THE TAKEOVER PANEL

RONSON PLC

The Application

1. On 11 December 2003, a written request was submitted to The Panel on Takeovers and Mergers ("the Panel") by Axiom Capital Limited ("Axiom") on behalf of Ronson for the grant of a rescue waiver in respect of the provisions of Rule 9 of The City Code on Takeovers and Mergers ("the Code"), in favour of AMY Holdings Limited ("AMY").

2. The waiver was sought because the financial condition of Ronson had deteriorated to the point at which it urgently needed additional funds to survive, and AMY had indicated a willingness to provide a bridging loan of £500,000 if, but only if, it could do so upon terms which included a waiver of the requirements of Rule 9.

3. The bridging loan was later formalised in an agreement dated 17 December 2003. It was to be repaid from the proceeds of an open offer (the "Open Offer") to the shareholders of Ronson inviting them to subscribe for additional shares in Ronson at a price of 0.0375p in proportions of two new shares for each existing one held to raise £800,000.

4. A condition of the loan was that AMY was to underwrite the Open Offer and thus be entitled and required to take up at the issue price any shares not taken up by other shareholders. The loan would be for three months with early default being triggered if the Open Offer did not proceed by 22 January (subject to a grace period of 15 days from that date).

5. AMY was (and is) a company controlled by the family of Mr Farzad Rastegar, who was already the indirect owner of 30.51% of Ronson (as well as being a non-executive Director of the company). Hence the need for a waiver from the provisions of Rule 9. Otherwise that Rule would have required AMY to make a bid for the shareholdings of other shareholders if and when it increased its percentage of voting

rights by taking up new shares offered to, but not taken up by, the other shareholders under the Open Offer.

6. The waiver was sought under Note 3 on Dispensations from Rule 9 of the Code entitled "Rescue operations". This provides:

> "There are occasions when a company is in such a serious financial position that the only way it can be saved is by an urgent rescue operation which involves the issue of new shares without approval by a vote of independent shareholders or the acquisition of existing shares by the rescuer which would otherwise fall within the provisions of this Rule and normally require a general offer. The Panel will, however, consider waiving the requirements of the Rule in such circumstances; particular attention will be paid to the views of the directors and advisers of the potential offeree company."

7. The rationale for this dispensation is that the normal rights of shareholders not to see control passing without receiving an offer or consenting (by a vote of independent shareholders) may be overridden in a case where to insist on this would, or might be likely to, lead to the insolvency of the company and the likely loss by shareholders of their entire investment. The Note makes it clear that the dispensation can be given only if that is the only way the company can be saved.

8. Extreme urgency in dealing with such an application is to be expected if not inevitable. It was quite unrealistic in the circumstances of the present case to take "a month or two" (as the appellant suggested) to investigate the gravity of the company's position or other alternatives which might provide a solution to its problems. The making of such investigations over a prolonged period presents very serious problems when creditors are pressing, to say nothing of the difficulties of preserving the interests in the meantime of suppliers, customers, creditors and the markets. That is, in part, why the Executive is required to pay particular attention to the views of the directors and advisors of the company when enquiring into the state of the company and the need for the rescue operation to the exclusion of other solutions. Both the directors and advisors must be expected to know the facts and are required to be open and frank to the Executive when supporting the waiver being sought.

The Executive's Consideration of the Application

9. The Executive considered the application and heard representations from Ronson and its advisors. It obtained details of the major creditors' positions and confirmation directly from the leading creditor of amounts due and payable.

10. The information provided by the directors of the company and by Axiom was crucial. It indicated that unless the dispensation were granted the loan would not be made. No other proposal in their view offered the prospect of sufficient cash in the time available. Traditional lenders would not advance further funds and there was no other prospect of a timely cash injection. Alternative situations were discussed including injecting cash through a convertible loan, with the subsequent issue of shares being the subject of a whitewash resolution by independent shareholders, but Axiom confirmed that this was unacceptable to AMY.

