Australian Government

Takeovers Panel

# Reasons for Decision
# World Oil Resources Limited
# [2013] ATP 1

**Catchwords:**

*Frustrating action – prescribed occurrences – rights issue – shareholder approval - need for funds - association – substantial holding - relevant interests - common directorships – common shareholdings – common investments – structural links - family links – failure to disclose – efficient, competitive and informed market - declarations – orders*

*Corporations Act 2001 (Cth), sections 9, 12, 602, 606, 611 item 9, 657A, 657B, 657C, 657D*

ASIC Act, section 199

ASIC regulation 13

*Guidance Note 12*

*Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel* [2012] FCA 1272, *ASIC v Fortescue Metals Group Ltd* [2011] FCAFC 19, *ASIC v Fortescue Metals Group Ltd [No 5]* [2009] FCA 1586 at [82], referred to in *ASIC v Fortescue Metals Group Ltd* [2011] FCAFC 19, *Adsteam Building Industries Pty Ltd & Anor v The Queensland Cement and Lime Co Ltd & Ors* (1984) 14 ACLR 456

*Bentley Capital Limited 01R* [2011] ATP 13, *Viento Group Limited 02* [2011] ATP 12, *Bentley Capital Limited* [2011] ATP 8, *CMI Limited 01R* [2011] ATP 5, *Viento Group Limited* [2011] ATP 1, *Mesa Minerals Limited* [2010] ATP 4, *Rey Resources Ltd* [2009] ATP 14, *Mount Gibson Iron Limited* [2008] ATP 4, *Orion Telecommunications Ltd* [2006] ATP 23, *Winepros Limited* [2002] ATP 18

| Interim order | IO undertaking | Conduct | Declaration | Final order | Undertaking |
|---|---|---|---|---|---|
| **No** | **No** | **Yes** | **Yes (two)** | **Yes (two)** | **No** |

## INTRODUCTION

1. The Panel, David Friedlander (sitting President), Julie McPherson and Tony Osmond, made declarations of unacceptable circumstances in relation to the affairs of World Oil Resources Limited. The Panel found that:

   (a) the Rights Issue was a frustrating action in relation to the Holdrey Bid and resulted in unacceptable circumstances and

   (b) certain shareholders in World Oil were associates and share purchases were undertaken in breach of the 20% threshold in s606.[1]

   The Panel ordered, among other things, that the Rights Issue be subject to shareholder approval and the shares above 20% held by Associated Parties be vested and sold by ASIC.

[1] References are to the *Corporations Act 2001* (Cth) unless otherwise specified

2. In these reasons, the following definitions apply.

| | |
|---|---|
| **Ariel Nominees** | Ariel Nominees Pty Ltd |
| **Associated Parties** | Maurice Silman and Ariel Silman |
| | Maurice Silman and Ezra Silman |
| | Maurice Silman and Bisan |
| **Bisan** | Bisan Limited |
| **Elken** | Elken Tower Pty Ltd |
| **Holdrey** | Holdrey Pty Ltd, as trustee for the Don Mathieson Family Trust |
| **Holdrey Bid** | the takeover bid announced by Holdrey on 25 February 2013 |
| **New Hopetoun** | New Hopetoun Pty Ltd |
| **Relevant Entities** | Ariel Nominees, Bisan, Elken, New Hopetoun, Rokeba and Templefield |
| **Rights Issue** | the rights issue announced by World Oil on 12 March 2013 |
| **Rokeba** | Rokeba Nominees Pty Ltd |
| **Templefield** | Templefield Pty Ltd |
| **World Oil** | World Oil Resources Limited |

## FACTS

3. World Oil is an ASX listed company (ASX code: WLR).

4. On 25 February 2013, Holdrey announced the Holdrey Bid. Holdrey intended to make an off-market takeover bid for all the issued shares of World Oil at 1.3 cents per share, subject to the following defeating conditions:

   (a) no regulatory action adversely affects the Holdrey Bid

   (b) there is no material adverse change in relation to World Oil's net assets and

   (c) there are no prescribed occurrences,[2] including:

   *… (d) WLR or a subsidiary of WLR issuing any shares or granting an option over its shares or agreeing to make such an issue or grant such an option.*

5. Holdrey's announcement included the statement that it would requisition a meeting to *"remove the current board of [World Oil] and propose the constitution of a new board"*.

6. On 8 March 2013, Holdrey lodged a s249D notice requesting that World Oil call a general meeting and that the following resolutions be put to the meeting:

   (a) John Ceccon and Christopher Andrew Manie be removed as directors and

   (b) Craig Donald Mathieson and John Vatovec be appointed as directors.

[2] s652C

7. On 12 March 2013, World Oil announced a 1-for-2 non-renounceable rights issue at 1.3 cents per share to raise approximately $2.5 million. The ex-entitlements date for the Rights Issue was 15 March 2013.

8. The shareholders of World Oil include:

   (a) Ariel Nominees (2.56%)

   (b) Bisan (2.56%)

   (c) Elken (3.85%)

   (d) New Hopetoun (2.56%)

   (e) Rokeba (13.97%)

   (f) Templefield (3.59%)

9. The current shareholdings reflect purchases in February and March 2013 by Rokeba/Templefield (2.82%) and Bisan (2.56%).

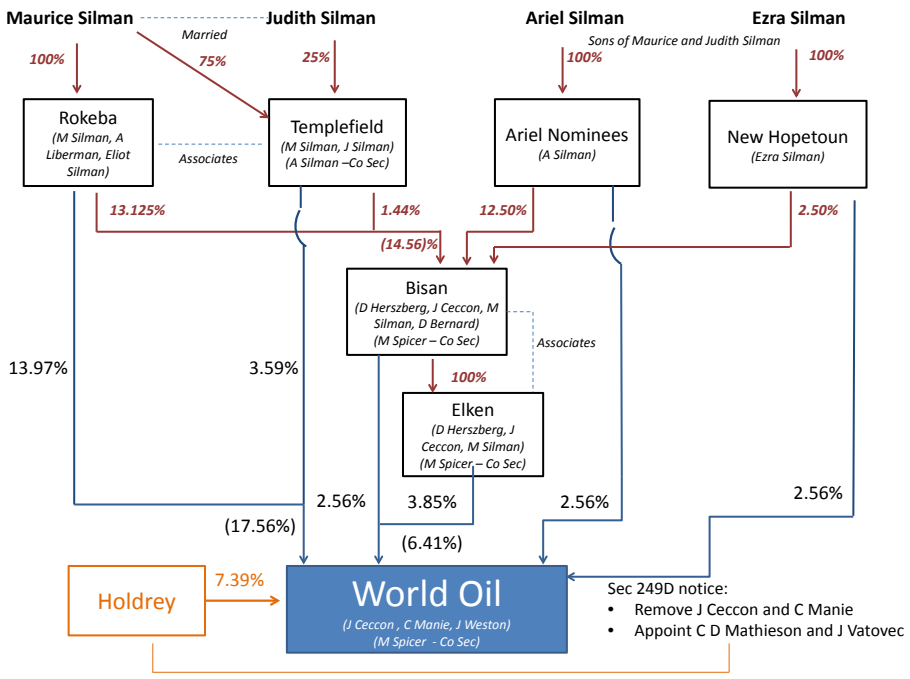
10. Rokeba and Templefield are associates, as disclosed in a substantial holder notice dated 2 October 2012. Templefield is the trustee of M. Silman Superannuation Fund. Maurice and Judith Silman are directors of Templefield, and members of the Fund. Rokeba is wholly owned by Maurice Silman. Its directors are Maurice Silman, Amina Liberman and Eliot Silman. Rokeba is trustee of the Silman family trust, controlled by Maurice Silman.

