Wawryk, Laura

From: Wawryk, Laura on behalf of Procter, Murray
Sent: Wednesday, 3 August 2011 10:53 AM
To: 'smurray@racingqueensland.com.au'
Subject: [2767947:34] Executive retention strategy
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Dear Shara,

Please see **attached** correspondence.

Please let me know if you have any queries.

Kind regards,

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NORTON ROSE

3 August 2011

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Our reference
2767947

Dear Mr Bentley

Executive retention strategy

We refer to our previous advice dated 20 July 2011 and the advice of Clayton Utz dated 1 August 2011 in relation to a retention strategy for Racing Queensland Limited's (**RQL**) senior executives, Mr Malcolm Tuttle, Mr Jamie Orchard, Mr Paul Brennan and Ms Shara Murray (**Executives**).

1 Further instructions

1.1 You have requested our response to the following concerns raised by Clayton Utz:

(1) that an early State Government election may have the effect that the termination payments under the proposed material adverse change clause are unreasonable; and

(2) that a change in the State Government alone may not be sufficient to act as a trigger in relation to a material adverse change clause.

1.2 Our advice is set out below.

2 Summary

2.1 In our view, in the event of an early election the potential increase to the termination payment under the proposed material adverse change clause is defensible for the following reasons:

(1) there is a commercial need for RQL to retain the Executives in context of the current industry environment; and

(2) for this reason, it is in the interests of RQL to reach an agreement satisfactory to the Executives in order to retain their employment.

2.2 If the Executives agree to the inclusion of a cap on the termination payment under the material adverse change clause, then this will satisfy RQL's commercial need to retain the Executives.

2.3 However, in the event that the Executives do not agree to the proposed cap, we consider that it remains in the best interests of RQL to reach an agreement without the inclusion of the cap in order to retain the Executives.

2.4 In order to adequately address the current concerns of the Executives, we also consider that it is necessary to include, effectively, a change in State Government as a trigger in the proposed material adverse change clause.

3 Impact of early State election

3.1 In their letter, Clayton Utz have raised the possibility of an early State Government election and recommended to the Board of RQL that it carefully considers the flow on effects.

3.2 In particular, the proposed increase to each Executive's TRV of 30% would increase the amount of the termination payments that the Executive would receive if they choose to rely on the proposed material adverse change clause.

3.3 Clayton Utz has suggested mitigating the risk by placing a cap on the amount that can be paid under the material adverse change clause of between 12 and 14 months.

3.4 Ultimately, we consider that whether a cap is included is a matter for agreement between RQL and the Executives.

3.5 The Executives have raised their concerns with you in their letter dated 5 July 2011 indicating that this speculation is having a destabilising effect and that they need security in their employment leading up to and subsequent to the upcoming State election.

3.6 It is apparent that if this security regarding the Executives' ongoing employment is not provided, the Executives may resign from their employment with RQL. In the event that the Executives resigned, it would have a significant negative impact on RQL and, in the current industry environment, the likelihood of replacing the Executives would be limited.

3.7 The Executives have indicated that they would be satisfied with a commercial agreement that involves an increase of 30% to each of their TRV's and related entitlements and the inclusion of termination rights entitling them to resign and receive payment of their TRV to the end of the term in the event of a material adverse change.

3.8 On this basis, we consider that it is in the interests of RQL to put in place appropriate measures to retain the Executives.

3.9 If you are able to reach a commercial agreement with the Executives to continue their employment with a cap in place then we consider that this will increase the defensibility of changes to their employment arrangements (particularly in response to negative publicity).

3.10 However, we consider that in circumstances where RQL faces potentially losing its senior Executives, and where these Executives would be difficult to replace due to the industry speculation regarding a restructure to RQL, the increase to the termination payment is defensible without the cap.

4 Redundancy triggers

4.1 The key concern of the Executives is that if the Liberal National Party (**LNP**) is successful at the next State election, the LNP will move to alter the make up of RQL including, possibly, terminating their employment.

4.2 This concern is based on the stated policy of the LNP to remove the Board of RQL and significant speculation in the industry regarding the Executives.

4.3 In our view, unless the effect of the LNP taking control of the Queensland Legislative Assembly is included as a trigger in the proposed material adverse change clause, the Executives' concerns will not be adequately addressed. Therefore, we recommend that this be maintained in the proposed material adverse change clause.

4.4 As to the inclusion of other triggers, we agree with Clayton Utz that any triggers in relation to reporting lines for the Executives or organisational structure be limited to significant or substantial changes. This will in our view avoid any possibility that the Executives will seek to rely on the proposed material adverse change clause without a reasonable basis for doing so.

We are currently in the process of drafting amendments to the Executives' employment agreements in accordance with your previous instructions and consistent with our advice above. If you would like us to include a cap on termination payments under the material adverse change clause, please let us know.

Please contact me if you have any queries. Alternatively, please contact Kristin Gamble on (07) 3414 2876.

Yours faithfully

Murray Procter
Partner
Norton Rose Australia
Contact: Kristin Gamble