

BEFORE THE TAKEOVERS PANEL

IN THE MATTER OF the Takeovers Act 1993 and the Takeovers Code

AND

IN THE MATTER OF a meeting held under s 32 of the Takeovers Act 1993 by telephone to determine whether **SUBMARINES AUSTRALASIA LIMITED** ("SAL") and **INTERNATIONAL MARINE SERVICES LIMITED** ("IMSL") have acted, are acting, or are intending to act in compliance with the Code by distributing a notice of meeting to shareholders and subsequently by the prospective allotment of voting securities by SAL to IMSL made pursuant to an ordinary resolution that could be approved by the shareholders of SAL at the company's meeting on 29 November 2002.

MEETING: 27 November 2002

MEMBERS: J C King (Chairman)

K J O'Connor

D M D Rawstorne

APPEARANCES: P D McKenzie QC as counsel assisting the Panel

A Wilson, appearing for Submarines Australasia Limited

IN ATTENDANCE: K G Morrell and J H van Amelsfort (from Panel Executive)

DETERMINATION: 28 November 2002

DETERMINATION OF TAKEOVERS PANEL

Introduction

1. Submarines Australasia Limited (“SAL”) is a tourism adventure company listed on the New Capital Market of the New Zealand Stock Exchange (“NZSE”). As such it is a Code company for the purposes of the Takeovers Code.
2. SAL was incorporated in September 2000 to undertake submarine exploration tours in the Milford Sounds. Its two largest shareholders are Skeggs Group Limited and the Mladenov Family Trust. The principal trading activities of SAL were undertaken by Submarine Adventures Limited, a wholly-owned subsidiary, which ceased operations in April 2002.
3. International Marine Services Limited (“IMSL”) is an unlisted marine consulting business based in Auckland. It was incorporated in October 1995 and forms part of the Networkmarine group of companies which is comprised of several distinct marine goods and services businesses. IMSL’s director and sole shareholder is Mr Wayne Shaw.
4. Since it ceased trading SAL’s financial position has deteriorated to the point of being described as “precarious” by the directors of the company for the purposes of the company’s annual meeting on 29 November 2002. The directors have advised shareholders that without a capital funding injection it was likely that SAL would go into liquidation with no return to shareholders.

Background

5. On 4 September 2002 the parties entered into an agreement (“the Agreement”) under which it was proposed that IMSL would be allotted voting securities in SAL. Under the Agreement SAL would allot to IMSL (or its nominee) 10,000,000 shares in SAL at 5 cents per share, being a total price of \$500,000 payable in cash within seven days of a successful shareholders’ resolution approving the allotment. The proposed allotment was subject to SAL satisfying certain conditions as set out in the Agreement.
6. On 12 September 2002 the parties notified the NZSE of the agreement and the proposed allotment. The parties intended to obtain the required shareholder approval at SAL’s annual general meeting to be held on 29 November 2002.

Proposed Allotment

7. On 14 November 2002 the Panel received a notice of meeting (“Notice”) from Anderson Lloyd Caudwell, on behalf of SAL, in respect of SAL’s annual general meeting. The Notice contained the resolution that was intended to be put to SAL’s shareholders in respect of the prospective allotment.
8. The proposed allotment of 10,000,000 shares to IMSL would give IMSL approximately 49% of the voting rights in an expanded and renamed SAL. Under rule 6(1) of the Code, SAL cannot make the allotment to IMSL unless it complies with the requirements of rule 7(d). This means that SAL must comply with rules 16 to 19 of the Code which govern the contents of the notice of meeting that is provided to shareholders for the purpose of considering the resolution necessary to approve the allotment to IMSL.
9. It was apparent to the Panel executive, on the basis of its review of the contents of the Notice, that it did not contain a statement from the proposed allottee, IMSL, which complied with rule 16(g) of the Code. (This is a statement from the proposed allottee setting out particulars of any agreements or arrangements that have been, or are intended to be, entered into between the allottee and any other person relating to the allotment, holding, or control of the voting securities to be allotted, or to the exercise of voting rights in the code company other than the allotment agreement itself.)
10. SAL’s notice of meeting was distributed to its shareholders on or about 14 November 2002, without the statement from the proposed allottee, IMSL, as required by rule 16(g).
11. The Panel was concerned that any subsequent allotment of shares by SAL to IMSL could therefore be made on the basis of a notice of meeting that did not comply with the Code.
12. The Panel held a preliminary meeting on Monday 25 November 2002 to discuss these issues. The Panel considered that SAL and IMSL may not be intending to comply with the Code in relation to the prospective allotment of shares to IMSL and decided to convene a meeting under section 32 of the Takeovers Act 1993 (“the

Act”) for 10.00 a.m. on 27 November 2002. The purpose of the meeting was to determine whether the Panel should exercise its powers under the Act.

