



Australian Government

Takeovers Panel

MEDIA RELEASE

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Viento Group Limited - Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 14 December 2010 by Viento Group Limited in relation to its affairs (see [TP10/73](#)).

Background

Viento Group Limited is a listed company (ASX Code: VIE). Viento applied to the Panel for a declaration of unacceptable circumstances and made submissions, including that:

1. Mr Allen Caratti, Mr Michael Carter, Timebuild Pty Ltd, Delta Ace Pty Ltd, Mammoth Nominees Pty Ltd, Guce Holdings Pty Ltd, Indian Ocean Capital (WA) Pty Ltd, Ms Tina Bazzo and Ms Samantha Ferguson-Smith are associates in relation to Viento and
2. the conduct of these parties, and structural links and relationships between them, evidence that they each have voting power in 30.60% of Viento.

Viento submitted that the circumstances were unacceptable because they constituted breaches of s606¹ (20% prohibition) and s671B (substantial holding provisions). It also submits there have been breaches of s672B (tracing notice provisions). It submitted that the circumstances resulted in the acquisition of control of Viento not taking place in an efficient, competitive and informed market (s602(a)) and the market not being fully informed (s602(b)).

Declaration

The Panel considers that the persons referred to in point 1 above (the **Associated Parties**) are associated:

1. under s12(2)(b) for the purposes of controlling or influencing the composition of Viento's board or the conduct of Viento's affairs, or
2. under s12(2)(c) in relation to the affairs of Viento.

¹ references are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated

The Panel further considers that the Associated Parties' voting power in Viento increased beyond the 20% threshold in s606 as a result of share acquisitions which occurred without using one of the exceptions in section 611.

The Panel considers that the combined voting power of the Associated Parties with respect to Viento has not been disclosed in accordance with Chapter 6C. Further, the Panel considers that each of Mr Carter, Ms Ferguson-Smith, Ms Bazzo and Mr Caratti gave deficient responses to tracing notices under s672A.

The factors taken into account by the Panel included:

- (a) structural and financial links between the Associated Parties
- (b) the conduct of the Associated Parties
- (c) a common purpose in seeking the appointment to the Viento board of Mr Carter and
- (d) family and other relationships between the Associated Parties.

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 section 657A(3).

Orders

Interim Orders

On 21 December 2010, the Panel made interim orders (see [TP10/74](#)) prohibiting the Associated Parties from acquiring any further shares or increasing their voting power in Viento, disposing of, transferring or granting a security interest over any shares in Viento and exercising any voting rights attaching to shares in Viento.

The interim orders were made to preserve the status quo while the Panel considered the matter. The interim orders remain in effect.

Final Orders

The Panel is considering what final orders to make and will publish details in due course.

The sitting Panel for the proceedings is Martin Alciaturi, John Fast and Byron Koster (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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Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657A DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

VIENTO GROUP LIMITED

CIRCUMSTANCES

Shareholdings

1. Viento Group Limited (**Viento**) is a listed company (ASX Code: VIE).
2. Timebuild Pty Ltd (**Timebuild**) holds 6,658,880 Viento shares (approximately 14.07%).
3. All the shares in Timebuild are held by Michael Carter on trust for Guce Holdings Pty Ltd (**Guce Holdings**) as trustee for the Guce Holdings Trust. All the shares in Guce Holdings are held by Tina Bazzo. Guce Holdings is trustee for the Guce Holdings Trust. Beneficiaries of the Guce Holdings Trust include:
 - Ms Bazzo
 - Allen Caratti (as Ms Bazzo's de facto spouse)
 - the children of Ms Bazzo and the children of Mr Caratti (as the primary beneficiaries) and
 - Mammoth Nominees Pty Ltd (**Mammoth Nominees**) (as an 'eligible entity' under the trust deed).
4. Mr Carter is Mr Caratti's son-in-law.
5. Guce Holdings holds 3,000 Viento shares (approximately 0.01%).
6. Indian Ocean Capital (WA) Pty Ltd (**IOCWA**) holds 468,180 Viento shares (approximately 0.99%). IOCWA is trustee for Indian Ocean Superannuation Fund. The beneficiaries of the Fund include:
 - Mr Caratti and
 - Ms Bazzo.
7. Delta Ace Pty Ltd (**Delta Ace**) holds 4,201,120 Viento shares (approximately 8.88%). Two-thirds of the shares in Delta Ace are held by Samantha Ferguson-Smith as trustee for Mammoth Nominees.
8. Mammoth Nominees holds 3,148,349 Viento shares (approximately 6.65%). All the shares in Mammoth are held by Mr Caratti.

9. The Panel considers that Ms Bazzo, Mr Caratti, Mr Carter, Ms Ferguson-Smith, Guce Holdings, Timebuild, IOCWA, Delta Ace and Mammoth Nominees are associated:
 - (a) under section 12(2)(b)² for the purpose of controlling or influencing the composition of Viento's board or the conduct of Viento's affairs, or
 - (b) under section 12(2)(c) in relation to the affairs of Viento.

Section 606

10. The voting power in Viento of the associated parties has increased as a result of acquisitions beyond the 20% threshold in section 606 other than through one of the exceptions in section 611.

Substantial holding notices

11. The Form 603 lodged by Timebuild on 28 May 2009 was late and is deficient.
12. The Form 603 lodged by Delta Ace on 27 January 2010 was late and is deficient.
13. No Form 603 has been lodged by Mammoth Nominees.
14. No Form 603 has been lodged by Mammoth Nominees, Ms Bazzo, Mr Caratti or entities which they respectively control disclosing the association and no Form 604 has been lodged in respect of the increases in voting power.

Tracing notices

15. On 12 February 2010 Viento served a direction under section 672A on:
 - (a) Mr Carter. His disclosure in response was deficient
 - (b) Ms Ferguson-Smith. Her disclosure in response was deficient
 - (c) Ms Bazzo. Her disclosure in response was deficient and
 - (d) Mr Caratti. His disclosure in response was deficient.

Unacceptable circumstances

16. It appears to the Panel that the circumstances outlined above are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of Viento or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Viento and
 - (b) having regard to the purposes of Chapter 6 set out in section 602 and
 - (c) because they constitute or give rise to a contravention of sections 606, 671B and 672B.

² References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

17. 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 section 657A(3).

Declaration

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

Alan Shaw
Counsel
with authority of Byron Koster
President of the sitting Panel
Dated 13 January 2011