



**Australian Government**

**Takeovers Panel**

# MEDIA RELEASE

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**No: TP12/58**

**Monday, 20 August 2012**

## **IFS Construction Services Limited – Declaration of Unacceptable Circumstances and Orders**

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 27 July 2012 by 3 applicant shareholders<sup>1</sup> in IFS Construction Services Limited in relation to the affairs of IFS (see [TP12/47](#)).

### **Background**

The application concerned a meeting requisitioned pursuant to section 249D by the applicants seeking to replace the existing directors of IFS. At the meeting, Mr David Sanders (a lawyer and principal of Perth law firm Bennett + Co), a newly appointed director and “*Interim Chairman for the purposes of Chairing the General Meeting of Shareholders*”, declared that proxies received by Mr Vivian-Williams (representing approximately 38.3% of the voting shares in IFS) were invalid and adjourned the meeting for 2 months. The proxies had resulted from a circular that Mr Scott Vivian-Williams had sent out which included a pre-completed proxy form voting in favour of the resolutions and appointing Mr Vivian-Williams as a proxy.

The meeting was held on 18 July 2012. Prior to that, on 13 July 2012, IFS announced that it had received a notice of intention to make a takeover offer from Millennium Scaffolding Systems (Asia) Ltd, which has a relevant interest in approximately 21.82% of IFS. Directors of Millennium, Mr Billy Ong and Ms Anita Ong, are also directors of IFS.

The proposed bid is subject to conditions, including that the resolutions requisitioned by the Section 249D Notice are not approved by shareholders of IFS at the General Meeting.

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<sup>1</sup> Caramulo Pty Ltd <S V Williams Family A/C>, Scott Vivian-Williams & Jonica Lyn Vivian-Williams <Vivian-Williams S/F A/C> and Scott Vivian-Williams & Jonica Lyn Vivian-Williams, who together hold approximately 7% of the issued share capital of IFS

Since the adjournment, Mr Sanders has purported to resign as a director, and Millennium or its associates have acquired additional shares in IFS.

The Panel considered that the circumstances were unacceptable because:

1. Rejection of the proxies denied shareholders the ability to determine which directors would respond to the proposed bid during the important initial stages.
2. Adjournment of the meeting for 2 months:
  - 2.1. denied shareholders the ability to trigger a defeating condition of the proposed bid before it was made and therefore potentially to forestall the making of the bid
  - 2.2. ensured that the same board would hold office until Millennium's bid was made and have the initial carriage of IFS's response to that bid
  - 2.3. assisted Millennium by giving it the opportunity to increase its existing substantial interest in IFS, having regard to the potential closeness of the vote if the proxies were not invalid and
3. The acquisition of additional shares increased Millennium's ability to determine the outcome of the meeting.

Accordingly the Panel made a declaration of unacceptable circumstances as set out in Annexure A.

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 has made orders as set out in Annexure B. In summary, the Panel ordered, among other things, that:

1. IFS must reconvene the meeting adjourned from 18 July 2012 so that it is held on a date no later than 31 August 2012
2. IFS must not, at the reconvened meeting, treat as invalid the proxies lodged by Mr Scott Vivian-Williams merely on the basis that they had been lodged by or on behalf of Mr Vivian-Williams
3. Millennium and its associates must not vote at the reconvened meeting any IFS shares it and its associates acquired on or after 18 July 2012 (the date the meeting was adjourned)

4. IFS must make an announcement to the market regarding the reconvened meeting, send out the notice to shareholders reconvening the meeting and place advertisements in certain newspapers and
5. Millennium must not lodge the bidder's statement in relation to its proposed bid for IFS announced on 13 July 2012 until after the conclusion of the reconvened meeting.

The sitting Panel was Martin Alciaturi, Robin Bishop and Norman O'Bryan AM SC (sitting President).

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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## Annexure A

### CORPORATIONS ACT SECTION 657A

### DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

#### IFS CONSTRUCTION SERVICES LIMITED

#### CIRCUMSTANCES

1. On 23 May 2012, certain shareholders holding approximately 7% of IFS Construction Services Limited (**IFS**) requisitioned a meeting under section 249D to remove all the current directors of IFS and appoint 3 other directors.
2. Mr Billy Ong is chairman, and has a relevant interest in approximately 21.82%, of IFS.
3. On 15 June 2012, IFS issued a notice of meeting to be held at 11:00 am (WST) on 18 July 2012.
4. On 13 July 2012, IFS announced that it had received from Millennium Scaffolding Systems (Asia) Ltd (**Millennium**) a notice of intention to make a takeover offer (**proposed bid**). Mr Billy Ong is the Managing Director of Millennium.
5. The announcement attached a letter from Millennium stating that the proposed offer would be a cash offer at 3.6 cents per share for all the fully paid shares in IFS and would be subject to a number of conditions, including:  
*"(ii) subject to Clause 1(b), the resolutions requisitioned by the Section 249D Notice are not approved by shareholders of IFS at the General Meeting."*  
Clause 1(b) provided that Millennium could not rely on the condition if it voted in favour of the resolutions either itself or as proxy for other shareholders.
6. Prior to the meeting on 18 July 2012, IFS announced the appointment of Mr David Sanders as a director of IFS and as *"Interim Chairman for the purposes of Chairing the General Meeting of Shareholders"*.
7. At the beginning of the meeting, Mr Sanders declared proxies representing 65,479,546 shares (approximately 38.3%) to be invalid and adjourned the meeting *"with the consent of shareholders for two months at the same venue"*.
8. On 6 August 2012, IFS announced the purported resignation of Mr Sanders as a director.
9. Since the adjournment of the meeting, Millennium and/or its associates have acquired additional shares in IFS.

