



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 06/2009

Wednesday, 28 January 2009

GoldLink IncomePlus Limited 04 – Decision

GoldLink Income Plus Limited 04R – Panel Receives Review Application

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 8 January 2009 by Emerald Capital Limited in relation to the affairs of GoldLink IncomePlus Limited (see [TP09/02](#)). The Panel has received a review application from Fortina Pty Ltd in relation to this decision.

Emerald made a 45% proportional takeover offer for GoldLink, which closed on 19 January 2009. In its bidder's statement, Emerald stated that if, as a result of accepting the bid a GoldLink shareholder was left with less than a marketable parcel of shares, the takeover extended to the whole of the shareholder's parcel of shares and the shareholder would be deemed to have accepted for all of their shares.

Bell IXL Investments Limited and its associates had an interest in approximately 18% of GoldLink (22,944,000 shares). On 21 December 2008 Fortina, a company associated with Bell IXL, established 1,912 trusts. The trusts each held 12,000 shares (22,944,000 in total). On 2 January 2009, Fortina lodged acceptances in respect of 12,000 shares for each of the 1,912 Fortina trusts in an attempt to accept Emerald's offer in respect of all 22,944,000 shares.

The Panel considers (among other things) that the actions by Fortina were at odds with the basic principles and policies underlying particular provisions of the Corporations Act relating to proportional bids, were contrary to the efficient market principle and the equal treatment principle and gave rise to unacceptable circumstances.

The Panel did not consider it against the public interest to make the declaration, and in making the declaration had regard to the matters in s657A(3).

Orders

The Panel has made orders to the effect that Emerald only process acceptances such that 45% of the 22,944,000 shares be accepted.

The sitting Panel for the proceedings was Garry Besson, Robert Johanson and Karen Wood (sitting President). A sitting review Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the review application.

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

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Annexure A
Corporations Act
Section 657A
Declaration of Unacceptable Circumstances
GoldLink IncomePlus Limited 04

CIRCUMSTANCES

1. GoldLink IncomePlus Limited (GLI) is a listed public company. It is the subject of an off-market 45% proportional takeover bid (Bid) by Emerald Capital Limited (Emerald)
2. Bell IXL Ltd (Bell) and its associates (including Fortina Pty Ltd (Fortina)) held approximately 18% of GLI, being 22,944,000 shares
3. Section 618(2) of the Corporations Act (the Act) provides that if a person accepts an off-market bid and is left with less than a marketable parcel of securities the offer extends to that parcel. Section 653B(1)(b) provides that a person who holds one or more parcels of securities as a trustee or nominee for another person may accept as if a separate offer has been made in relation to each of those parcels
4. Fortina established trust arrangements involving 1,912 trusts during the offer period under Emerald's takeover bid. The trusts each held 12,000 shares (total of 22, 944,000 shares)
5. The beneficiaries of the trusts include Bell and associated companies
6. Fortina lodged acceptances with Emerald in respect of each of those trusts for 12,000 shares each. The shares remaining in each of the trusts after 45% has been accepted would be an unmarketable parcel within the meaning of s618(2) of the Act and Chapter 19 of the ASX Listing Rules
7. By doing so Fortina sought to accept Emerald's offer in respect of all 22,944,000 shares in the 1,912 trusts, at odds with basic principles and policies underlying ss 618(2) and 653B and the purposes of Chapter 6 as set out in s602
8. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied that the circumstances have had, are having, will have, or are likely to have, on:
 - (i) the control, or potential control of GLI
 - (ii) the acquisition, or proposed acquisition of a substantial interest in GLI
 - (b) the purposes of Chapter 6 of the Act as set out in s602
9. 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) of the Act

DECLARATION

- 10. Under section 657A of the Act, the Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of GLI.**

Alan Shaw

Counsel

with authority of Karen Wood

President of the Sitting Panel

Dated 21 January 2009

Annexure B

Corporations Act Section 657D Orders

GoldLink IncomePlus Limited 04

PURSUANT TO:

1. A declaration of unacceptable circumstances in relation to the affairs of GoldLink IncomePlus Ltd made by the Panel on 21 January 2009
2. Section 657D of the *Corporations Act 2001* (Cth)

THE PANEL ORDERS THAT:

1. Emerald Capital Limited only process the acceptances in the Schedule to the effect that 45% of the total of 22,944,000 shares in those acceptances are accepted under its takeover.
2. As soon as practicable, Emerald make an announcement to ASX of:
 - (a) the effect of these orders on its takeover and
 - (b) its final holding in GoldLink.

Schedule

Acceptances lodged by Fortina Pty Ltd under Emerald's takeover on behalf of the 1,912 trusts named 'Fortina No 2 Trust' to 'Fortina No 1,913 Trust' referred to in the Form 605 dated 4 January 2009 lodged by Bell IXL Investments Limited and persons referred to in paragraph 2 of the Form.

Alan Shaw
Counsel
with authority of Karen Wood
President of the Sitting Panel
Dated 28 January 2009