11. Bisan and Elken (its wholly-owned subsidiary) are associates, as disclosed in a substantial holder notice dated 8 March 2013.

12. Ariel Nominees is wholly owned by Ariel Silman, who is its sole director.

13. New Hopetoun is wholly owned by Ezra Silman, who is its sole director and secretary.

14. Various relationships between the parties are described in the diagram.



# APPLICATION

## Declaration sought

15. By application dated 14 March 2013, Holdrey sought a declaration of unacceptable circumstances. Holdrey submitted that, if the Rights Issue proceeded without shareholder approval, then (among other things):
    (a) should Holdrey waive the relevant defeating condition, it would result in a significantly higher purchase price, making it likely that Holdrey Bid would not proceed
    (b) should Holdrey rely on the defeating condition, World Oil shareholders would be denied a fair opportunity to consider the Holdrey Bid and
    (c) World Oil shareholders will be denied an opportunity to exit an otherwise illiquid investment.
16. Holdrey also submitted that World Oil's disclosure in relation to the Rights Issue was deficient.
17. Holdrey also submitted that the Relevant Entities may be associates, may have acquired shares in breach of s606 and may have failed to make appropriate substantial holding disclosures.

## Interim orders sought

18. Holdrey sought an interim order that World Oil make an announcement deferring the record date and ex-entitlements date for the Rights Issue.
19. The President decided that it was not necessary to make the interim order. The success of the Rights Issue may have been affected by an order at this stage and final orders could adequately protect the applicant and remedy any unacceptable circumstances. The disclosure issue could be addressed, if need be, once the Rights Issue opened.

## Final orders sought

20. Holdrey sought final orders to the effect that:
    (a) the Rights Issue be made subject to shareholder approval (with the Record Date no earlier than five business days after the meeting)
    (b) World Oil make corrective disclosure in relation to the Rights Issue's impact on the Holdrey Bid, including:
        (i) a comparison of the advantages and disadvantages of the Rights Issue and the Holdrey Bid and
        (ii) that if it proceeded it would trigger a condition of the Holdrey Bid.
    (c) to the extent the voting power of the Relevant Entities was in excess of 20%, shares representing the excess be vested for sale by ASIC and the voting rights attaching to those shares be restrained; and the Relevant Entities provide accurate substantial holding notices.

# DISCUSSION

## Application timing

21. The application had two aspects to it: frustrating action and association.

22. Under s657C(3), an application for a declaration must be made "*within 2 months after the circumstances have occurred*" or such longer period determined by the Panel. The application in respect of frustrating action was made within 2 months. The application in respect of association may not have been, noting that the circumstances were continuing as they had not been disclosed (and may involve a breach).

23. The association that we found had existed for more than 2 months before the date of the application. Some share acquisitions that breached s606 had occurred more than 2 months before the application was made. As noted, the circumstances were continuing. However, for avoidance of doubt, we extended time for making the application. Under s657B, the Panel must make a declaration of unacceptable circumstances within 3 months after the circumstances occur or 1 month after the application for a declaration is made. Accordingly, on one reading of the provision, on the association aspect we could only make a declaration within 1 month after the application.

## Frustrating action

24. The Rights Issue was not subject to shareholder approval or any mechanism that minimised the potential for the Rights Issue to frustrate the Holdrey Bid.

25. Nor did the announcement include much information about the Holdrey Bid. It noted that, because of the announcement of the Holdrey Bid, ASX Listing Rule 7.9 applied and World Oil would seek a waiver from ASX to permit the operation of a shortfall facility. The announcement did not disclose that the issue of shares under the Rights Issue would trigger a condition of the Holdrey Bid or include a comparison of the relative merits of the Rights Issue and the Holdrey Bid.

26. Where an action by a target is likely to trigger a material condition of a takeover offer, the Panel will generally require that shareholders be given a choice between the frustrating action and the takeover offer, for example by asking shareholders to approve the frustrating action. Guidance Note 12 says that a frustrating action that creates a choice for shareholders will not generally give rise to unacceptable circumstances.[3]

27. Holdrey submitted that World Oil *"has not disclosed that the Rights Issue triggers a defeating condition under the [Holdrey Bid] which may cause the [Holdrey Bid] not to be made."*

28. World Oil submitted that it "*did not believe it was necessary to disclose that proceeding with a Rights Issue would trigger a defeating condition of the [Holdrey Bid], or to explain in more detail to shareholders their alternatives in the light of both the [Holdrey Bid] defeating conditions and the Rights Issue."*

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[3] Guidance Note 12 *Frustrating Action* at [13]

29. In our view, World Oil should have disclosed that the Rights Issue, if it proceeded, would trigger a condition of the Holdrey Bid. It should have provided shareholders with information to enable them to consider the relative merits of these alternatives. It was not sufficient for World Oil to assume that all shareholders were aware of the implications of the Rights Issue.

30. And for the following reasons it should also have made the Rights Issue subject to shareholder approval.

31. In considering whether a frustrating action gives rise to unacceptable circumstances the Panel is guided by the conditions surrounding the bid and the conditions surrounding the frustrating action, including, most relevantly in this matter:

    (a) whether the condition is commercially critical to the bid

    (b) whether it is unreasonable for a bidder to rely on the condition

    (c) how advanced the negotiations on the frustrating action were when the bid was announced and

    (d) whether there is commercial imperative for the frustrating action.[4]

32. An issue of new shares, if significant in the context of the target's issued capital, is an example of an action that may give rise to unacceptable circumstances.[5]

33. Holdrey submitted that *"it is not unreasonable for Holdrey to rely on the defeating condition triggered by the Rights Issue"*. If the Rights Issue were fully subscribed it would result in the issue of 195,000,002 shares, representing 50% of World Oil's issued capital.

34. This is significant and would be *"commercially critical"* to the Holdrey Bid.

35. In *Rey Resources*[6] the Panel said:

    *Whether the rights issue is a frustrating action giving rise to unacceptable circumstances depends on whether the commercial objectives of the Gujarat bid would be frustrated by it. There are two ways in which this could occur:*

    *(a) the rights issue could frustrate the bid if it significantly expands the issued capital of Rey, requiring Gujarat to offer significantly more consideration to complete the acquisition. We did not need to finalise our view because the basis for the complaint was addressed by the undertaking or*

    *(b) the effect of the rights issue could be that BBY's potential acquisition of a 12% interest frustrates Gujarat gaining control of Rey. The undertaking ensures that BBY cannot acquire more than 5% voting power in Rey.*

36. World Oil submitted that it *"had already taken substantial preparation of (sic) the Rights Issue prior to the announcement of the [Holdrey Bid]"*, and *"the Rights Issue was not*

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[4] GN12 at [11]
[5] GN12 at [12]
[6] [2009] ATP 14 at [23], footnotes omitted

*made with the intention to frustrate the Holdrey bid, rather the decision to continue with the Rights Issue was due to the pressing financial circumstances of the Company*."

37. World Oil had undertaken investigations in relation to a capital raising prior to the Holdrey Bid, if not specifically on the Rights Issue. The terms of the Rights Issue were finalised after the Holdrey Bid was announced. Even so, there was an opportunity to seek shareholder approval before undertaking the Rights Issue, and there was insufficient material to show that this would necessarily have had a deleterious effect on World Oil's financial circumstances.

