



Australian Government

Takeovers Panel

**Reasons for Decision
MEC Resources Limited
[2017] ATP 6**

Catchwords:

Decline to conduct proceedings - rights issue – effect on control – discretion to place shortfall shares - disclosure

Corporations Act 2001 (Cth), sections 606, 657C(2), 708AA(2)(f), Chapter 6D

Pooled Development Fund Act 1992 (Cth)

Guidance Note 17, Rights Issues

Sherwin Iron Limited [2014] ATP 12, Argosy Minerals Limited [2014] ATP 7, Powerlan Limited [2010] ATP 2, Redflex Holdings Limited [2009] ATP 17, Dromana Estate Limited [2006] ATP 4

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
NO	NO	NO	NO	NO	NO

INTRODUCTION

1. The Panel, Tracey Horton, Christian Johnston (sitting President) and Robert McKenzie, declined to conduct proceedings on an application by Grandbridge Limited, Trandcorp Pty Ltd and Mr David Breeze in relation to the affairs of MEC Resources Limited. The application concerned MEC Resources’ 1 for 2 non-renounceable rights issue. After MEC Resources announced that the directors of MEC Resources would allocate shortfall applications pro rata among its shareholders before allocating any shortfall shares at their discretion, the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

- applicants Grandbridge Limited (ASX code: GBA), Trandcorp Pty Ltd and Mr David Breeze
- MEC Resources MEC Resources Limited
- Rights Issue a 1 for 2 non-renounceable rights issue at \$0.028 per MEC Resources share

FACTS

3. MEC Resources is an ASX listed company (ASX code: MMR). It is registered as a Pooled Development Fund under the *Pooled Development Fund Act 1992 (Cth)* and invests in exploration companies in the energy and mineral sectors.
4. On 14 March 2017, MEC Resources announced the Rights Issue and released a cleansing notice under s708AA(2)(f).¹ The announcement disclosed that the Rights

¹ unless otherwise indicated, all statutory references are to the *Corporations Act 2001 (Cth)*, and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

Issue price represented a discount of approximately 20% to the VWAP² of MEC Resources shares traded on the ASX during the period of 10 trading days up to and including the day of the announcement.

5. On 23 March 2017, MEC Resources released an offer document for the Rights Issue. The Rights Issue was not underwritten. The Rights Issue was scheduled to close on 28 April 2017.
6. As at 10 April 2017 the applicants had voting power of 12.67% in MEC Resources and were the only substantial shareholders.

APPLICATION

Declaration sought

7. By application dated 10 April 2017, the applicants sought a declaration of unacceptable circumstances. The applicants submitted that the structure of the Rights Issue would:
 - (a) maximise the shortfall and permit the board of MEC Resources *“to divert the shortfall to persons aligned with their personal interests”*
 - (b) dilute the applicants’ shareholding and
 - (c) not permit MEC Resources shareholders equal access to the Rights Issue because MEC Resources directors *“retain an absolute discretion regarding the allocation of shares”* under the shortfall offer.
8. The applicants also submitted in effect that there were deficiencies and omissions in MEC Resources’ cleansing notice and offer document that were required to be disclosed under Chapter 6D.
9. The applicants submitted that the effect of the circumstances was that control, or the potential control, of MEC Resources was *“likely to be affected otherwise than in an efficient, competitive and informed market”* and MEC Resources shareholders would be denied a reasonable and equal opportunity to participate in the benefits of the Rights Issue.

Interim order sought

10. The applicants sought an interim order preventing MEC Resources from issuing any shares under the Rights Issue until further order of the Panel.

Final orders sought

11. The applicants sought either an order preventing the Rights Issue from proceeding or orders including corrective disclosure and providing existing shareholders *“the right to take up shortfall shares”*.

DISCUSSION

12. In this case there is no material to suggest that any shareholder would obtain a relevant interest in more than 20% in MEC Resources as a result of the Rights Issue. The only control effect identified by the applicants was the possible dilution of its

² volume weighted average price

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12.67% voting power in MEC Resources, if they do not subscribe for their full entitlement under the Rights Issue. Without more, we consider that this is unlikely to be unacceptable.³

13. The applicants submitted that since the announcement of the Rights Issue, MEC Resources' share price had dropped below the issue price.⁴ As a result, the applicants submitted that MEC Resources shareholders would not be incentivised to accept their entitlements, resulting in a greater number of shortfall shares to be placed at the discretion of the directors of MEC Resources.
14. It is conceivable that the exercise of the directors' discretion may have an effect on the control of MEC Resources. The Panel has been critical of shortfall facilities that provide discretion on the part of the entity in relation to allocation.⁵
15. We asked MEC Resources whether it would be prepared to offer its shareholders priority in any shortfall on a pro rata basis.⁶ MEC Resources agreed and made an announcement to that effect on 20 April 2017. MEC Resources' announcement also stated that no shortfall shares would be allocated or issued to any related party (including MEC Resources' directors and their associates) *"or to any person to the extent that the Company is aware that to do so would result in a breach of the Corporations Act, the Listing Rules or any other relevant legislation or law, including without limitation, a breach of section 606 of the Corporations Act"*.
16. We consider that these changes to the allocation of shortfall will lessen any potential control effect of the Rights Issue, noting that the applicants have the opportunity to apply for shortfall up to the 20% threshold. In the unlikely event that the issue of shortfall following completion of the Rights Issue has a control effect, this may be a new circumstance and an interested person⁷ can make a further application to the Panel.
17. The applicants submitted that there were a number of disclosure deficiencies and omissions, including in relation to the use of funds raised under the Rights Issue and details of litigation between the applicants and MEC Resources. The Panel *"is not the primary regulator of the disclosure content in rights issues"*.⁸ The Panel's focus in considering disclosure in matters involving rights issues is in relation to whether the potential control effects of the rights issue are properly disclosed.⁹ The disclosure issues raised in the application are matters which the applicants can raise with ASIC.

DECISION

18. For the reasons above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we have

³ see *Argosy Minerals Limited* [2014] ATP 7 at [25] and *Sherwin Iron Limited* [2014] ATP 12 at [33]

⁴ trading between \$0.025 on 24 March 2017 and \$0.031 on 17 March 2017

⁵ see *Dromana Estate Limited* [2006] ATP 4 at [30]-[32], *Redflex Holdings Limited* [2009] ATP 17 at [28] and *Powerlan Limited* [2010] ATP 2 at [42]-[43]

⁶ similar to what was agreed to in *Powerlan Limited* [2010] ATP 2 at [42]-[43]

⁷ see s657C(2)

⁸ Guidance Note 17, *Rights Issues*, at [32]

⁹ *ibid* at [25] to [32]

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decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

19. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

Christian Johnston
President of the sitting Panel
Decision dated 20 April 2017
Reasons given to parties 27 April 2017
Reasons published 28 April 2017

Advisers

Party	Advisers
Applicants	Steinepreis Paganin
MEC Resources	Lavan