11. Specifically the directors and/or Axiom confirmed at the time of the application that:

(a) there was need for £800,000 of which £500,000 was urgently needed and further working capital of £300,000 would be needed over the following three months;

(b) without the proposed immediate injection of funds the company would not be able to continue trading beyond 15 December 2003;

(c) the company had exhausted efforts to raise this additional capital from other sources;

(d) AMY's loan was dependent upon the company undertaking an Open Offer in January 2004 to raise £800,000, the proceeds of which were to be used to repay AMY and provide the further funds required;

(e) it was not expected that all shareholders would take up their rights under the Open Offer and AMY was prepared to do so in their place, although applications for additional shares would be permitted from all shareholders including AMY;

(f) AMY was not prepared to make this loan if a vote of the independent shareholders was required;

(g) details of existing indebtedness and existing problems in meeting re-payments by instalments of significant sums provided to the Executive were correct; and

(h) in their view the company's existence "was in very great danger and the proposed bridging loan must be provided immediately to enable trading to continue".

12. The directors concluded that it was "in the better interests of shareholders to end up with a lesser percentage of a going concern because the only alternative course of action would be the appointment of an Administrator/Receiver".

The Executive's Decision

13. On the 12 December 2003, the Executive accordingly granted the waiver. On this basis, AMY then provided the bridging loan of £500,000 and the company continued trading (as it still does).

The Ronson Plc Shareholders Action Group and the Kiam Family Interests

14. The Ronson Plc Shareholders Action Group ("RSAG") is a group said to be of several hundred shareholders out of a total number of 8,600. It has been represented both before and during this appeal by Mr Nicos Malamatinas, himself a shareholder, who has made detailed and vigorous submissions to the Panel both orally and in writing.

15. The Kiam Family Interests own about 10% of the company's shares. They were represented by Mr G.V.B. Thompson of MacArthur & Co Limited and generally supported Mr Malamatinas, although they were not formally parties to this appeal.

16. Both RSAG and the Kiam Family Interests have been concerned for some time about what they saw as the way in which the affairs of the company were being conducted, citing the lack of information given to shareholders, the unexplained deterioration which in a short period brought the company to the point of crisis, and the failure of the company to consider other courses of action which might solve its

problems without allowing it to fall under the control of Mr Rastegar and which would be more to the benefit of the shareholders as a whole. In particular, they were concerned at what they saw as a failure to react positively to suggestions by the Kiam Family Interests that it might provide the necessary finance, and by the failure to propose a scheme that would be voted upon only by independent shareholders (i.e. independent of AMY and Mr Rastegar) in contrast to the Open Offer coupled with a Rule 9 waiver. We say more about these complaints below, but it should be noted that the Executive's decision was based on the company's dire financial straits, and that RSAG did not deny that the company was in serious financial trouble.

17. Having seen correspondence, including emails, between Mr Tory Kiam and Mr Rastegar and the company concerning the suggestion referred to above, we observe that at the time of the Executive's decision, no approach had been made by the Kiam Family Interests and, even now, no offer has been made. The family first required to be informed of the terms of the AMY loan and to be given an opportunity for due diligence before committing funds. In our view, these exchanges could not properly have affected the conclusions of the Executive on 12 December 2003, given the facts presented at that time, and they did not help us in reviewing that decision. We should add that, given that there seems some doubt as to whether a letter dated 7 January 2004 from the company to Mr Tory Kiam in this context was sent and/or received, we did not place any reliance upon it in reaching our decision.

The Appeal by RSAG

18. On 18 January 2004, Mr Malamatinas circulated a document - apparently widely - making various allegations about what was being proposed, and asking for the waiver to be withdrawn. He wished the EGM of 30 January 2004, already convened to consider the Open Offer, to be adjourned and to be re-fixed to coincide with an EGM to be convened at the request of RSAG at which RSAG's concerns including, but not limited to, the matters mentioned at paragraph 16 above would be considered.

19 No appeal was initiated by RSAG against the Executive's decision of 12 December 2003 until the late afternoon of 29 January 2004, less than 24 hours

before the EGM of the company of which shareholders had been given notice dated 6 January 2004. The EGM was due to start at 2pm on 30 January 2004.

20. Nevertheless, it was possible to convene a hearing of the full Panel at short notice on the morning of 30 January 2004, to hear all parties at full length and to announce a decision by 1pm.