38. What did seem to have an effect on World Oil's financial circumstances were payments to entities connected with Relevant Entities. World Oil initially submitted that, in the absence of the Rights Issue, it "*will potentially be insolvent by the end of May 2013*". It provided a financial forecast to support that submission. World Oil subsequently submitted that it may potentially be insolvent "*earlier than the end of May*". This came about because World Oil made substantial payments to entities associated with Ariel Silman and David Herszberg (a director of Bisan), as well as a payment to a joint venture party during mid-late March 2013, which were much greater than in the forecast.

39. Holdrey submitted that it believed that "*World Oil will be in a cash negative position by 30 June 2013*" and it was "*sceptical about the dire financial position of World Oil and the immediate threat of insolvency.*"

40. We asked World Oil to provide documentation relating to the board discussions in which it was decided that the Rights Issue would proceed. World Oil did not provide such documentation.

41. Holdrey submitted that "*At no point following the announcement of the takeover by Holdrey on 25 February 2013 and prior to the announcement of the rights issue by World Oil on 12 March 2013 did any director or representative of World Oil approach Holdrey in relation to its bid condition that would be triggered by the rights issue…any company in the parlous financial state represented by World Oil…would reasonably be expected to contact the bidder at first instance.*"

42. We would not necessarily expect a target in a stressed financial position to approach a hostile bidder as its first contact. It may have other options for raising capital that would not frustrate the bid or potential bid. But if that is not the case, then in our view it would be prudent to first approach the bidder before undertaking a corporate action that may frustrate the bid or potential bid.

43. In this case, following announcement of the Rights Issue Holdrey offered to subscribe for shares in World Oil by way of a placement of 2.1% of World Oil's issued capital at an issue price of 1.3 cents per share, raising $110,000. It subsequently offered World Oil an interest free loan of $110,000 for 6 months, convertible at the election of World Oil into World Oil shares at an issue price of 1.3 cents per share.

44. World Oil submitted (after we had made a declaration and orders) that the terms of the funding options from Holdrey were unsatisfactory.

45. Had World Oil approached Holdrey prior to announcing the Rights Issue, options such as those offered later by Holdrey may have been made available and may have preserved the ability for shareholders to choose between the Rights Issue and the Holdrey Bid.

46. There may be good reasons not to accept an offer of funding, but there are unlikely to be good reasons not to even allow consideration of one.

47. Moreover, when World Oil did announce the Rights Issue it barely mentioned the Holdrey Bid. Shareholders were left with insufficient information.

48. In our view, World Oil shareholders should have had the opportunity to accept the Holdrey Bid or subscribe to the Rights Issue. They will (if the bid does not proceed) have been denied a reasonable and equal opportunity to participate in benefits that would accrue through the Holdrey Bid, and have not been given enough information to enable them to assess the merits of the competing proposals.

49. In our view, the Rights Issue gives rise to unacceptable circumstances.

50. *Post script: since the making of our decision, there have been a number of iterations of the draft notice of meeting, which has to date still not been settled*.

**Association**

51. Section 12 sets out the tests for association as applied to Chapter 6. There are two relevant tests here:

    (a) s12(2)(b) - which provides, in essence, that B is an associate of A if (and only if) B is a person with whom A has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of a company's board or conduct of its affairs and

    (b) s12(2)(c) - which provides, in essence, that B is an associate of A if (and only if) B is a person with whom A is acting or proposing to act in concert in relation to the company's affairs.

52. A relevant agreement is an agreement, arrangement or understanding:

    (a) whether formal or informal or partly formal and partly informal and

    (b) whether written or oral or partly written and partly oral and

    (c) whether or not having legal or equitable force and whether or not based on a legal or equitable rights.[7]

53. As stated by the Panel in *CMI Limited 01R*,[8] the cases make it clear that there is significant overlap between the concepts of "*acting in concert*" and "*relevant agreement*" in s12.

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[7] Section 9

[8] [2011] ATP 5 at [33]-[34]

54. An understanding means an understanding – "*plainly a word of wide import*"[9] - as to some common purpose or object in relation to the company in question. Here, the company in question is World Oil.

*Preliminary findings*

55. Having considered the application, submissions and rebuttals, we made preliminary findings and invited comments on them. Our conclusions follow consideration of responses.

56. We considered the cumulative effect of the material and drew appropriate inferences. In doing so we had in mind that we must be satisfied by logical and probative material and the potential seriousness of a finding of association.

*Conference*

57. Rokeba/Templefield and Ariel Nominees requested a conference on the association issue.

58. Holdrey submitted that a conference was not necessary.

59. We decided that a conference was not needed because:

    (a) we asked all parties what a conference would add to the written submissions. The responses did not satisfy us that a conference would add anything material

    (b) we accepted that the allegations of association were strongly denied and took that into account in our review of the material

    (c) Rokeba submitted that Maurice Silman was not available until early May for a conference. Maurice Silman would be a key participant. This was outside the timeframe to make a declaration, if we were minded to do so and

    (d) there did not appear to be any likelihood of additional, probative documents (such as board minutes, which had already been asked for) being made available.

*Timing for submissions*

60. Rokeba expressed concern that the Panel process operated under "*draconian time restrictions*" that disregarded religious and public holidays. We have already noted the statutory time constraint potentially applicable on the association issue, this being (we think) the issue of most concern to Rokeba so far as timing was concerned.

61. The Panel is obliged to deal with matters in a speedy and informal way. That is its legislative mandate. We have procedural requirements to meet, which we have met in our view, and we have legislated time constraints in which to make a decision. In *Tinkerbell Enterprises*,[10] Collier J said:

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[9] *Adsteam Building Industries Pty Ltd & Anor v The Queensland Cement and Lime Co Ltd & Ors* (1984) 14 ACLR 456 at 459

[10] *Tinkerbell Enterprises Pty Limited as Trustee for The Leanne Catelan Trust v Takeovers Panel* [2012] FCA 1272

*That the Panel was created to deal with takeover disputes in a relatively informal and expeditious manner is clear from its enabling legislation.*[11]

62. Of course, the Panel must act fairly and reasonably in so far as the requirements of the regulations and legislation, and a proper consideration of the matters before it, permit.[12] We were conscious of the religious and public holidays, and of the deadline. The timing requirements for submissions and rebuttals in this matter were not more onerous than the usual Panel process.

63. In fact, more time than usual was available to Rokeba, but it did not seem to take advantage of it. Holdrey served a copy of the application on each of the Relevant Entities on Thursday, 14 March 2013. We sent a brief to each of the Relevant Entities on Wednesday, 20 March 2013 and invited them to make submissions by 5.00pm on Monday, 25 March 2013. This period of 3 business days was longer than the typical submission period of 2 business days.[13]

64. World Oil's legal adviser raised a concern about the timing of the brief, being Passover, as "*I will not be able to speak to my clients during that period*". However, the client was World Oil. We were later informed that none of the directors of World Oil were affected by Passover, although World Oil felt it needed to speak to members of the Silman family and others about certain aspects of the brief.

65. While some work was required over the Passover period, work was also required over the Easter period.

66. Rokeba and Templefield did not become parties until 27 March 2013. Ariel Nominees did not become a party until 28 March 2013. This is some 12 days or more after the application was made and a week after our brief was issued. Nevertheless we provided Rokeba, Templefield and Ariel Nominees an opportunity to make submissions and rebuttals in respect of our original brief.

