



Australian Government

Takeovers Panel

MEDIA RELEASE

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Friday, 21 May 2010

Mesa Minerals Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure C) in relation to an application dated 13 April 2010 by Mesa Minerals Limited in relation to its affairs (see [TP10/017](#)).

Background

Mighty River (which is owned and controlled by Mr Yuzheng Xie) has approximately 19.17%¹ voting power in Mesa. Mighty River has requisitioned an extraordinary general meeting of Mesa under section 249D² to replace a majority of the board. The meeting is scheduled to be held on 28 May 2010.

Auvex Resources Limited has approximately 6.97% voting power in Mesa (acquired since 29 March 2010) and Mr James Smalley approximately 1.13%.

Mineral Resources Limited has made a takeover bid for all the shares in Mesa, currently due to close on 2 June 2010.

Mesa applied to the Panel for a declaration of unacceptable circumstances and made submissions, including that:

1. Mighty River and Auvex are associates in relation to Mesa and
2. Mighty River and Auvex are also associates with other shareholders in relation to Mesa.

Mesa submitted that the combined voting power of associated parties as a result of acquisitions exceeds the 20% threshold in s606 in breach of the Act. Mesa also submitted that failure to lodge a substantial holding notice in respect of the combined voting power constituted a further breach of the Act.

The Panel considers that Mr Xie, Mighty River and Auvex have voting power of approximately 27.27% in Mesa at present, including because:

¹ based on issued capital in Mesa at today's date of 617,270,831 shares

² references are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated

1. Mr Xie is associated with Auvex and parties (including Mr Premjit Roy, a non-executive director of Auvex) who control Auvex or together hold relevant interests in more than 20% of the shares in Auvex and
2. Mr Xie and Mr Smalley are associates with respect to Mesa.

The Panel further considers that Mr Xie, Mighty River and Auvex's voting power in Mesa increased beyond the 20% threshold in s606 as a result of share acquisitions by Mighty River and Auvex which occurred without using one of the exceptions in section 611.

The Panel considers that the combined voting power of Mr Xie and his associates with respect to Mesa has not been disclosed in accordance with Chapter 6C.

The factors taken into account by the Panel included:

- (a) structural and financial links
- (b) prior collaborative conduct
- (c) a common purpose in seeking to resolve a joint venture dispute between Mesa and Auvex or block the Mineral resources takeover bid for Mesa and
- (d) the existence of uncommercial dealings and investments involving various parties and other persons.

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).

Orders

Interim Orders

On 19 May 2010, when the Panel was minded to make a declaration of unacceptable circumstances, the Panel made interim orders (Annexure B) prohibiting Mighty River, Mr Xie, or Auvex from selling any shares they held in Mesa, or voting any of the shares the Panel considered were acquired in breach of s606. The interim orders were made to preserve the status quo while the Panel considered what final orders it would make. Given the final orders made, the interim order no longer has effect.

Final Orders

The Panel has made final orders including to the effect that:

1. Shares acquired by Mighty River and Auvex which, when aggregated with the combined voting power of Mr Xie, Mighty River, Auvex and Mr Smalley, represents in excess of 20% of the total voting power which exists in Mesa at present (Sale Shares) are to be divested.
2. Sale Shares cannot be dealt with by Mighty River and Auvex other than by accepting into the Mineral Resources bid within 7 days of the date of the Panel's declaration.
3. If Sale Shares are not accepted into the Mineral Resources bid within 7 days, or if Sale Shares are accepted into the bid and subsequently the bid is not completed or the acceptances are withdrawn, the shares are to be immediately vested in ASIC and subsequently sold (with the proceeds net of costs returned to the owners).
4. Until the steps described in paragraphs 1, 2 and 3 are completed, Mighty River and Auvex cannot vote the Sale Shares and their ability to vote their remaining Mesa shares is scaled back such that the combined votes of Mr Xie, Mighty River, Auvex and Mr Smalley do not exceed 20% of the total votes that can be cast after the application of these orders.
5. Mighty River, Mr Xie, Auvex and Mr Smalley must disclose their association in a substantial holder notice.

