



Australian Government

Takeovers Panel

MEDIA RELEASE

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BC Iron 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 21 March 2011 by BC Iron Limited (**BCI**) in relation to its affairs.

Background

On 20 January 2011, BCI entered into a scheme implementation agreement (**SIA**) with Regent Pacific Group Limited (**Regent Pacific**), which owns or controls 19.49% of BCI, and Regent Pacific's wholly owned subsidiary, Regent Pilbara Pty Ltd (**Pilbara**). Under the SIA, Pilbara would acquire by scheme of arrangement all the fully paid ordinary shares in BCI (except those already held) for \$3.30 per share.

Clause 15.1(d) of the SIA provides that Regent Pacific may terminate the SIA where the Regent Pacific Board publicly changes or withdraws its recommendation. This termination right was not disclosed.

Clause 10.2 of the SIA provides that the Regent Pacific Board may change or withdraw its recommendation if the Regent Pacific Board has determined in good faith, having received a specific written opinion from Senior Counsel on the matter, that its fiduciary and statutory duties to Regent Pacific require it to do so. This right was not disclosed.

On 15 March 2011, Regent Pacific announced that the Regent Pacific Board had decided to withdraw its recommendation of the necessary Regent Pacific shareholder resolutions in reliance on clause 10.2 of the SIA and that Regent Pacific was terminating the SIA under clause 15.1(d) with immediate effect.

On 22 March 2011, BCI released a copy of the SIA on ASX.

Declaration

In the Panel's view, by reason of the non-disclosure of Regent Pacific's right to terminate based on clause 15.1(d) of the SIA and Regent Pacific's subsequent reliance on the right, the acquisition of control over voting shares in BCI has not taken place in an efficient, competitive and informed market.

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 s657A(3).

Orders

The Panel has made orders that Regent Pacific and Pilbara cannot rely on clause 15.1(d) of the SIA to terminate that agreement.

The sitting Panel was Guy Alexander (sitting President), John M Green and Vickki McFadden.

The Panel will publish 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

BC IRON LIMITED

1. BC Iron Limited (**BCI**) is an ASX listed company (ASX code: BCI).
2. On 20 January 2011, BCI entered a scheme implementation agreement with Regent Pacific Group Limited (**RP**), which owns or controls 19.49% of BCI, and RP's wholly owned subsidiary, Regent Pilbara Pty Ltd (**Pilbara**).
3. Under the agreement, Pilbara would acquire by scheme of arrangement all the fully paid ordinary shares in BCI (except those already held) for \$3.30 per share.
4. Clause 10.2 of the agreement provided:

The Regent Pacific Board may change or withdraw its recommendation, and any Regent Pacific Director may announce his intention to vote against the Regent Pacific Shareholder Resolutions or to abstain from voting on the Regent Pacific Shareholder Resolutions any Regent Pacific Shares in respect of which they have the power to direct a vote, if the Regent Pacific Board has determined in good faith, having received a specific written opinion from a Senior Counsel on the matter, that its fiduciary and statutory duties to Regent Pacific (including having regard to the best interests of holders of Regent Pacific Shares) require it do so.
5. Clause 15.1(d) of the agreement provided:

Regent Pacific may terminate this agreement at any time before 8.00 am on the Second Court Date by notice in writing to [BCI]:

(d) if the Regent Pacific Board publicly changes or withdraws its recommendation;
6. Under clause 8 of the agreement, BCI was required to issue an announcement to ASX. "Announcement" was defined as an announcement by BCI in the form agreed by the parties.
7. BCI made an announcement to ASX dated 21 January 2011 and RP made an announcement to the Hong Kong Stock Exchange (**HKSE**) dated 20 January 2011 of the agreement. Each announcement contained a summary of the key terms of the agreement, including termination rights, but neither announcement referred to RP's right to terminate the agreement based on clause 15.1(d).
8. On 14 March 2011, RP advised BCI that the RP Board intended to publicly withdraw its recommendation of the necessary RP shareholder resolutions in reliance on clause 10.2 of the SIA and that RP was terminating the SIA pursuant

to clause 15.1(d) with immediate effect from the time of that withdrawal. On 15 March 2011, RP announced its withdrawal to the HKSE.

9. By reason of the non-disclosure of RP's right to terminate based on clause 15.1(d) and RP's subsequent reliance on the right, the acquisition of control over voting shares in BCI has not taken place in an efficient, competitive and informed market.
10. It appears to the Panel that the circumstances are unacceptable having regard to the purposes of Chapter 6 set out in section 602.
11. 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).

DECLARATION

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

Alan Shaw
Counsel
with authority of Guy Alexander
President of the sitting Panel
Dated 5 April 2011

Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

BC IRON LIMITED

The Panel made a declaration of unacceptable circumstances on 5 April 2011.

THE PANEL ORDERS

Regent Pacific Group Limited and Regent Pilbara Pty Ltd cannot rely on clause 15.1(d) of the Scheme Implementation Agreement to terminate that agreement (the Scheme Implementation Agreement was referred to in BC Iron Limited's announcement to ASX on 21 January 2011 and released to the ASX on 22 March 2011).

**Alan Shaw
Counsel
with authority of Guy Alexander
President of the sitting Panel
Dated 5 April 2011**