67. Four requests for extension of time were made during the course of the proceedings. Three were refused and one granted. Apart from the statutory deadline, we had been informed that World Oil's financial condition was precarious. In any event, Rokeba and Ariel Nominees each made submissions outside the Panel time requirements and we accepted them.

68. In our view, the timing requirements were fair and reasonable, and the matter proceeded in a fair and reasonable way.

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[11] Ibid at [54]

[12] ASIC regulation 13, which also requires the Panel to act in a timely manner and with as little formality as appropriate

[13] Procedural Rules [6.2.1, note 5]: Parties are usually provided with 2 Business Days from receipt of a brief to provide submissions and 1 Business Day from receipt of submissions to provide rebuttal submissions. However, shorter or longer times may be allowed.

*Indicia of association*

69. In *Mount Gibson Iron Limited*[14] the Panel said circumstances that are relevant to establishing an association include:

    (a) a shared goal or purpose

    (b) prior collaborative conduct

    (c) structural links

    (d) common investments and dealings

    (e) common knowledge of relevant facts and

    (f) actions which are uncommercial.

70. Often establishing an association requires the Panel "*to draw inferences from patterns of behaviour, commercial logic and other evidence suggestive of association*."[15]

***Shared goal or purpose***

71. In World Oil there is a pattern of circumstances that, in our view is strongly indicative of a shared goal or purpose of influencing the composition of the World Oil board and the conduct of its affairs.

72. Shareholdings in World Oil are held by entities linked to Silman family members. There are a number of directors, supported by Silman family members, common to World Oil and other companies in which they have interests. Marc Spicer, who is employed by a company 50% owned by Ariel Silman, is company secretary in a number of those companies. Many of the companies share a common address.

73. Maurice Silman gave shares in various companies to Ariel and Ezra Silman, which it appears they have retained in large part, and funded purchases of shares by them. These acquisitions were in companies in which Maurice Silman had or was to acquire a substantial holding.

74. There is also a pattern of circumstances that, in our view is strongly indicative of a shared goal or purpose of Maurice and Ariel Silman in relation to Bisan, which has a shareholding in World Oil.

75. We infer a shared goal or purpose among Maurice, Ariel and Ezra Silman in relation to World Oil.

***Prior collaborative conduct***

76. The material established, in our view, a pattern of contemporaneous conduct. See the following sections.

***Structural links - family***

77. Maurice Silman is the father and Judith the mother of Ariel, Amina, Eliot and Ezra Silman. This was not disputed, but the alleged associations were strongly disputed.

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[14] [2008] ATP 4

[15] *Winepros Limited* [2002] ATP 18 at [27]

78. Rokeba submitted that:

*Prior to 6 Feb 2012, Ariel Silman assisted his father Maurice and Eliot in the investment strategies for Rokeba and Templefield and in that capacity advised on Rokeba's original purchase of shares in WLR. On 6 Feb 2012 Ariel resigned as a director of Rokeba after lengthy family discussions and expressed a desire to have control of his own funds and undertake his own investments. This was a very acrimonious split (e-mails and documentation of the nature of this split can be provided confidentially for ASIC/Takeover Panel only) and the resolution by Maurice Silman as father was to continue to divide a material part of the family assets and distribute it amongst the four children for them to invest and control as they saw fit…*

*Since the divestment of certain family assets from Rokeba to the children of Maurice and Judith Silman, all investment decisions in respect of Rokeba and Templefield have been made solely by Maurice Silman (with some consultation with Eliot who has continued to work with his father) but without any consultation or discussion with any of his other children.*

*This family divestment of certain assets to the next generation provides the basis for some commonality of shareholdings between the Relevant Entities reflecting the original single investment strategies of Rokeba/Templefield and the subsequent divestment of assets to the children of Maurice and Judith on resolution of the family discussions.*

79. Rokeba did not provide any of the emails or other documentation referred to, beyond partial copies of text messages (which were supplied subsequently). Those text messages were between Maurice Silman and Ariel Silman and were sent in January and February 2012.

80. Some of the text messages reflect that Ariel questioned some (unknown) circumstances at a meeting on 7 February 2012.

81. While these text messages display some acrimony between the two on those days, without more we do not accept that there has been a "very acrimonious split" between them, at least not one that has resulted in an end to business collaboration.

82. We infer that the issue over which there was acrimony has passed or has been overstated. However, even if that is not the case, a number of transactions that took place after 7 February 2012 imply ongoing collaborative conduct. We consider that the transfers of cash to Ariel Silman, used to purchase shares in companies in which Maurice Silman invested (Bisan and Lemarne), is evidence that the "very acrimonious split" was not sufficient to affect common dealings in companies.

83. Perhaps part of the motivation for Maurice Silman transferring shares, cash and other assets to his children was to effect a family divestment to the next generation. Even so, this would not undermine a finding of collaboration.

84. Rokeba further submitted:

*Surely the Panel can infer that this acrimonious split was business related, and the two parties wished to remain separate on a business level for the good of their relationship as father-son….*

85. In our view, even though the split related to a business matter, the parties have not remained separate on a business level.

86. Rokeba submitted that Ariel Nominees and New Hopetoun were incorporated after the split between Maurice and Ariel Silman in February 2012. However Ariel Nominees was incorporated on 12 December 2011 and New Hopetoun was incorporated on 18 November 2011. In response to this inconsistency Rokeba submitted:

    *If the Panel wants dates or sentences that are perfectly accurate, perhaps it should have initially given Rokeba/Templefield appropriate/reasonable time to actually check through dates/facts.*

87. We do not accept this. There is a significant difference between an event that occurs either before or after a significant event such as the split and mere error of one date or another. It is a requirement of the Act,[16] and the Panel is entitled to expect, that parties will make accurate submissions.

88. There are a number of links between Maurice and Ariel Silman that appear inconsistent with Rokeba's submission that Ariel Silman no longer has involvement in his father's business:

    (a) Ariel Silman is a company secretary of Templefield

    (b) Ariel Nominees shares the same registered address as Rokeba

    (c) Rokeba and Ariel Nominees have each listed the same post office box (in Hopetoun Gardens, Victoria) in substantial holder notices in relation to Bisan

    (d) Rokeba controls the following entities, which all have Maurice Silman, Ariel Silman and Eliot Silman as directors – Drybridge Pty Ltd, Rochgate Pty Ltd, Staedpoe Pty Ltd, Burjoe Pty Ltd, Ragadon Investments Pty Ltd, Stagefront Pty Ltd, Langley Pty Ltd, Cadmium Pty Ltd and Tashlich Nominees Pty Ltd

    (e) Maurice Silman controls the following entities, which all have Maurice Silman, Ariel Silman and Eliot Silman as directors –Taina Pty Ltd, Diract Pty Ltd and Hazelbrook Investment Pty Ltd and

    (f) Based on emails included in Ariel Nominees' submissions, Ariel Silman has used a Silman Group email address as recently as 12 January 2013.

89. Rokeba submitted that the circumstances set out above (other than the email address, about which it did not comment) were merely administrative oversights. It submitted that Ariel Silman had not been active in these positions since February 2012 and that company records should have been updated at that time. *(Post script: We have been informed that Ariel Silman has now resigned or otherwise been removed from the relevant positions.)*

90. There are a high number of 'administrative oversights' that have been identified since the brief went out (and errors in relation to substantial holder notices referred to later).

