



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/50

Thursday, 7 July 2016

Condor Blanco Mines Limited 02 – Panel Application Withdrawn

The Panel has consented to a request by Australian Securities and Investments Commission to withdraw its application to the Panel dated 28 June 2016 (see [TP16/45](#)), in relation to the affairs of Condor Blanco Mines Limited (administrator appointed) (**Condor**).

The application by ASIC concerned the subject of a referral from the Panel in [Condor Blanco Mines Ltd \[2016\] ATP 8](#) (see [TP16/35](#)) and related to potential undisclosed relevant interests and associations among certain entities and persons to whom 27,937,360 Condor shares were transferred, being Minesweeper Pty Ltd, Ms Nicola Philip, Monclar Pty Ltd, Mr Pierre Jules Richard, IPS Nominees Limited and Beaufort Securities Limited. Collectively, the transferees hold 24.57% of Condor.

The shares had been issued into escrow and were subsequently transferred to the transferees pursuant to a direction given by Condor to the escrow agent in connection with an Assignment Agreement, dated 22 September 2015, among Condor, Minesweeper, Monclar and Condor's then Chilean subsidiary, Tierra Amarilla SCM. Under the Assignment Agreement, both Monclar and Minesweeper received a right to be issued with Condor shares in exchange for managing and/or assuming the debts of Tierra Amarilla.

ASIC submitted that:

- Ms Philip and Minesweeper (a UK company controlled by Ms Philip) have a relevant interest in the shares held by IPS Nominees and Beaufort Securities because each appeared to hold Condor shares as nominee of Minesweeper/Ms Philip
- Mr Richard has a relevant interest in the Condor shares held by Monclar as he has the power to control disposal of those shares and that Mr Richard and Monclar are associates
- Ms Philip, Minesweeper and Beaufort Securities are associates and
- Mr Richard, Ms Philip, Monclar and Minesweeper are associates.

Evidence presented in the application by ASIC allegedly showed, among other things, that:

- following the transfer of Condor shares from the escrow agent, Minesweeper intended to place the shares held by IPS Nominees and Beaufort Securities
- a purported transfer of the shares held by IPS Nominees (to Mr Ahmet Ertus) and a purported transfer of the shares held by Beaufort Securities (to King Spirit International Ltd) were in doubt
- Mr Richard and Ms Philip are married and have had prior dealings and investments in Condor either in their personal capacities or through companies to which they were connected
- Mr Richard was the primary person who had practical control over the Condor shares held by Monclar
- Mr Richard, Ms Philip, Monclar and Minesweeper had a shared goal or purpose with regards to the Assignment Agreement and the transfer of Condor shares under that agreement and
- Mr Richard, Ms Philip, Monclar and Minesweeper were acting in concert in relation to the affairs of Condor.

ASIC submitted that the acquisitions of relevant interests in Condor shares and/or associations resulted in contraventions of the 20% threshold (s606¹) and the substantial holder notice provisions (s671B). It further submitted that *“the acquisition of control over voting shares in [Condor] by the Transferees did not take place in an efficient, competitive and informed market.”*

The Panel considered that there was sufficient evidence to warrant conducting proceedings; however, circumstances changed before a brief could be issued.

On 28 June 2016, Condor announced that Ms Lia Darby had resigned as a director of Condor and Mr Timothy Stops had been appointed as a director and would replace Ms Michelle Feruglio as chairman, although Ms Feruglio would remain as a director. On 30 June 2016, Condor announced that Ms Feruglio had resigned as a director.

On 4 July 2016, Mr Domenico Alessandro Calabretta was appointed as voluntary administrator of Condor under s436A. On 5 July 2016, he announced on ASX his appointment. Also on 5 July 2016, at the shareholders' meeting convened pursuant to a requisition under s249D, Mr Glen Darby was removed from the board of Condor and three directors were appointed.²

¹ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

² Mr Stops was not put forward for re-election and Condor announced that, in accordance with Condor's constitution, his tenure as a director ceased as of 5 July 2016

In light of Condor being placed in administration, ASIC sought to withdraw its application to the Panel, noting that it may seek to re-lodge an application in relation to the affairs of Condor in the future should the company's circumstances change.

As the Panel has formed no views other than that there was sufficient material to warrant it conducting proceedings, and noting that it has not received submissions on its brief in relation to the allegations, the Panel is satisfied given the changed circumstances that it is not against the public interest to consent to the applicant withdrawing its application.

Given the determination of proceedings, the interim orders made on 4 July 2016 (see [TP16/48](#)) have no further effect.

The sitting Panel appointed to consider this matter was Alex Cartel, Lee Dewhirst and Sarah Dulhunty (sitting President).

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