The sitting Panel for the proceedings is Diana Chang, Peter Scott (sitting President) and Jane Sheridan.

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

MESA MINERALS LIMITED

CIRCUMSTANCES

1. Mesa is a listed company (ASX Code: MAS) with issued capital of 617,270,831 ordinary shares.
2. Mighty River holds 118,294,255 Mesa shares and Mr Yuzheng Xie holds 12,500 Mesa shares. Mr Xie is the sole shareholder and director of Mighty River and controls it. Mighty River has approximately 19.17% voting power in Mesa.
3. Auvex holds 43,000,000 Mesa shares (approximately 6.97%).
4. Mr James Howard Nigel Smalley holds 7,000,000 Mesa shares (approximately 1.13%).
5. Mineral Resources has made a takeover bid for all the shares in Mesa, currently due to close on 2 June 2010.
6. Mighty River has requisitioned an extraordinary general meeting of Mesa under section 249D¹ to replace a majority of the board of Mesa scheduled to be held on 28 May 2010.
7. The Panel considers that:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the composition of Mesa's board or the conduct of Mesa's affairs, or
 - (b) under section 12(2)(c) in relation to the affairs of Mesaone or more of the following exist:
 - (c) Mr Xie is associated with Auvex
 - (d) Mr Xie is associated with Mr Premjit Roy and Mr Roy controls Auvex or
 - (e) Mr Xie is associated with Mr Roy and companies that together own or control more than 20% of Auvex are owned or controlled by Mr Xie or Mr Roy or by persons associated with Mr Xie and/or Mr Roy.
8. Further or alternatively, the Panel considers that Mr Xie and Mr Roy are associated:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the conduct of Auvex's affairs, or
 - (b) under section 12(2)(c) in relation to the affairs of Auvex.

¹ References are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated

9. Further, the Panel considers that Mr Xie and Mr Smalley are associated:
 - (a) under section 12(2)(b) for the purpose of controlling or influencing the composition of Mesa's board or the conduct of Mesa's affairs or
 - (b) under section 12(2)(c) in relation to the affairs of Mesa.
10. Mr Xie, Mighty River and Auvex's voting power in Mesa has increased as a result of acquisitions beyond the 20% threshold in section 606 other than through one of the exceptions in section 611 and without disclosure under Chapter 6C.
11. It appears to the Panel that the circumstances are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Mesa or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Mesa or
 - (b) having regard to the purposes of Chapter 6 set out in section 602 or
 - (c) because they constitute or give rise to a contravention of sections 606 and 671B.
12. 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 Mesa.

DEFINITIONS

In this declaration:

Auvex means Auvex Resources Limited

Market Energy means Market Energy Ltd

Mesa means Mesa Minerals Limited

Mighty River means Mighty River International Limited

Mineral Resources means Mineral Resources Limited

Alan Shaw
Counsel
with authority of Peter Scott
President of the sitting Panel
Dated 21 May 2010



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ANNEXURE B

CORPORATIONS ACT SECTION 657E INTERIM ORDERS

MESA MINERALS LIMITED

Mesa Minerals Limited (**Mesa**) made an application to the Takeovers Panel dated 13 April 2010 in relation to its affairs.

Mighty River International Limited (**Mighty River**) has requisitioned a general meeting of Mesa under section 249D of the Corporations Act 2001 (Cth) scheduled to be held on 28 May 2010.

The Panel ORDERS:

1. Mighty River, Mr Yuzheng Xie and Auvex Resources Limited (**Auvex**) not dispose of, transfer or charge any shares they hold in Mesa.
2. If, notwithstanding order 1, a transfer of any shares held in Mesa by Mighty River, Mr Xie or Auvex is lodged, Mesa not register the transfer.
3. Mighty River and Auvex not exercise any voting rights in respect of the following shares held by them in Mesa:
 - 3.1. Mighty River: 12,569,181 Mesa shares
 - 3.2. Auvex: 35,938,408 Mesa shares.
4. If, notwithstanding order 3, any voting rights in respect of the shares specified in order 3 are exercised, Mesa disregard those votes.
5. These interim orders have effect until the earliest of:
 - (i) further order of the Panel
 - (ii) the determination of the proceedings and
 - (iii) 2 months from the date of these interim orders.