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[16] Section 199 ASIC Act

***Structural links - Listed companies***

91. There is a commonality of directors, company secretaries and shareholders between the following listed entities.

| **Company and registered address** | **Directors (and date appointed)** | **Company secretary (and date appointed)** | **Shareholders (limited to entities referred to in the application/submissions)** |
|---|---|---|---|
| World Oil (WLR)<br>Level 1, 34-36 Punt Road, Windsor 3181 (from 10/12/12) | John Ceccon (8/11/12)<br>Christopher Manie (14/1/13)<br>John Weston (8/10/07)<br>(Amos Meltzer was a director from 3/10/12 to 4/2/13) | Marc Spicer (10/12/2012) | Rokeba (13.97%)<br>Templefield (3.59%)<br>Bisan (2.56%)<br>Elken (3.85%)<br>Ariel Nominees (2.56%)<br>New Hopetoun (2.56%)<br>Holdrey (7.39%) |
| Bisan (BSN)<br>Level 1, 34 -36 Punt Road, Windsor 3181 (from 20/11/12) | Maurice Silman (10/5/12)<br>John Ceccon (8/11/12)<br>David Herszberg (10/5/12)<br>David Bernard (7/2/13) | Marc Spicer (10/5/12) | Rokeba (13.125%)<br>Templefield (1.44%)<br>Ariel Nominees (12.5%)<br>New Hopetoun (2.5%) |
| Lemarne Corporation Ltd (LMC)<br>Level 1, 34-36 Punt Road, Windsor 3181 (from 29/10/12) | Christopher Manie (8/2/13)<br>David Herszberg (22/10/12)<br>John Ceccon (22/10/12)<br>Amos Meltzer (22/10/12) | Marc Spicer (22/12/12) | Ariel Nominees (19.75%)<br>Rokeba (11.16%) |
| Cohiba Minerals Ltd (CHK)<br>Level 1, 34 -36 Punt Road, Windsor 3181 (from 17/09/12) | John Ceccon (28/11/12)<br>David Bernard (8/2/13)<br>Amoz Meltzer (17/9/12)<br>David Herszberg (8/5/12) | Marc Spicer (17/9/12, was a director from 30/5/12 to 28/11/12) | New Hopetoun (17.81%)<br>Rokeba (19.18%)<br>Templefield (0.82%)<br>YAD Investments Pty Ltd[17] (4.1%)<br>(option holders Rokeba – 23.08%, Silkman Consultants Pty Ltd – 7.69% and YAD Investments 3.1%) |
| Altius Mining Ltd (AYM)<br>Level 1, 34 -36 Punt Road, Windsor 3181 (from Dec 12) | Xiao Jing Wang (2/5/12)<br>John Zee (14/5/12)<br>David Herszberg (9/2/12)<br>Edward McCormack (14/5/12)<br>Jia Yu (2/5/12) | John Zee (31/5/12) | Rokeba (11.19%)<br>Cohiba (4.58%)<br>Templefield (1.06%) |

[17] David Herszberg has a relevant interest in shares and options held by YAD Investments.

92. Rokeba submitted that it was not responsible for the commonalities. We disagree.

93. We infer that these structural links show ongoing connections between Maurice, Ariel and Ezra Silman.

***Common investments and dealings - World Oil***

94. Elken has had a shareholding in World Oil since 1998.

95. On 14 September 2011, Rokeba commenced acquiring World Oil shares.

96. On 7 September 2012, Rokeba distributed World Oil shares to Ariel Nominees and New Hopetoun. As a result, Ariel Nominees and New Hopetoun hold 10 million shares each.

97. Rokeba submitted that it distributed the shares to Ariel Nominees and New Hopetoun as "*part of the continuing division of the family assets*". This corresponds to two off-market sales of World Oil shares disclosed in Rokeba's substantial holding notice dated 7 September 2012. That substantial holding notice disclosed that Rokeba had voting power of 12.03% in World Oil (after these sales).

98. On 10 October 2011, Templefield commenced acquiring World Oil shares. It had voting power of 1.48% in World Oil by at least 25 September 2012.

99. On 2 October 2012, Rokeba disclosed Templefield's interest in a substantial holder notice. It had not done so previously, it submitted, due to "*an administrative oversight*". In addition to the errors noted elsewhere in these reasons, we think that correct disclosure was not a priority for Rokeba, and indeed may even have been regarded as somewhat inconvenient.

100. On 7 February 2013, Templefield acquired 4 million shares in World Oil.

101. Rokeba and Templefield acquired 6 million shares on or after the announcement of the Holdrey Bid, as follows:

| Date | Company | Number of shares |
|---|---|---|
| 25/2/13 | Templefield | 1,744,363 |
| 28/2/13 | Templefield | 1,255,637 |
| 6/3/13 | Templefield | 1,000,000 |
| 6/3/13 | Rokeba | 2,000,000 |

102. Rokeba and Templefield submitted that, in relation to the acquisitions by Rokeba on 6 March 2013 and Templefield between 7 February 2013 and 6 March 2013, Maurice Silman had reviewed the World Oil announcements and considered the market price of the shares relative to World Oil's net tangible assets. It was submitted that these acquisitions were in the ordinary course of Maurice Silman's trading and "*[Maurice] viewed the WLR shares as good value, especially with a takeover announcement, which may result in competitive bids for WLR.*"

103. At 7 March 2013, Rokeba (with Templefield) had voting power in 17.56% in World Oil.

104. Bisan also bought shares in World Oil on 6 March 2013, in circumstances that we consider uncommercial (see paragraphs 191 to 202).

105. We note that the 2.56% interest in World Oil shares acquired by Bisan on 6 and 7 March 2013 occurred when Rokeba ceased buying World Oil shares. Had that stake been acquired by Rokeba it would have breached the 20% threshold in s606, albeit only marginally.

106. We infer that Bisan was a preferred vehicle for purchasing World Oil shares.

107. We note that Rokeba, Templefield, Ariel Nominees and New Hopetoun have holdings in Bisan (in aggregate 29.56%) and that Maurice Silman is chairman of Bisan, so we consider that control could still be exercised over the World Oil shares.

108. We infer that Rokeba, Templefield and Bisan's acquisitions were part of a pattern of common investments in World Oil. Trading on a single day reinforces our view.

***Common investments and dealings - World Oil Board changes***

109. Immediately prior to 3 October 2012, the directors of World Oil were Philip Galloway (CEO), John Weston, Michael Goldhirsch (Chairman) and Stephen Shnider (also company secretary).

110. On 3 October 2012, Amos Meltzer was appointed a director. World Oil submitted that he was appointed "*with the view to fill a casual vacancy while the WLR Board considered in detail the board composition. Amos later voluntarily resigned on 4 February 2012 and Christopher Manie was appointed to WLR Board*".

111. On 7 November 2012, World Oil announced that Michael Goldhirsch had resigned as a director, and Stephen Shnider had resigned as a director and company secretary.

112. World Oil submitted:

> *The other WLR Board members at the time – who formed a majority, had advised [*Michael Goldhirsch and Stephen Shnider] *that they had lost confidence in them*. [Therefore] *Michael and Stephen in those circumstances decided to negotiate a resignation from the WLR Board*.

113. No documentary evidence (such as board minutes or emails between the remaining directors) was provided to support this submission and no basis for the loss of confidence was given.

