



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: 09/2011

Wednesday, 19 January 2011

## Viento Group Limited - Panel Makes Final Orders

The Panel made a declaration of unacceptable circumstances on 13 January 2011 in relation to an application dated 14 December 2010 by Viento Group in relation to its affairs (see [TP 10/73](#) and [TP 11/05](#)).

The Panel considered that 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 (the **Associated Parties**) are associated in respect of Viento.

The Panel has made final orders (Annexure A), the effect of which includes:

- Shares acquired by Delta Ace Pty Ltd, Timebuild Pty Ltd, Mammoth Nominees Pty Ltd, Guce Holdings Pty Ltd and Indian Ocean Capital (WA) Pty Ltd (**IOCWA**) which represent in excess of 20% of the total voting power which exists in Viento at present (**Sale Shares**) are to be vested in the Commonwealth on trust for ASIC to sell (using an investment bank or stock broker) and return the proceeds net of costs to the owners.
- Until the steps described in above are completed, the ability of the Associated Parties to vote their remaining Viento shares is scaled back such that the combined votes of IOCWA, Timebuild and Delta Ace do not exceed 20%.
- The Associated Parties may rely on the exception in Item 9 of s611 of the Corporations Act (the "3% creep") to increase their combined holdings but based on a 20% holding and not taking into account the Sale Shares
- Each of the Associated Parties must disclose their relevant interests and association in a substantial holder notice.

The determination of the proceedings brings to an end the interim orders dated 21 December 2010.

The sitting Panel was 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](http://www.takeovers.gov.au).

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**Australian Government**

**Takeovers Panel**

**Annexure A**

**CORPORATIONS ACT  
SECTION 657D  
ORDERS**

**Viento Group Limited**

The Panel made a declaration of unacceptable circumstances on 13 January 2011.

**The Panel Orders**

**Divestment order**

1. The Sale Shares are vested in the Commonwealth on trust for Delta Ace, Guce Holdings, Mammoth Nominees, IOCWA and Timebuild respectively.
2. ASIC must:
  - (a) sell the Sale Shares in accordance with these orders and
  - (b) account to Delta Ace, Guce Holdings IOCWA, Mammoth Nominees and Timebuild respectively for the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
3. ASIC must:
  - (a) retain an Appointed Seller to conduct the sale and
  - (b) instruct the Appointed Seller -
    - (i) to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale
    - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares
    - (iii) unless the Appointed Seller sells Sale Shares on market, that it obtain from any prospective purchaser of Sale Shares a statutory declaration that the prospective purchaser is not associated with any of the Associated Parties

- (iv) that none of the Associated Parties may directly or indirectly purchase any of the Sale Shares, except to the extent that they are allowed to acquire additional shares under item 9(b) of s611 and the Appointed Seller sells those shares on market and
  - (v) to dispose all the Sale Shares within 3 months from the date of its engagement.
- 4. Viento and the Associated Parties must do all things necessary to give effect to these orders, including:
  - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Sale Shares in the form approved by ASIC and
  - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Sale Shares.
- 5. The Associated Parties must not otherwise dispose of, transfer, charge or vote any Sale Shares (except those acquired on market under paragraph 3(b)(iv)).
- 6. Until completion of orders 1 - 5:
  - (a) IOCWA can only exercise voting rights over 74,624 Viento shares
  - (b) Timebuild can only exercise voting rights over 5,757,654 Viento shares and
  - (c) Delta Ace can only exercise voting rights over 3,632,636 Viento shares.
- 7. None of the Associated Parties may take into account any relevant interest or voting power that any of them or their respective associates had, or have had, in the Sale Shares, when calculating the voting power referred to in Item 9(b) of s611 of the *Corporations Act 2001* (Cth), of a person six months before an acquisition exempted under Item 9 of s611. Any Sale Shares acquired on market under paragraph 3(b)(iv) must be taken into account in any subsequent calculation for item 9 purposes, taking the date of acquisition as the date they were acquired on market under paragraph 3(b)(iv).

#### **Substantial holding disclosure order**

- 8. Each of the Associated Parties must as soon as practicable give notice of their combined substantial holding as required under Part 6C.1 in relation to their voting power in Viento and their association, including disclosing:
  - (a) the name of each associate who has a relevant interest in voting shares in Viento
  - (b) the nature of their association with each associate
  - (c) the relevant interest of each associate and
  - (d) details of any relevant agreement through which they have a relevant interest Viento shares.

## **Interpretation**

9. In these orders:

<b>Term</b>	<b>Meaning</b>
Appointed Seller	An investment bank or stock broker
ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth
Associated Parties	Ms Tina Bazzo, Mr Allen Caratti, Mr Michael Carter, Ms Samantha Ferguson-Smith, Timebuild, Delta Ace, Mammoth Nominees, Guce Holdings and IOCWA or any of their associates
Delta Ace	Delta Ace Pty Ltd
Guce Holdings	Guce Holdings Pty Ltd, itself and as trustee of the Guce Holdings Trust
IOCWA	Indian Ocean Capital (WA) Pty Ltd, itself and as trustee of the Indian Ocean Superannuation Fund
Mammoth Nominees	Mammoth Nominees Pty Ltd
On market	in the ordinary course of trading on Australian Stock Exchange and not by crossing or special crossing
Sale Shares	The following shares in Viento: 568,484 shares held by Delta Ace 3,000 shares held by Guce Holdings 393,556 shares held IOCWA 3,148,349 shares held by Mammoth Nominees 901,226 shares held by Timebuild
Timebuild	Timebuild Pty Ltd
Viento	Viento Group Ltd

**Alan Shaw**  
**Counsel**  
**with authority of Byron Koster**  
**President of the sitting Panel**  
**Dated 19 January 2011**