



Australian Government

Takeovers Panel

MEDIA RELEASE

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Gascoyne Resources Limited – Panel Declines to Conduct Proceedings

The Panel has declined to conduct proceedings on an application dated 13 October 2021 from Westgold Resources Limited (**Westgold**) in relation to the affairs of Gascoyne Resources Limited (**Gascoyne**).

The application concerned (among other things) certain aspects of a Scheme Implementation Deed (**SID**) entered into between Gascoyne and Firefly Resources Limited (**Firefly**) in relation to their proposed merger by way of a Firefly scheme of arrangement, including a ‘fiduciary out’ to the no talk restriction on Gascoyne (see [TP21/25](#)).

Westgold had submitted (among other things) that the ‘fiduciary out’ to the exclusivity provisions in the SID is “ultimately illusory and does not achieve what it is intended to achieve (i.e. an ability for the Gascoyne Board to support a superior offer to the Scheme which requires the Scheme to not proceed)”, in particular Gascoyne “has no express contractual ability of its own volition to in fact terminate the Scheme and instead would need to argue that there exists some form of implied right of termination where such termination would be in accordance with their equitable fiduciary obligations to Gascoyne Shareholders”.

Among other matters, the Panel considered that in light of the Gascoyne Board having determined that Westgold’s proposed takeover offer for Gascoyne is “not a Superior Proposal as contemplated by the SID”,¹ there was no reasonable prospect that it would make a declaration of unacceptable circumstances.

Accordingly, the Panel declined to conduct proceedings.

The sitting Panel was Denise McComish (sitting President), Bruce McLennan and Rory Moriarty.

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

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¹ As stated in Gascoyne’s ASX announcement titled ‘Updated Business Plan and REJECT Westgold Offer’ of 13 October 2021