114. On 8 November 2012, John Ceccon was appointed a director.

115. Ariel Nominees submitted:

> *As a result of John's appointment to the Lemarne Board and during this performance as a Lemarne independent non executive director – he became better known to Ariel Silman. When both (sic) WLR, Bisan and Cohiba Minerals Ltd were subsequently looking for additional non executive directors to assist those boards, John was invited to join each of those boards in or around November 2012.*

*John's discussions with Ariel Silman had been to offer his services as an independent non executive director and importantly to assist in future corporate strategy having regard to his experience in the capital markets (in the small cap sector).*

116. John Ceccon also sits on the board of Bisan, which Maurice Silman chairs. Rokeba submitted that "*John Ceccon is an independent director and was brought onto Bisan for his experience, skills, and in the eyes of Maurice Silman, he seemed a genuine person with a strong moral compass*."

117. Rokeba submitted that it had not nominated any directors, or made any requests, of the boards of World Oil or Bisan. In relation to John Ceccon, however, Rokeba submitted "*Maurice Silman was happy to accept him to the Bisan board*."

118. On 10 December 2012, World Oil announced that it had accepted the resignation of Phillip Galloway, noting that he would continue to work for World Oil in an executive position until the end of February and "*thereafter assist the company on specific projects as a consultant*".

119. World Oil submitted:

*… at its AGM held on 30 November 2012 shareholders made numerous negative comments and there was a very hostile sentiment expressed by many shareholders regarding the performance of* [Phillip Galloway and] *in the light of the negative WLR shareholder views at the AGM, Philip subsequently decided to resign*.

120. This submission is contrary to another we received. In late 2012, Mathew Hudson was negotiating with representatives of World Oil to acquire some of World Oil's assets. Matthew Hudson, while responding to our enquiries on frustrating action, submitted:

*Phil Galloway quit shortly after a dispute with Ariel and Avi. As I understand Phil objected to the control that the Silman's have over the board. This boiled over when he objected to a related party (Alerion/Silkman) being appointed.*

121. "Ariel and Avi" refers to Ariel Silman and Avrohom Kimelman, who jointly own two consultancies that provide services to World Oil.

122. In rebuttal submissions, Rokeba said the control that the Silman's have over the board was "*a complete fabrication*". Rokeba also submitted that Matthew Hudson was seeking to support Holdrey as he had a vested interest in the bid. Ariel Silman provided a statutory declaration that he recalled Mr Hudson saying, in connection with the sale of World Oil's tenement, that he was "*acting on behalf of a friendly entity associated with the Mathieson family in respect of the proposal*."

123. Whether or not this is the case, we do not accept that Matthew Hudson would make this up merely because he supported Holdrey. Matthew Hudson appeared equally prepared to do business with Ariel Silman. On the other hand, Rokeba would have a reason to deny it.

124. On 14 January 2013, Christopher Manie was appointed a director. An email dated 3 February 2013 shows Christopher Manie's email address as linked to Alerion Corporate, the trading name of Global Constructive Services (50% owned by Ariel Silman, see below).

125. On 2 February 2013, Amos Meltzer resigned as a director.

126. Consequently, the board of World Oil now comprises Christopher Manie, John Ceccon and John Weston, the majority connected with Silman family interests. We note that Holdrey seeks to remove Christopher Manie and John Ceccon, but not John Weston, from the World Oil board.[18]

127. We infer from Ariel Nominees' submission that Ariel Silman had some influence over John Ceccon's appointment to the World Oil board. We infer that Ariel Nominees had the support of Rokeba/Templefield in this matter.

128. This inference is supported by an email dated 15 November 2012 from Avrohom Kimelman to Amos Meltzer detailed at paragraph 139. The context of that email involved a difference of opinion over which of Alerion/ Global Constructive Solutions and Phil Galloway should provide corporate services to World Oil. We note that Phil Galloway left the board shortly after this difference of opinion.

***Common investments and dealings - Company Secretary***

129. World Oil's announcement of 10 December 2012 stated that Marc Spicer had been appointed as its company secretary and that the company had relocated its registered office and principal place of business to Level 1, 34-36 Punt Road, Windsor. This address is used by Bisan, Lemarne, Cohiba and Altius Mining.

130. World Oil submitted that:

> *Marc Spicer is the company secretary of World Oil, is also employed by Alerion Corporate Services (trading name of Global Constructive Solutions Pty Ltd) and otherwise has no financial or family interests with any other Identified Persons or Relevant Entities.*

131. Global Constructive Solutions Pty Ltd is 50% owned by Ariel Silman (who is a director and the secretary of the company) and 50% by Avrohom Kimelman (who is a director). Its registered address and principal place of business is Level 1, 34-36 Punt Road, Windsor.

132. Rokeba submitted "*that it believes that Alerion/GCS have provided quality, cheaper services to the alternative options and predecessors*". However, Rokeba also submitted that "*Maurice furthermore had no idea, until these proceedings, of what Silkman Consultants or GCS were charging any of the public companies*", which is inconsistent. It also submitted that "*Rokeba/Templefield assumes Marc was employed separately by each company as he was introduced to them – the same way that most people become employed by an employer. Or perhaps he is employed by GCS…*"

133. We infer that Marc Spicer is employed as company secretary of World Oil by reason of his employment at Global Constructive Solutions.

134. We infer that Marc Spicer is connected with Silman family interests. We do not accept the submission by Rokeba that "*Marc Spicer is clearly connected with Ariel Silman's business interests, but not the Silman family interests, as these interests are* ***separate***" (original emphasis). Marc Spicer is employed by a company 50% owned by Ariel Silman. He is company secretary to a number of companies in which

[18] s249D notice issued on 8 March 2013

Silman family interests are substantial holders. He has been a director of one of those companies (Cohiba).

***Common investments and dealings - Consultancy services***

135. Silkman Consultants Pty Ltd is 50% owned by Ariel Silman (who is a director of the company) and 50% by Avrohom Kimelman (who is a director).

136. Silkman Consultants provides consultancy services to World Oil.

137. A cash flow forecast provided by World Oil shows a potential payment of $60,000 as *"Silkman fees"* (of which approximately $40,000 has been paid). Ariel Silman made a business trip to Brazil in February/ March 2013 for World Oil as a part of that consultancy.

138. These services are in addition to the corporate services provided by Global Constructive Solutions.

139. Further, the submission from Matthew Hudson included an email dated 15 November 2012 from Avrohom Kimelman to Amos Meltzer (copied to John Ceccon and Ariel Silman and forwarded to Matthew Hudson). It said:

*I wrote this with careful consideration and mean this!! Other than Rokeba's holding, i have with my mates an additional 20m + we know the guys in Shaw Brokers that are very pissed off about the past. More than 65% of the votes we know are very pissed about the past. This can be confirmed with the "proxy's being returned up until this date. If we struggle to achieve what we believe to be the best interest of shareholders, we have many options at hand before the AGM. I may seek a Directorship myself.*

*Conclusion, yes i understand things have to be done diplomatically with thought. However it must be addressed today and actioned on in today's board meeting, not after the AGM. As i mentioned to John, we put the money in over a yr ago and am not prepared to wait until after the AGM for things to be actioned!!*

140. We infer from this email:

(a) the statement "*Other than Rokeba's holding"* in this context indicates an understanding of Rokeba's intentions. The intentions are likely to be understood equally by Ariel Silman, as Maurice Silman's son and Avrohom Kimelman's business partner. Rokeba submitted that this statement was made without its knowledge. That may be. However, noting the addressees of the email, it is unlikely that Avrohom Kimelman made this statement without any basis. We note also there is no email response refuting the reference to Rokeba's holding

