (President), Ron Malek and Julie McPherson.

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

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Annexure A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

THE PRESIDENT'S CLUB LIMITED

CIRCUMSTANCES

1. The President's Club Ltd (**TPC**) is an unlisted company with more than 50 members. Its capital is divided into 7,488 ordinary shares and 5 subscriber shares (the latter having no right to vote, to dividends or to participate in the net assets of the company on a winding up).
2. Coeur de Lion Holdings Pty Ltd (**CDLH**) owns all the shares in Coeur de Lion Investments Pty Ltd (**CDLI**). CDLI owns 3,107 shares in TPC (approximately 41.4%).
3. Ordinary shares in TPC are voting shares. They carry voting rights beyond those in the definition of 'voting share' in section 9. This is not changed by a deed poll entered by CDLI, revocable on 6 months' notice and which has been revoked, in favour of the Australian Securities and Investments Commission as follows:

Where [CDLI] and its associates are not disqualified and excluded from voting their interests at a meeting, [CDLI] covenants that any voting rights held by [CDLI] and its associates or any operator, manager, promoter in relation to each Scheme, must not be exercised in excess of 10% of the votes that may be cast (after deducting any votes not cast by anyone or more members) on a resolution by members of the relevant Club other than:

 - (a) *in circumstances consented to in writing by the ASIC; or*
 - (b) *in relation to a resolution to wind up the relevant Scheme.*
4. In or around July 2011, CDLI:
 - (a) was the holder of the shares
 - (b) had power to exercise, or control the exercise of, a right to vote attached to the shares and/ or
 - (c) had power to dispose of, or control the exercise of a power to dispose of, the shares.
5. In or around July 2011, Queensland North Australia Pty Ltd (**QNA**) acquired 98% of the shares in CDLH. The remaining 2% of the shares in CDLH were acquired by Closeridge Pty Ltd.
6. By reason of section 608(3)(a), or alternatively section 608(3)(b), in or around July 2011 QNA acquired a relevant interest in the shares in TPC that CDLI had a relevant interest in (**first acquisition**).

7. None of the exceptions in section 611 applied to the first acquisition. The first acquisition occurred in contravention of section 606.
8. Further in March 2012, QNA acquired 221 additional shares in TPC (2.9%) taking its relevant interest in TPC shares to approximately 44.4% (collectively, **second acquisition**). The second acquisition was the acquisition of a substantial interest in TPC.
9. The second acquisition occurred in purported reliance on item 9 of section 611. However, to the extent that item 9 was met, it was only by reason of the first acquisition, which contravened section 606.
10. It appears to the Panel that the circumstances of the first acquisition are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of TPC or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in TPC and
 - (b) the purposes of Chapter 6 set out in section 602 and
 - (c) because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6.
11. Further it appears to the Panel that the circumstances of the second acquisition are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of TPC or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in TPC and
 - (b) the purposes of Chapter 6 set out in section 602.
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 The President's Club Limited.

Alan Shaw
Counsel
with authority of Ewen Crouch
President of the sitting Panel
Dated 24 July 2012