13. SAL and IMSL were asked to provide any written submissions they wished to make to the Panel by 9.00 a.m. on the morning of the meeting and were invited to attend the meeting. Both parties provided submissions to the Panel as requested. SAL participated in the meeting through its legal adviser. IMSL did not join the meeting.

The issue for determination

14. The issue to be determined by the Panel was whether SAL and IMSL have acted, are acting, or are intending to act in compliance with the Code by distributing a notice of meeting to shareholders, and subsequently making the prospective allotment of shares to IMSL pursuant to a resolution that could be approved by the shareholders of SAL at the company’s meeting on 29 November 2002.

Application of the relevant rules of the Code

15. Rule 7(d) provides that:

A person may become the holder or controller of an increased percentage of voting rights in a code company –

- (d) by an allotment to the person of voting rights in the code company or in any other body corporate if the allotment has been approved by an ordinary resolution of the code company in accordance with this code (the main provisions are contained in rules 16 to 19).

16. Rule 16(g) requires that the notice of meeting include:

a statement by the allottee setting out particulars of any agreement or arrangement (whether legally enforceable or not) that has been, or is intended to be, entered into between the allottee and any other person (other than between the allottee and the code company in respect of the matters referred to in paragraphs (a) to (e)) relating to the allotment, holding, or control of the voting securities to be allotted, or to the exercise of voting rights in the code company.

17. In the present case the Notice provided to the shareholders of SAL for the purpose of its meeting on 29 November 2002 does not contain a statement by IMSL that complies with rule 16(g). IMSL confirmed that it had not provided SAL with such a statement. As a result the Panel is of the view that SAL’s notice of meeting does not comply with rule 16(g) of the Code. SAL’s counsel confirmed to the Panel that it is her view, and SAL’s view, that the notice does not comply with the Code.

Parties' submissions and evidence

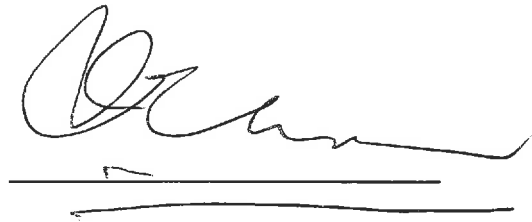
18. At the hearing the Panel heard submissions from Ms A Wilson for SAL. Ms Wilson informed the Panel that SAL intended to comply with the Code in relation to any future allotment of shares to IMSL. She indicated that SAL was likely to put the resolution proposed in the defective Notice to the meeting of shareholders on 29 November 2002 for approval, but told the Panel that SAL would not subsequently allot any securities to IMSL pursuant to that resolution unless the allotment was made in compliance with the Code.
19. Ms Wilson advised the Panel that the shareholders of SAL would be informed at the meeting on 29 November 2002 that even though the resolution may be approved no allotment would be made to IMSL unless this could be done in compliance with the Code.
20. Subsequent to the hearing the Panel received an undertaking from SAL, signed by Mr P Winter, Chairman and Mr D Skeggs, a director of the company, that it would not allot any voting securities to IMSL on the basis of the relevant resolution proposed in the notice for the meeting of 29 November 2002, and that SAL would only allot voting securities to IMSL at such time as SAL and IMSL have complied with the Takeovers Code and the Takeovers Panel formally approves such allotment.
21. The Panel considered the evidence and submissions and took advice from Mr P McKenzie QC, legal adviser to the Panel.

Determination

22. The Panel determines that the notice of meeting sent by SAL to shareholders on or about 14 November 2002 did not comply with rule 16 of the Code and that any allotment of securities to IMSL made on the basis of the resolution as proposed in that notice of meeting would be in breach of the Code.
23. On the basis of SAL's undertaking the Panel determines that it is satisfied that SAL intends to comply with the Code, and accordingly the Panel has decided not to make any restraining orders.

DATED at Auckland this 28th day of November 2002

SIGNED for and on behalf of the Panel
by the Chairman

A handwritten signature in black ink, appearing to read 'J C King', written over a horizontal line.

J C KING