



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP14/95

Monday, 15 December 2014

Yancoal Australia 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 21 November 2014 by Senrigan Capital Management Ltd and Mr Nicholas R. Taylor in relation to the affairs of Yancoal Australia Limited (see [TP14/87](#)).

Background

On 10 November 2014, Yancoal announced a pro-rata, renounceable rights offer of 2,321,12 Subordinated Capital Notes (SCNs) for every 100 Yancoal shares to raise up to approximately US\$2.3 billion.¹ Distributions on the SCNs are perpetually deferrable, non-compounding and within the control of Yancoal's board.²

The issue price of the SCNs is US\$100 per note. The SCNs will be initially convertible into Yancoal shares at a conversion price of US\$0.10 per share.

Yanzhou Coal Mining Company Limited (which holds approximately 78% of Yancoal) has committed to subscribe for its full entitlement of approximately US\$1.8 billion of SCNs. Its commitment is dependent (among other things) on Yancoal committing to repay it and its subsidiaries US\$1.8 billion in shareholder loans from the proceeds of the offering. If no other shareholders take up their rights, Yanzhou could acquire up to 98.8% of Yancoal by converting its SCNs into shares over time in reliance on the 3% creep exception to the takeovers prohibition.

The Panel held a conference and received written submissions.

¹ The offer was made by Yancoal SCN Limited, a wholly owned subsidiary of Yancoal

² These features of the distributions were included because the recapitalisation was intended to replace certain of Yancoal's existing debt obligations with accounting equity

Declaration

The Panel considered that the circumstances were unacceptable (see Attachment 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 to the effect that Yanzhou can only convert any SCNs it holds to maintain (but not increase) the level of its voting power in Yancoal as at the date of the orders, unless it obtains approval from minority shareholders.

The sitting Panel was Richard Hunt (sitting President), Jane Sheridan and Alison Watkins.

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

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Takeovers Panel

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

YANCOAL AUSTRALIA LIMITED

CIRCUMSTANCES

1. Yancoal Australia Limited (**Yancoal**) is an ASX listed entity. Yanzhou Coal Mining Company Limited (**Yanzhou**) has voting power in approximately 78% of Yancoal's shares.
2. On 10 November 2014, Yancoal announced a pro-rata, renounceable rights offer of 2.32112 Subordinated Capital Notes (**SCNs**) for every 100 Yancoal shares to raise up to approximately US\$2.3 billion. Features of the SCNs include:
 - (a) The issue price is US\$100 per note.
 - (b) The SCNs are convertible into Yancoal shares at a conversion price of US\$0.10 per share, so each SCN is initially convertible into 1,000 Yancoal shares.
 - (c) The SCNs are perpetual.
 - (d) The SCNs have priority over Yancoal's ordinary shares and some loans and financial support. Otherwise the SCNs are subordinated.
 - (e) The SCNs are unsecured.
 - (f) Distributions on the SCNs are perpetually deferrable, non-compounding and within the control of Yancoal's board.
3. The rights offer is not underwritten.
4. Yanzhou has committed to subscribe for its full entitlement of approximately US\$1.8 billion of SCNs. Its commitment is dependent (among other things) on Yancoal committing to repay it and its subsidiaries US\$1.8 billion in shareholder loans from the proceeds of the offering.
5. If no other shareholders take up their rights, Yanzhou could acquire up to 98.8% of Yancoal by converting its SCNs into shares over time in reliance on item 9 of section 611 of the *Corporations Act 2001* (Cth) (**Act**).

6. The Panel considers, having regard to the terms of the SCNs, that:
 - (a) the rights offer is highly dilutive
 - (b) some shareholders are excluded from participation by reason of their investment mandates
 - (c) the SCNs are a complex security which require a significant capital contribution and are unattractive to Yancoal shareholders other than Yanzhou
 - (d) the steps taken to minimise the control effect of the rights offer are not sufficient, including the discount conversion price which exacerbates the potential control effect and
 - (e) compulsory acquisition may occur at a cheaper price than would be the case through ordinary acquisitions of shares.
7. The alternatives available to Yancoal, on the evidence provided, were limited by what would be accepted by Yanzhou in such a way as to limit the ability of Yancoal to address its need for funds otherwise than by the SCNs.
8. As far as practicable, the holders of the ordinary shares in Yancoal to whom the SCNs are being offered, other than Yanzhou, do not have a reasonable and equal opportunity to participate in any benefits accruing to Yanzhou as a person who would acquire a substantial interest in Yancoal.
9. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances are having, will have or are likely to have on the control, or potential control, of Yancoal and
 - (b) the purposes of Chapter 6 set out in section 602 of the Act.
10. 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 Yancoal.

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 12 December 2014



Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657D
ORDERS**

YANCOAL AUSTRALIA LIMITED (“YANCOAL”)

The Panel made a declaration of unacceptable circumstances on 12 December 2014.

THE PANEL ORDERS

1. Subject to order 2, the conversion by Yanzhou Coal Mining Company Limited (“**Yanzhou**”) and its associates of Subordinated Capital Notes may only proceed with the approval of Yancoal shareholders excluding Yanzhou and its associates.
2. Yanzhou may from time to time, without shareholder approval, convert such number of Subordinated Capital Notes as would allow it to maintain (but not increase) the level of its voting power in Yancoal as at the date of these orders.
3. In this order:

Approval of Yancoal shareholders means approval by at least 50% of the votes cast by members entitled to vote on the resolution.

Subordinated Capital Notes means the Subordinated Capital Notes issued pursuant to a rights offer by Yancoal SCN Limited made under the prospectus dated 24 November 2014.

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 12 December 2014