Alan Shaw
Counsel
with authority of Peter Scott
President of the Sitting Panel
Dated 19 May 2010



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ANNEXURE C

**CORPORATIONS ACT
SECTION 657D
ORDERS**

MESA MINERALS LIMITED

The Panel made a declaration of unacceptable circumstances on 21 May 2010.

THE PANEL ORDERS

Divestment order

1. Any Sale Shares not accepted into the Mineral Resources takeover bid for Mesa within 7 days of the date of these orders are vested in ASIC for it to:
 - 1.1. sell them in accordance with these orders and
 - 1.2. account to Auvex and Mighty River for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC.
2. If the Mineral Resources bid for Mesa closes with conditions under the bid not satisfied or waived, or if acceptances into the bid with respect to Sale Shares are withdrawn for any reason, any Sale Shares which had been accepted into the bid are vested immediately in ASIC for it to:
 - (c) sell them in accordance with these orders and
 - (d) account to Auvex and Mighty River for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC.
3. If shares are vested in ASIC under either orders 1 or 2 :
 - 3.1. ASIC must retain an investment bank or stock broker (**Appointed Seller**) to conduct the sale as determined by the Appointed Seller, in its absolute discretion, to be the most appropriate method to get the best available sale price for the Sale Shares in the context of complying with these orders.
 - 3.2. ASIC must instruct the Appointed Seller:
 - 3.2.1. to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares
 - 3.2.2. that none of the Associated Parties or any of their associates may purchase any of the Sale Shares
 - 3.2.3. to obtain from any prospective purchaser of Sale Shares a statutory declaration that it is not associated with any of the Associated Parties and
 - 3.2.4. to dispose all of the Sale Shares within 2 months from the date of its engagement.

4. Other than accepting into the Mineral Resources takeover bid for Mesa, Auvex and Mighty River must not dispose of, transfer or charge any Sale Shares.
5. Until the first to occur of:
 - 5.1. the Sale Shares vesting in ASIC and
 - 5.2. the Sale Shares being transferred to Mineral Resources in accordance with the takeover bid following an acceptance by Auvex or Mighty River as referred to in order 1,if, notwithstanding these orders, a transfer of any of the Sale Shares is lodged otherwise than to give effect to these orders, Mesa must not register the transfer. This order applies as far as it is practicable for Mesa to comply with it.

Voting order

6. Until completion of these orders:
 - 6.1. Auvex cannot exercise any voting rights in respect of Mesa shares and
 - 6.2. Mighty River can only exercise voting rights over 105, 241, 019 Mesa shares.

Substantial holding disclosure order

7. As soon as practicable each of the Associated Parties give notice of their combined substantial holding as required under Part 6C.1 in relation to their voting power in Mesa and their association, including disclosing:
 - 7.1. the name of each associate who has a relevant interest in voting shares in Mesa
 - 7.2. the nature of their association with each associate and
 - 7.3. the relevant interest of each associate.

Interim order

8. For avoidance of doubt the interim order dated 19 May 2010 is discharged.

Definitions

ASIC means Australian Securities and Investments Commission

Associated Parties means Mighty River, Auvex or Mr James Howard Nigel Smalley or any of their associates

Auvex means Auvex Resources Limited

Mighty River means Mighty River International Limited

Mineral Resources means Mineral Resources Limited

Sale Shares means the following shares:

- (a) 34,932,471 Mesa shares held by Auvex
- (b) 9,920 118 Mesa shares held by Mighty River

Alan Shaw
Counsel
with authority of Peter Scott
President of the sitting Panel
Dated 21 May 2010