



Australian Government

Takeovers Panel

Reasons for Decision

Tikforce Limited

[2018] ATP 17

Catchwords:

Decline to conduct proceedings – share issue – convertible notes – options – shareholder approval – disclosure

Corporations Act 2001 (Cth), sections 249D, 602, 606, item 7 of section 611

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

INTRODUCTION

1. The Panel, James Dickson, Paula Dwyer (sitting President) and Bruce McLennan, declined to conduct proceedings on an application by a group of shareholders in relation to the affairs of Tikforce Limited. The application concerned a notice of meeting containing a resolution approving the issue of shares and options of Tikforce in connection with the conversion of convertible notes. 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	EZR Systems Pty Ltd, Valplan Pty Ltd as trustee for the Troy R Valentine Fam S/F Account, Alignment Capital Pty Ltd, Cityside Investments Pty Ltd and Union Square Capital Pty Ltd on behalf of the Endeavour A/C
ASX Letter	Has the meaning given in paragraph 8
Notice of Meeting	Tikforce’s Notice of General Meeting to be held on 20 August 2018
Resolution	Has the meaning given in paragraph 6
Tikforce	Tikforce Limited

FACTS

3. Tikforce is an ASX listed company (ASX code: TKF). Tikforce has developed an online human resource solution for the delivery of identity and credential verification.
4. On 22 June 2018, Tikforce received from the Applicants a request under section 249D¹ to call a general meeting of Tikforce for the purpose of replacing two directors on Tikforce’s board.

¹ Unless otherwise indicated, all section 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)

5. Tikforce scheduled the general meeting for 20 August 2018.
6. One of the resolutions proposed by Tikforce to be considered at the general meeting was for the approval, for the purposes of ASX Listing Rule 7.1 and for all other purposes, of the issue of up to 706,335,386 shares and 706,335,386 options (the **Resolution**).
7. The Notice of Meeting did not identify who would receive the shares if the resolution was passed. It only stated that the shares and options would be issued to holders of convertible notes upon conversion.
8. On 17 August 2018, following the Applicant's application to the Panel, Tikforce received a letter from ASX (the **ASX Letter**) directing that Tikforce adjourn the general meeting to consider the Resolution (and other listing rule resolutions) until such time as certain disclosure concerns set out in the ASX Letter were rectified.
9. Shortly before the meeting on 20 August 2018, Tikforce withdrew the Resolution (and other listing rule resolutions) from the general meeting.

APPLICATION

Declaration sought

10. By application dated 14 August 2018, the Applicants sought a declaration of unacceptable circumstances. The Applicants submitted that if the shares the subject of the Resolution were issued, the subscribers for those shares would hold approximately 78.5% of Tikforce's issued share capital (not counting any shares that those subscribers already held in Tikforce). According to the Applicants' analysis, if all of Tikforce's convertible notes were converted into shares at least three convertible note holders would become substantial shareholders in Tikforce and one would potentially acquire a shareholding of more than 34% in Tikforce.
11. The Applicants submitted that the circumstances were unacceptable having regard to:
 - (a) the effect on control or potential control of Tikforce or the acquisition by a person of a substantial interest in Tikforce and
 - (b) the purposes of Chapter 6 set out in section 602, in particular section 602(b).
12. The Applicants submitted that, in respect of the Resolution, Tikforce had failed to identify any person who would receive shares if the Resolution was passed and did not provide Tikforce shareholders any information to enable them to assess the merits of the proposed share issue.

Interim order sought

13. The Applicants sought an interim order to restrain Tikforce from putting the Resolution to a vote at the general meeting or alternatively, from issuing any shares as a consequence of the Resolution being passed pending determination of its application.

Final orders sought

14. The Applicants sought final orders restraining Tikforce from seeking shareholder approval for the issue of shares on conversion of the convertible notes until

shareholders had been provided with sufficient information and, if applicable, requiring Tikforce to seek item 7 of section 611 approval in relation to any person who may obtain voting power in more than 20% in Tikforce.

DISCUSSION

15. Tikforce made a preliminary submission that the conversion of the convertible notes would not breach section 606 because the holder of notes convertible into more than 34% of Tikforce shares had directed Tikforce to issue the shares on conversion to various parties none of which would acquire voting power in Tikforce in excess of 20%. Tikforce offered to provide an undertaking to the Panel to release an announcement with the identity of the entities that would receive shares upon conversion.
16. The Applicants submitted, among other things, that releasing the announcement in the form proposed by Tikforce a day before proxies were due to close for the general meeting failed to give shareholders a reasonable time to consider the proposal or enough information to assess the merits of the proposal.
17. In considering whether to conduct proceedings, we had concerns regarding the lack of information available to shareholders around the identity of persons to whom shares were to be issued. We also had queries regarding the direction to Tikforce to issue shares to various parties on the conversion of one convertible noteholder's note. However, before we decided whether to conduct proceedings, ASX sent Tikforce the ASX Letter (copying us).
18. With ASX's consent, we shared the ASX Letter with parties and asked Tikforce how it intended to respond. Tikforce advised that (among other things) it would withdraw the Resolution (and the other listing rule resolutions) on the day of the meeting and issue a new notice of meeting that included additional disclosure on the Resolution subject to ASX's review.
19. In response, the Applicants requested an interim order adjourning the other resolutions being put to the meeting for at least one month on the basis that, prior to the proxy deadline expiring, Tikforce failed to disclose the ASX Letter to shareholders (which ASX had requested that it do immediately) and delayed responding to the Panel.
20. We declined to make the interim order but, in light of Tikforce's failure to release the ASX Letter, did release an announcement prior to the meeting. We disclosed that Tikforce had advised us of action it proposed to take in response to a request from ASX, including the withdrawal of the listing rule resolutions from the matters to be considered at the meeting. After our media release and shortly before the meeting, Tikforce disclosed the ASX Letter and its intention to withdraw the listing rule resolutions and issue a new notice of meeting which will include the additional disclosure on the Resolution as requested by ASX.
21. The directions of ASX to Tikforce in the ASX Letter and the response by Tikforce appeared to address the circumstances which the Applicants submitted were unacceptable.

22. Following the meeting, we asked the Applicants for submissions on whether we should continue to consider whether to conduct proceedings. The Applicants considered, in the circumstances, there was no need for the application to proceed further.
23. We advised parties that if the new notice of meeting is considered deficient when released, a new application may be made at that time.

DECISION

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

Orders

25. 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.

Paula Dwyer
President of the sitting Panel
Decision dated 29 August 2018
Reasons given to parties 25 September 2018
Reasons published 26 September 2018

Advisers

Party	Advisers
Applicants	Bennett + Co
Tikforce	-