(b) the statement "*i have with my mates an additional 20m"* is likely to be a reference to Ariel Nominees and New Hopetoun (which collectively hold 20 million shares). This indicates a shared understanding between Ariel and Ezra Silman in connection with World Oil that is known to Avrohom Kimelman. Avrohom Kimelman submitted that the *"20m"* referred to shares issued through a shortfall from a previous World Oil rights issue. The shortfall from a World Oil rights issue in October 2011 was approximately 87.6 million shares (24.33% of the issued capital, post the 2011 rights issue). Rokeba submitted that it did not know who Avrohom Kimelman was

referring to. The reference to*"20m"* is strongly coincidental of a reference to Ariel Nominees and New Hopetoun and on balance, in our view, is more likely to refer to them than to other unnamed, unidentified persons

(c) the statement "*we put the money in over a yr ago*" is likely to be a reference to Rokeba's investment in World Oil, given Ariel Nominees was not a shareholder prior to September 2012. This indicates a shared understanding between Maurice and Ariel Silman in connection with World Oil. Rokeba submitted that Ariel invested on its behalf when he worked for Rokeba, but there had since been a parting of the ways and Avrohom Kimelman should not have spoken on Rokeba's behalf. In that event, one would expect the statement to refer to Rokeba having put the money in, not "we". While the reference to "we" could also be a reference to shares distributed through the shortfall from the October 2011 rights issue to Avrohom Kimelman and his "mates", we think this is less likely and

(d) the statement "*am not prepared to wait until after the AGM for things to be actioned"* is consistent with the board being prepared to act in accordance with the wishes of the author, as are the addressing of the email to a director, a conversation with another of the directors and the demand for the matter to be "*actioned on in today's board meeting"*. This indicates that control of World Oil is being exercised.

141. We infer that Maurice and Ariel Silman act together, or, at the very least, will not act inconsistently, in connection with the affairs of World Oil.

***Common investments and dealings - actions in Bisan***

142. Rokeba commenced acquiring Bisan shares on 14 September 2011, the same day it commenced acquiring shares in World Oil.

143. At 29 November 2011, Rokeba had voting power of 7.88% in Bisan.

144. At 27 February 2012, Rokeba had voting power of 13.13% in Bisan.

145. On 26 April 2012, Ariel Nominees acquired an interest of 8.75% in Bisan with funds provided by Maurice Silman. At this time Rokeba and Ariel Nominees held, in aggregate, a 23.13% interest in Bisan.

146. Rokeba submitted:

*Money/consideration was provided by Rokeba (as part of the family divestment) to Ariel Nominees to pay for shares…. Ariel Nominees was gifted the funds to purchase the Bisan shares above, because he wanted this shareholding in Bisan, which he stated had good value, and he obviously found a seller…:*

147. On 10 May 2012, Maurice Silman and David Herszberg were appointed to the Bisan board and Marc Spicer was appointed company secretary.

148. Maurice Silman then made a gift of Bisan shares to Ariel Silman. A substantial holding notice from Rokeba dated 11 May 2012 disclosed a disposal of 6,500,000 Bisan shares. This is matched by an acquisition of the same number of Bisan shares disclosed in a substantial holding notice from Ariel Nominees dated 25 May 2012. Both notices disclose the transactions as occurring on 11 May 2012.

149. Rokeba submitted that this constituted a gift from Rokeba to Ariel Nominees as part of "*the continuous family divestment/equalisation process*".[19]

150. From 25 May 2012 to 25 September 2012, Rokeba's voting power in Bisan increased from 10.625% to 14.56%. At this time Rokeba, Templefield and Ariel Nominees held, in aggregate, a 27.06% interest in Bisan. New Hopetoun held a further 2.5%.

151. On 8 November 2012, John Ceccon was appointed to the Bisan board.

152. On 20 November 2012, Bisan's registered office moved to Level 1, 34-36 Punt Road, Windsor.

153. On 7 February 2013, David Bernard was appointed to the Bisan board.

154. Many of these events took place after the split, which was submitted to have occurred around January/February 2012.

155. We infer that the gifts, purchases and transfers were not independent actions of two merely like-minded investors.

156. We infer that money received by Ariel Silman from Maurice Silman was used to acquire Bisan shares, and that he made a decision to invest in Bisan by reason of an agreement arrangement or understanding with Maurice Silman in relation to that company, or because they were acting in concert.

157. The acquisitions, appointments and change of registered address are consistent with actions in World Oil and in our view support a finding of association between Maurice and Ariel Silman in relation to that company.

***Common investments and dealings - actions in Lemarne***

158. Rokeba started acquiring Lemarne shares on 25 June 2012, lodging an initial substantial holding notice on 1 October 2012 disclosing voting power in Lemarne of 11.16%.

159. On 22 October 2012, Lemarne announced that its directors had accepted a proposal from Ariel Nominees to "*relaunch Lemarne*". As part of the proposal:

    (a) Ariel Nominees would acquire 1.7 million shares in Lemarne from Lemarne's directors

    (b) The board invited "*three directors, namely Amos Meltzer, David Herszberg and John Ceccon to join the Board, after which Peter Davenport, John Larking*" and Brian Noxon would retire and

    (c) Marc Spicer would be appointed company secretary.

160. Rokeba submitted that on 22 October 2012 "*Ariel Silman, the sole director, shareholder and controller of Ariel Nominees Pty Ltd, was distributed funds to purchase shares in Lemarne Corporation Ltd (LMC), as a continuing part of the equalisation process of Silman family assets*".

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[19] Rokeba submitted that a later sale of 3,500,000 Bisan shares from Ariel Nominees to Rokeba was because "*Ariel Nominees was gifted too many shares as part of the equalisation process*"

161. Rokeba submitted that "*Maurice did not want to distribute shares to his children, which required day-to-day trading and increased risk*" especially as Eliot had been given low-risk assets. Maurice did in fact distribute shares, or cash to purchase shares, to his children. It seems to us that he did so in relation to companies in which he had an interest. It is not clear why the investments his children made were in these companies, unless the explanation is collaborative conduct. We have been given no evidence to suggest there were significant investments in other listed companies with no connection to Maurice Silman. We also doubt the explanation given by Maurice Silman that he did not want to distribute shares (or cash to purchase shares) in higher-risk, short-term shareholdings to his children. We query whether investments in the companies meet the test that Maurice Silman applied. Rokeba, in another submission, said: "*Rokeba was only ever involved in LMC with the goal to exit at a quick profit, which would have happened if the board change did not occur.*" Rokeba denied having anything to do with the board change.

