



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP16/35

Monday, 30 May 2016

## **Condor Blanco Mines 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 1 May 2016 by Mr Joshua Farquhar in relation to the affairs of Condor Blanco Mines Limited (see [TP15/27](#)).

### **Background**

On 25 September 2015, Condor entered into an escrow deed with EMC (Nominees) Pty Ltd (EMC) under which EMC agreed to hold 45 million ordinary shares in Condor (33.24% of then issued capital) in escrow pending the finalisation of funding or acquisition agreements.

On 26 February 2016, Condor issued 50 million ordinary shares (29.13% of then issued capital) and requested EMC to hold those shares in escrow pursuant to the escrow deed pending the finalisation of funding or acquisition agreements.

Under the escrow arrangements, in respect of both the issue of the 45 million shares and the 50 million shares, Condor and EMC each acquired a relevant interest in voting shares of Condor in contravention of sections 606(1) and (2).<sup>1</sup>

Neither Condor nor EMC lodged substantial holder notices, in contravention of section 671B(1).

Ms Nicola Philip and Minesweeper Limited (wholly owned by Ms Philip) were each transferred a portion of the 45 million shares on 27 November 2015 giving rise to substantial holder notice obligations. No initial substantial holder notice was lodged until 16 May 2016, in contravention of section 671B(1). The notice failed to attach any relevant agreement through which she obtained a relevant interest in Condor, in contravention of section 671B(4).

### **Declaration**

The Panel considered that the acquisition of control over voting shares in Condor did not take place in an efficient, competitive and informed market. Condor

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<sup>1</sup> References are to the *Corporations Act 2001* (Cth)

shareholders and the market were not aware of Condor's or EMC's relevant interest in Condor shares, the nature of the interest or the circumstances of the acquisition or Ms Philip's substantial holding and any agreement giving rise to it. Moreover, the issue of the shares improperly diluted shareholders.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3).

### **Orders**

The Panel has made orders including that the 50 million Condor shares currently held by EMC are cancelled and that Condor disclose to the market, among other things, the circumstances and effects of the two share issues held in escrow and the transfer of a portion of the 45 million shares to persons including Ms Philip and Minesweeper Limited. The Panel also ordered that Condor disclose the number of Condor shares on issue subsequent to the orders.

The Panel also ordered Ms Philip to lodge an amended notice of initial substantial holder attaching any agreement giving rise to her interest.

The Panel is making enquiries into possible further orders.

### **Referral to ASIC**

The Panel was concerned with numerous aspects of the two share issues, the cancellation of shares and the transfer of a portion of the 45 million shares to persons including Ms Philip and Minesweeper Limited. The Panel is referring these matters to ASIC.

The sitting Panel was James Dickson, Michelle Jablko (sitting President) and Nicola Wakefield Evans.

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

#### CONDOR BLANCO MINES LIMITED

#### CIRCUMSTANCES

1. On 22 September 2015, Condor Blanco Mines Limited (**Condor**) entered into an assignment, indemnity and put option agreement (**Assignment Agreement**) with Minesweeper Limited (**Minesweeper**) and other parties. Minesweeper is wholly owned by Ms Nicola Philip.
2. On 25 September 2015, Condor entered into an escrow deed with EMC (Nominees) Pty Ltd (**EMC**) under which EMC agreed to hold 45 million ordinary shares in Condor in escrow pending the finalisation of funding or acquisition agreements.
3. The 45 million shares represented 33.24% of the then issued capital of Condor.
4. Pursuant to a direction dated 26 November 2015 from Condor to EMC, of the 45 million shares, 27,937,360 were transferred to six transferees purportedly in connection with the completion of the Assignment Agreement.
5. On 26 February 2016, Condor purported to cancel the remaining 17,062,640 shares.
6. Also on 26 February 2016, Condor issued 50 million ordinary shares and requested EMC to hold those shares in escrow pursuant to the escrow deed pending the finalisation of funding or acquisition agreements.
7. The 50 million shares represented 29.13% of the then issued capital of Condor (after the purported cancellation of 17,062,640 shares).
8. The 45 million shares and 50 million shares are voting shares.
9. Under the escrow deed, Condor had (in respect of the 45 million shares) and has (in respect of the 50 million shares) the power to exercise, or control the exercise of, the right to vote and dispose of the shares. Accordingly, under section 608(1)(b) and (c),<sup>2</sup> Condor acquired a relevant interest in those shares.
10. EMC had a relevant interest in respect of the 45 million shares and has a relevant interest in respect of the 50 million shares under section 608(1)(a). EMC did not satisfy the exemption in section 609(2) in relation to either holding of Condor shares.

