



**In the Matter of RICHFIELD GROUP LIMITED
[2003] ATP 41**

Catchwords: *Breach of 20% threshold - substantial holding notices - association -- Decline to commence proceedings - inappropriate forum - Court/Panel overlap*

Corporations Act 2001 (Cth), sections 602, 606, 657A, 657C, 657D, 657E, 671B

Taipan Resources NL (No. 2) [2000] ATP 13; refd

Taipan Resources NL (No. 4) [2000] ATP 16; refd

Precious Metals Australia Limited [2002] ATP 5 refd

On 21 November 2003, the Panel issued the following Media Release concerning an application in relation to the affairs of Richfield Group Limited. The Panel will not be publishing additional reasons in relation to this matter.

THE PROCEEDINGS

1. The Panel has considered the application (**Application**) by Mr Chak Chew Tan (**CC Tan**) dated 30 October 2003 alleging that unacceptable circumstances exist in relation to the affairs of Richfield Group Limited (**Richfield**). It has decided not to conduct proceedings in relation to the Application.

APPLICATION

2. CC Tan is a director of, and 29.57% shareholder in, Richfield. He acquired his stake in Richfield in December 2002, after shareholders approved a placement to him in exchange for approximately \$1.35 million cash in Richfield (**Placement**).
3. The Application alleges that certain shareholders in Richfield (**Alleged Associates**), some of whom are directors of Richfield, have formed an agreement to control or influence the Richfield board. CC Tan submits that some of the Alleged Associates now have relevant interests in up to 60% of Richfield.
4. The Application asserts that unacceptable circumstances exist because:
 - (a) the agreement between the Alleged Associates contravenes section 606 (the 20% threshold) of the *Corporations Act 2001 (Cth)* (**Act**); and
 - (b) the Alleged Associates have contravened section 671B (the substantial holding provision) of the Act by failing to lodge notices disclosing their voting power in Richfield.
5. The Application alleges that a purpose of the agreement is to prevent Richfield entering into a transaction proposed by CC Tan (**Proposed Transaction**). The Proposed Transaction involves Richfield acquiring a business or company from CC Tan in return for which CC Tan and his associates would be issued further shares in Richfield such that their relevant interests in Richfield would exceed 50%. CC Tan wants Richfield shareholders to vote on the Proposed Transaction at Richfield's next

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general meeting. The Application asserts that CC Tan and Richfield (or some of its directors) agreed to the Proposed Transaction in or before December 2002 and that it was approved in principle by shareholders at the time.

6. CC Tan has sought an order that certain directors of Richfield be restrained from voting at a board meeting convened to consider whether shareholders should be asked to approve the Proposed Transaction.

Court overlap

7. The matters alleged to be unacceptable circumstances in the Application, namely the alleged breaches of sections 606 and 671B, are squarely before the Supreme Court of Western Australia in ongoing proceedings brought by CC Tan against some of the Alleged Associates and Richfield. In those proceedings, CC Tan seeks substantially similar orders, including an order compelling Richfield to put the Proposed Transaction to shareholders at its next general meeting. The Court has already made interim orders on some of the matters raised in the proceedings.
8. The Application does not raise any significant issues that are not in issue before the Court. CC Tan has given the Panel no reason to doubt that he had standing to bring those proceedings or that the Court has jurisdiction to deal with them, and he has not terminated them, although the Court has adjourned part of them indefinitely at his request. The overlap between the Panel application and the Court proceedings is so extensive that it would be impossible to separate any issues from the Application which are not before the Court.
9. The Panel has already published its views on whether it will conduct proceedings on matters which are also the subject of Court proceedings.¹ The Panel will generally not commence proceedings on an issue on which the Court has jurisdiction and has already commenced proceedings.

No basis for making orders sought

10. The Panel also considers that, were it to conduct proceedings on the matters raised in the Application, the material given to it by CC Tan would not be a sufficient basis for it to make the order sought by CC Tan restraining members of the Board of Richfield from opposing a decision to recommend the Proposed Transaction to shareholders.

DECISION

11. Accordingly, under regulation 20 of the ASIC Regulations, the Sitting Panel declines to conduct proceedings on the application. If substantive issues remain between CC Tan, the Alleged Associates and Richfield after conclusion of the Court proceedings (and any appeal) and if those issues are suitable to be considered by the Panel, any of those parties may then make a further application to the Panel.

¹ *Taipan Resources NL (No. 2)* [2000] ATP 13; *Taipan Resources NL (No. 4)* [2000] ATP 16; *Precious Metals Australia Limited* [2002] ATP 5

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12. The sitting Panel is Nerolie Withnall (sitting President), Brett Heading (deputy President) and Irene Lee.

Nerolie Withnall

President of the Sitting President

Decision Dated 20 November 2003

Reasons Published 28 November 2003