



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/89

Tuesday, 22 December 2020

E&P Financial Group Limited – Panel Receives Application

The Panel has received an application from E&P Financial Group Limited in relation to its affairs (ASX: EP1).

Details of the application, as submitted by the applicant, are below.

A sitting 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 application.

Details

360 Capital Group Limited and 360 Capital FM Limited as responsible entity of the 360 Capital Investment Trust (**360 Capital**) (ASX: TGP) is the largest shareholder of EP1 with a 19.55% shareholding.

On 27 October 2020, 360 Capital announced its intention to acquire via a conditional off-market takeover all of the shares in EP1 that it does not already own for \$0.40 per EP1 share plus one 360 Capital stapled security for every four EP1 shares, less any dividends declared or paid after 27 October 2020 (**First Offer**).

On 11 December 2020, 360 Capital made an announcement purporting to:

- withdraw the First Offer on the basis that a condition to that offer was triggered and
- publicly propose a new conditional off-market takeover to acquire all of the shares in EP1 that it does not already own for \$0.30 per EP1 share plus two 360 Capital stapled securities for every five EP1 shares, less any dividends declared or paid after 11 December 2020 (**New Offer**).

The announcement also stated that 360 Capital is targeting to lodge its bidder's statement in respect of the New Offer with ASIC by 23 December 2020.

The New Offer is subject to conditions that substantially replicate those in the First Offer. However, the New Offer introduces a new condition (that was not part of the

First Offer) relating to the withdrawal, discontinuation, settlement or determination of certain ASIC proceedings concerning a wholly-owned subsidiary of EP1 (**ASIC proceedings condition**).

EP1 submits (among other things) that:

- As a result of the ASIC proceedings condition and two of the other conditions attached to the New Offer (namely, the change of control consent condition and the other regulatory approvals condition), EP1 and its shareholders “are presented with an illusory offer as one or all of these conditions will inevitably be unsatisfied and require waiver at the sole discretion of 360 Capital in order to proceed”.
- Specifically in respect of the ASIC proceedings condition, the resolution of the relevant ASIC proceedings “is likely to take considerably longer than one year, being the maximum permitted duration of 360 Capital’s offer period”. Accordingly, the condition has “little if any prospect of being satisfied on any realistic scenario”.
- The three conditions are “so vaguely drafted and uncertain in their operation” such that EP1, its shareholders and the broader market “have no meaningful way of assessing the likelihood of these three conditions to the New Offer being satisfied”.
- Unless these conditions are waived by 360 Capital, the conditions “effectively give [360 Capital] a call option” on whether or not to proceed with the New Offer, thereby offending the express terms and/or policy of section 629 of the Corporations Act 2001 (Cth).

EP1 wrote to 360 Capital on 15 December 2020 seeking to resolve its concerns regarding the conditions of the New Offer, including the three conditions mentioned above. As at the date of the application, EP1 has not received a response.

EP1 seeks an interim order that 360 Capital be restrained from despatching its bidder’s statement in relation to the New Offer if EP1’s concerns identified in the application are not satisfactorily addressed.

EP1 seeks final orders to remove or modify the three conditions of the New Offer, including to remove or waive the ASIC proceedings condition.

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