The Criticisms of the Executive's Decision

21. On an appeal, the Panel re-hears the original application. The burden in a case like the present remains on the party seeking the dispensation, and the Panel considers the evidence for and against granting the application. However, the Panel cannot turn back the clock, and it notes that not only has AMY advanced £500,000 to the company (together with a further £95,000 to meet immediate needs in January 2004) but that the Executive has obtained further details of the company's cash flow and the position relating to its overdraft as well as checking that AMY's loan has been used as indicated in December by Axiom. The company's position continues to be very serious and receipt of the proceeds of the Open Offer remains critical. We were told that if the appeal was allowed the Board intended to put the company into insolvent liquidation.

22. In short, what was at stake when the Executive reached its decision was still at stake when we heard this appeal.

23. The reasons advanced in support of the appeal were essentially:

(a) further enquiries should have been (and presumably even now should be) made, e.g. the company's auditors, officers and shareholders should be consulted;

(b) the Executive should have been more suspicious when considering what it was told given the unsatisfactory background of the company in the eyes of the appellant;

(c) probing questions should have been put to Mr Rastegar about his intentions and behaviour, and the possibility of amelioration of the terms of the loan;

(d) the possibility of a better route for shareholders by liquidation should have been considered;

(e) the Kiam Family Interests alternative loan facility should have been followed up (see above on this point); and

(f) overall the Executive should have taken more time (1 to 2 months was suggested) and done more before accepting the arguments of the directors and the advisers.

The Panel's View

24. Whilst we can readily understand the concerns of the RSAG given the deterioration in the company's financial position and the unattractive options now open, we cannot accept RSAG's arguments.

25. In our view what was put before the Executive was compelling. What has happened since then if anything strengthens the conclusions about the critical state of the company and the need, if the company was to survive, for an immediate cash injection of the kind that was in fact made. The fact that, as we were told by Mr Malamatinas, the largest creditor had not threatened liquidation, did not, in the Panel's view, affect the urgent need for payment of sums due. Mr Malamatinas' suggestion that liquidation might be better for the shareholders is pure speculation. There had been in the past year discussions about the willingness of others to bid for the company as a going concern. They had come to nothing and are no basis for saying that the shareholders could be better off with a liquidation.

26. Although some concerns were expressed by Mr Malamatinas about the lack of independence of the other directors and Axiom from Mr Rastegar, the Panel did not feel, on the evidence it heard, that it could disregard what they said about the state of the company and its prospects.

27. As to questions which should have been asked by the Executive, we are not persuaded that any relevant questions were not asked. If and to the extent that they were not asked, both the Panel and Mr Malamatinas had and took the opportunity to ask further questions during the Panel hearing (which was attended by all three directors of the company, including Mr Rastegar, and by Axiom). Nothing emerged

during the hearing which suggested that the financial position of the company was any less critical than as put to the Executive in December.

28. Nor can we see that the further enquiries suggested would assist. We were not told what such further enquiries would have revealed.

29. Reliance was placed by RSAG on the interim financial results of the company sent to shareholders on 5 November 2003. RSAG said that it was surprising and suspicious that it showed such a healthy state given the crisis which was said to have developed by 11 December 2003. Those figures in fact showed that, at 30 June 2003 (the date of the figures), there was a loss of £494,000 for the half year (compared with a profit of £122,000 for the comparable period in 2002), that in addition there were exceptional costs and asset write-downs of £505,000 (2002 first half £nil) and that although some things had improved, nevertheless "[a]s a result of the sustained and continuing under performance of the business against its budgets and plans, the company's resources have been critically depleted". The notes to the results also showed that offers previously contemplated by various parties for the company had, when explored, come to nothing.

30 It was suggested on behalf of the Kiam Family Interests that the Panel should require a vote limited to shareholders independent of AMY and Mr Rastegar when the company considered the resolution before the EGM. Whilst this might be considered in different circumstances, it does not provide a solution to this case. The AMY loan was dependent upon there being no such vote. It was not available on different terms and it is clear that such a term was unacceptable. Furthermore, the money has been advanced on the basis outlined above.

31. For the reasons given above, we concluded that this appeal should be dismissed.

4 February 2004