



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/48

Tuesday, 8 October 2013

Avalon Minerals Limited – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure) in relation to an application dated 5 September 2013 by Sidan Super Pty Ltd as trustee for the Sidan Superannuation Fund in relation to the affairs of Avalon Minerals Limited (see [TP13/42](#), [43](#), [44](#) and [46](#)).

Background

The application concerned a 1 for 1 non-renounceable rights issue at a price of \$0.01 per share to raise approximately \$5.89 million announced by Avalon on 9 August 2013. The rights issue was fully underwritten by Tan Sri Abu Sahid Mohamed, the largest shareholder and a former director and Chairman of Avalon. Avalon placed shares to Dato Lim Heng Suan (also known as Dato Richard Lim) on 19 August 2013 and to other investors on 5 September 2013.

The applicant submitted that Tan Sri Abu was associated with other Avalon shareholders, and that Tan Sri Abu and his associates sought to increase their control of Avalon to the detriment of other shareholders. The applicant also submitted that the structure of, and disclosure in relation to, the rights issue was unacceptable.

Declaration

The Panel considers (among other things) that:

- (a) all reasonable steps to minimise the potential control impact of the rights issue were not taken
- (b) there are material information deficiencies in relation to Avalon's offer, including inadequate disclosure concerning Tan Sri Abu, as underwriter of the rights issue, his intentions, association with Dato Richard Lim and Avalon's need for and use of funds
- (c) Tan Sri Abu and Dato Richard Lim are associated under s12(2)(b) for the purpose of controlling or influencing the conduct of Avalon's affairs and under s12(2)(c) in relation to Avalon's affairs and
- (d) through the 19 August 2013 placement Tan Sri Abu and Dato Richard Lim increased their voting power in Avalon otherwise than as permitted under

Chapter 6. Their interest would be further increased if the underwriting proceeds.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel is considering what final orders, if any, to make and will publish details in due course. At present the interim orders remain in effect.

The sitting Panel was Sarah Dulhunty, Ron Malek and Nora Scheinkestel (sitting President).

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Australian Government

Takeovers Panel

**CORPORATIONS ACT
SECTION 657A
DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

AVALON MINERALS LIMITED

CIRCUMSTANCES

1. Tan Sri Abu Sahid Mohamed (**Tan Sri Abu**) is the largest shareholder and a former director and Chairman of Avalon Minerals Limited (**Avalon**).
2. On 9 August 2013, Avalon announced a 1 for 1 non-renounceable rights issue at \$0.01 per share to raise approximately \$5.62 million (subsequently increased to approximately \$5.89 million) (**Rights Issue**).
3. Avalon shareholders at this time included:
 - (a) Tan Sri Abu – 19.9% and
 - (b) Dato Lim Heng Suan (also known as **Dato Richard Lim**) – 8.2%.
4. The Rights Issue was fully underwritten by Tan Sri Abu.
5. Avalon's notice under s708AA(2)(f)¹ stated that if no other shareholders took up any of their entitlements the maximum voting power of the underwriter after the Rights Issue would be 61%.²
6. All reasonable steps to minimise the potential control impact of the Rights Issue on Avalon were not taken. Other capital-raising alternatives available to Avalon were not fully explored.
7. Avalon did not seek to comply with s615 in relation to the Rights Issue. Rather, Avalon sent offers to all shareholders and indicated in the offer document that shareholders outside Australia and New Zealand should ensure that they comply with any applicable securities laws in their own country.
8. There were material information deficiencies in relation to Avalon's offer, including inadequate disclosure concerning Tan Sri Abu, as underwriter of the Rights Issue, his intentions, association with Dato Richard Lim and Avalon's need for and use of funds.
9. On 19 August 2013, Avalon raised \$344,807 through a placement at \$0.013 per share to Dato Richard Lim, increasing his interest in Avalon to 11.8% (the **Placement**).³ The Placement was funded, at least initially, by Tan Sri Abu.

¹ All references are to the *Corporations Act 2001* (Cth) unless otherwise specified

² If the voting power of Dato Richard Lim was included, the maximum voting power of the underwriter would have been approximately 65%

10. Dato Richard Lim was nominated to take the Placement by a director of Avalon, Siew Mun Wai (also known as Edward Siew). Dato Richard Lim agreed to take the Placement at the request of Tan Sri Abu, who told Dato Richard Lim he could not subscribe for the shares because his shareholding had reached 19.9%.
11. A similar approach had been taken to placements to Dato Richard Lim earlier in 2013 and in 2012.
12. Tan Sri Abu and Dato Richard Lim each subscribed for their full entitlement under the Rights Issue.
13. The Panel considers that Tan Sri Abu and Dato Richard Lim (the **Associates**) are associated:
 - (a) under s12(2)(b) for the purpose of controlling or influencing the conduct of Avalon's affairs and
 - (b) under s12(2)(c) in relation to Avalon's affairs.
14. The Associates did not disclose the increase in their voting power resulting from their association and the Placement in accordance with Chapter 6C.
15. Immediately following the Placement the Associates had voting power of 31.36% and the Placement and the increase in their voting power occurred otherwise than as permitted under Chapter 6.
16. If the Rights Issue proceeds and Tan Sri Abu is allocated shares as underwriter, it is expected that the voting power of the Associates would increase to 48.72%.⁴
17. It appears to the Panel that the circumstances are unacceptable having regard to:
 - (a) the effect that the Panel is satisfied the circumstances have had, will have or are likely to have on:
 - (i) the control, or potential control, of Avalon or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Avalon or
 - (b) the purposes of Chapter 6 set out in s602 or
 - (c) the circumstances having constituted or given rise to contraventions of s606 and s671B.
18. 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).

³ After dilution as a result of another Avalon placement on 5 September 2013. As a result of the placements Tan Sri Abu's interest was reduced to 18.2%

⁴ Based on participation of shareholders when the Rights Issue closed on 9 September 2013

DECLARATION

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

Allan Bulman
Director
with authority of Nora Scheinkestel
President of the sitting Panel
Dated 7 October 2013