10. Rejection of the proxies denied shareholders the ability to determine which directors would respond to the proposed bid during the important initial stages.
11. Adjournment of the meeting for 2 months:
  - (a) denied shareholders the ability to trigger a defeating condition of the proposed bid before it was made and therefore potentially to forestall the making of the bid
  - (b) ensured that the same board would hold office until Millennium's bid was made and have the initial carriage of IFS's response to that bid and
  - (c) assisted Millennium by giving it the opportunity to increase its existing substantial interest in IFS, having regard to the potential closeness of the vote if the proxies were not invalid.
12. The acquisition of additional shares has increased the ability of Millennium to determine the outcome of the meeting.
13. It appears to the Panel that the circumstances 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 IFS or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in IFS and/or
  - (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).
14. 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 IFS Construction Services Limited.

**Alan Shaw**  
**Counsel**  
**with authority of Norman O'Bryan AM SC**  
**President of the sitting Panel**  
**Dated 17 August 2012**



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**Annexure B**

**CORPORATIONS ACT  
SECTION 657D  
ORDERS**

**IFS CONSTRUCTION SERVICES LIMITED**

The Panel made a declaration of unacceptable circumstances on 17 August 2012.

**THE PANEL ORDERS**

*Reconvening of section 249D meeting*

1. IFS Constructions Services Limited (**IFS**) must reconvene the meeting adjourned from 18 July 2012 so that it is held on a date no later than 31 August 2012 and must take all necessary steps to do so.

*Proxies*

2. Subject to order 4, IFS must not, at the reconvened meeting, treat as invalid the proxies lodged by Mr Scott Vivian-Williams on behalf of certain shareholders representing 65,479,546 shares in IFS merely on the basis that they had been lodged by or on behalf of Mr Vivian-Williams.
3. Mr Scott Vivian-Williams must, within 5 business days of the date of this order, confirm to IFS in writing that all the proxies lodged with him:
  - (a) have been lodged with IFS
  - (b) have not been altered in any way by him or on his behalf after he received them and
  - (c) are not to his knowledge the subject of any countermand or replacement proxy.
4. IFS may treat as invalid any proxies that are not the subject of the confirmation in order 3, provided IFS has written legal advice that it is appropriate to treat the particular proxy as invalid.

*Voting restriction*

5. Millennium and its associates must not vote at the reconvened meeting, and IFS must disregard any votes cast in respect of, any shares in IFS acquired by Millennium and its associates on or after 18 July 2012.

6. Millennium must inform IFS of the number of shares which it and its associates have acquired on or after 18 July 2012. Notification must be given the day before IFS prints the notice reconvening the meeting and again the day before the reconvened meeting.

***Information to shareholders***

7. IFS must as soon as practicable make an announcement to the market, in a form approved by the Panel, that:
  - (a) the meeting is to be reconvened, and on what date
  - (b) the proxies referred to in order 2 will not, unless order 4 applies, be treated as invalid at the reconvened meeting on that basis
  - (c) shareholders who wish to vote in the same way they did at the meeting on 18 July 2012 need not lodge a new proxy form, but must do so if they wish to vote in a different way, and the date by which and place at which any new proxy form must be received
  - (d) the number of shares that, at the date of the notice reconvening the meeting, cannot be voted by Millennium and its associates (and if they are, the votes will be disregarded)
  - (e) shares subsequently acquired by Millennium and its associates will also not be voted (and if they are, the votes will be disregarded) and
  - (f) the effect of the Panel's orders.
8. IFS must include the information required to be provided to the market in order 7 in the notice to shareholders reconvening the meeting.
9. IFS must, at least one week before the date of the reconvened meeting, publish a suitably prominent advertisement (in a form approved by the Panel) in the business section of a nationally circulating newspaper and *The West Australian* that includes sufficient information as will inform shareholders of the reconvened meeting and the market announcement in order 7.

***Millennium bid***

10. Millennium must not lodge the bidder's statement in relation to its proposed bid for IFS announced on 13 July 2012 until after the conclusion of the reconvened meeting.
11. IFS's directors must not consent to an abridged time under step 6 of section 633(1) of the *Corporations Act 2001* (Cth) until after the conclusion of the reconvened meeting.

**Alan Shaw**  
**Counsel**  
**with authority of Norman O'Bryan AM SC**  
**President of the sitting Panel**  
**Dated 17 August 2012**