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<sup>2</sup> References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

11. Accordingly:
  - (a) upon the issue of the 45 million shares on 25 September 2015, Condor's and EMC's voting power in Condor increased from below 20% to more than 20% in contravention of section 606(1) and (2) and
  - (b) upon the issue of the 50 million shares on 26 February 2016, Condor's and EMC's voting power in Condor again increased from below 20%<sup>3</sup> to more than 20% in contravention of section 606(1) and (2).
12. None of the exceptions in section 611 applied.
13. Neither Condor nor EMC lodged substantial holder notices in respect of any shares, in contravention of section 671B(1).
14. Ms Philip and Minesweeper were each transferred a portion of the 45 million shares on 27 November 2015 giving rise to substantial holder notice obligations. On 16 May 2016, Ms Philip lodged substantial holder notices disclosing a current holding of 6.57% of Condor in respect of the shares held by her and Minesweeper. The initial substantial holder notice failed to comply with the requirements of section 671B(4).

## **EFFECT**

15. Condor shareholders and the market were not aware of Condor's or EMC's relevant interest in the Condor shares held by EMC, or the nature of the interest or the circumstances of the acquisition. Moreover, the issue of the shares improperly diluted shareholders. Condor shareholders and the market were also not aware of Ms Philip's substantial holding and the agreement giving rise to it.
16. By reason of the foregoing, the acquisition of control over voting shares in Condor did not take place in an efficient, competitive and informed market.

## **CONCLUSION**

17. It appears to the Panel that the circumstances are unacceptable circumstances:
  - (a) having regard to the effect that the Panel is satisfied the 45 million share issue had, and the 50 million share issue is having or is likely to have on:
    - (i) the control, or potential control, of Condor or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Condor
  - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
  - (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 and of Chapter 6C.
18. 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).

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<sup>3</sup> Following the transfer of a portion of the 45 million shares

## **DECLARATION**

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Condor.

**Alan Shaw**  
**Counsel**  
**with authority of Michelle Jablko**  
**President of the sitting Panel**  
**Dated 27 May 2016**



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**ANNEXURE B**  
**CORPORATIONS ACT**  
**SECTION 657D**  
**ORDERS**

**CONDOR BLANCO MINES LIMITED**

The Panel made a declaration of unacceptable circumstances on 27 May 2016.

**THE PANEL ORDERS**

1. 50,000,000 ordinary shares in Condor Blanco Mines Limited (**Condor**) currently held by EMC (Nominees) Pty Ltd are cancelled.
2. To the extent 17,062,640 ordinary shares in Condor were not cancelled by Condor on 26 February 2016, such shares are cancelled.
3. Condor must as soon as practicable, and in any event within two business days after the date of these orders, provide a draft ASX announcement to the Panel, ASIC and the other parties in the matter that:
  - (a) describes the circumstances around and effects of:
    - (i) the issue of 45,000,000 ordinary shares on 25 September 2015
    - (ii) the transfer of a portion of the 45,000,000 shares in connection with the assignment, indemnity and put option agreement dated 22 September 2015 and
    - (iii) the issue of the 50,000,000 shares on 26 February 2016
  - (b) states that the 17,062,640 shares have been cancelled
  - (c) states that the 50,000,000 shares have been cancelled and
  - (d) specifies the number and class of Condor securities (including shares, options and all other securities) on issue subsequent to these orders.
4. Condor must release on ASX the announcement referred to in order 3, in a form approved by the Panel, forthwith after approval.
5. Within two business days after the date of these orders, Ms Nicola Philip lodge an amended notice of initial substantial holder, amending the notice dated 16 May 2016 and attaching all documents setting out the terms of any relevant agreement through which she obtained a relevant interest in Condor.

**Alan Shaw**  
**Counsel**  
**with authority of Michelle Jablko**  
**President of the sitting Panel**  
**Dated 27 May 2016**