162. Ariel Nominees submitted that:

    *Subsequent to the divestment of the Silman family assets to the children, Ariel Nominees has purchased shares in Lemarne Corporation Limited which was offered as a parcel by parties non associated with the Silman family. Ariel Silman was aware of Lemarne Corporation Limited and its sale of main undertaking (leaving it with a substantial cash position with net cash exceeding share price) from his earlier involvement in Rokeba's investment strategies prior to September 2012.*

163. Ariel Nominees made the following submission in relation to John Ceccon's involvement with Lemarne:

    *John Ceccon originally approached Rokeba/Templefield (as disclosed major shareholders in Lemarne Corporation Limited) of his own accord when his analysis revealed Lemarne's net cash position and the need for it to pursue new M&A/corporate transactions (arising from sale of its main undertaking). John wanted to understand a major shareholder's views on possible future corporate transaction (sic) by Lemarne. As John could bring substantial independent financial attributes to Lemarne in looking at M&A and other activities, he offered and was invited in August 2012 to join the Lemarne board.*

164. It is unclear in what capacity John Ceccon approached Rokeba or in what capacity Rokeba could repay him by an invitation to join Lemarne's board (which he did in October 2012). Rokeba submitted that it "*did not have John recommended to the board of LMC.*"

165. Rokeba in a later submission provided the following explanation as to why it continues to have an investment in Lemarne:

    *Rokeba received broker advice regarding LMC that it appeared as though the company, lacking a new business project, could pay out a distribution of cash, to shareholders, as it had done so in the past. Rokeba received advice that the NTA of LMC was approximately $1 per share. Rokeba acquired shares between approximately 57c to 73c. At the time of purchase there was a risk factor pertaining to escrowed funds. When escrowed funds were forfeited by LMC management, it seemed the share backing dropped to 80c, which still represented a profit for Rokeba Nominees. Subsequently, after the directors took further bonuses and "flew the coop", share backing dropped to approximately 67c per share, which*

*was approximately the purchase price for Rokeba. There was no opportunity for Rokeba to exit, and not all funds were distributed by LMC. Rokeba Nominees was and is still keen to exit their position in Lemarne Corporation. Funds were provided by Rokeba to Ariel Silman as part of the family divestment, because Ariel Nominees expressed a long term investment interest in the company.*

*There was eventually a 13c return of capital cash distribution, and a 7c dividend from LMC to shareholders, as well as a change of board – which had nothing to do with any Identified Persons in Rokeba Nominees (or Templefield).*

166. On 29 October 2012, Lemarne changed its registered office to Level 1, 34-36 Punt Road, Windsor.

167. On 8 February 2013, Christopher Manie was appointed a director of Lemarne.

168. We infer that Rokeba's investment in Lemarne, and Lemarne's "relaunch", which involved Ariel Nominees acquiring the shares of the former directors of Lemarne, were not independent actions of two merely like-minded investors.

169. We infer that Ariel Silman and Maurice Silman invested in Lemarne by reason of an agreement, arrangement or understanding between them; or perhaps that Ariel Silman invested with Maurice Silman, acting in concert in relation to that company.

170. The acquisitions, appointments and change of registered address are consistent with actions in World Oil and in our view support a finding of association between Maurice and Ariel Silman in relation to that company.

***Common investments and dealings - actions in Cohiba***

171. On 21 November 2011, New Hopetoun acquired its shareholding in Cohiba (initially 10.96%) by private treaty, according to Rokeba's submission. Rokeba also submitted that it provided the funds to Ezra Silman to make that acquisition as part of "*the continuous family divestment*".

172. On 27 January 2012, Rokeba obtained its 19.18% shareholding in Cohiba in the initial public offering of that company.

173. Rokeba also submitted that:

*Maurice Silman initially believed that Cohiba Minerals was a company with a good project, good potential for growth, with the ability to generate good returns. Maurice Silman did not gift his children cash as he did not want them to "misuse it", and he wanted to encourage them to be investors and grow their assets. It should be noted that when the initial decision came about to purchase shares in CHK, as divestment of assets was already occurring (with Eliot Silman – SILCOH Pty Ltd - receiving funds to purchase 50% of VS Distillers-see attached ASIC extract), Maurice Silman believing that Cohiba was a worthwhile investment, informed Ezra Silman, and asked him if he would be interested in a shareholding as part of his divestment. Ezra, after reading the prospectus, and performing his own research, informed Maurice Silman that he had decided that he was keen to own the initial 2 million shares of CHK. This was his initial distribution/divestment. Time passed, and further opportunities to purchase CHK shares came about (29 March 2012 and 21 May 2012)– Ezra Silman (New Hopetoun), was provided with further gift of funds to increase his shareholding investment in CHK.*

*Whilst Ezra was introduced to the company by Maurice Silman – controller and common director of Rokeba/Templefield – Ezra Silman acknowledged he owned/controlled the shareholding, was independent from Maurice Silman, and had complete autonomy to sell/trade his shareholding. Neither Maurice Silman, Rokeba nor Templefield had any charge over the shares, nor any interest or loan agreement with regard to the shareholding. Furthermore, Rokeba/Templefield have never exercised their voting rights regarding Cohiba Minerals*.

174. We note that Maurice Silman "*did not gift his children cash as he did not want them to "misuse it"*", and he wanted to encourage them to be investors and grow their assets. While this statement was made in relation to Cohiba, it appears not to be restricted to that company. It appears that Maurice Silman made gifts of cash for the purchase of shareholdings in companies which he (or an associated entity) had, or wished to, invest in or of which Maurice Silman approved.

175. Rokeba submitted, in response to our preliminary findings that Maurice Silman only made gifts of cash for the purchase of shareholdings in companies which he invested in or approved of, that it did not own shares in VS Distillers, a company in which Eliot Silman had received funds to purchase shares. We accept that. However, this does not deny the evidence in relation to the companies identified.

176. On 29 March 2012, New Hopetoun increased its holding in Cohiba to 15.28%.

177. On 8 May 2012, Cohiba announced that David Herszberg (a 4.1% shareholder and 3.1% option holder) had been appointed a director.

178. On 24 May 2012, New Hopetoun increased its holding in Cohiba to 18.06%.

179. On 30 May 2012, Cohiba announced that Marc Spicer had been appointed a director.

180. On 17 September 2012, Cohiba announced that Amos Meltzer had been appointed a director.

181. Also on 17 September 2012, Cohiba announced that Marc Spicer had been appointed company secretary and that its registered office had been moved to Level 1, 34-36 Punt Road, Windsor. Its previous registered office was in West Perth.

182. On 28 November 2012, Cohiba announced that John Ceccon had been appointed a director and Marc Spicer had resigned as a director (but remained company secretary).

183. On 8 February 2013, Cohiba announced that David Bernard had been appointed a director.

184. We infer that Rokeba's investment in Cohiba and New Hopetoun's investment in Cohiba were not independent actions of two merely like-minded investors.

185. We infer that Ezra Silman and Maurice Silman invested in Cohiba by reason of an agreement, arrangement or understanding between them; or perhaps that Ezra Silman invested with Maurice Silman, acting in concert in relation to that company.

186. The acquisitions, appointments and change of registered address are consistent with actions in World Oil and in our view support a finding of association between Maurice and Ezra Silman in relation to that company.

***Common knowledge of relevant facts***

187. Rokeba/Templefield, Bisan/Elken, Ariel Nominees and New Hopetoun initially made submissions through World Oil on 25 and 26 March 2013. Similar language was used, although that may not be surprising as the submissions were apparently prepared by the same adviser.

188. Holdrey submitted that using "*common advisers is an indicia of association*". Subsequent to receiving that submission:

    (a) on 27 March 2013, Rokeba and Templefield submitted notices of appearance and engaged a legal adviser. Rokeba submitted that when it "*discovered that it was going to need to prepare more submissions, it engaged Jack Cyngler of CKL*". and

    (b) on 28 March 2013, Ariel Nominees submitted a notice of appearance, and engaged as legal adviser the adviser engaged by World Oil in relation to its rights issue. This indicates a community of interest as well as common knowledge of facts.

189. We infer that the entities that initially made submissions through World Oil had common knowledge of relevant facts.

190. We do not think that the initial submissions through World Oil indicate an association for two reasons. First, there was a timing constraint involved, and second, it is unclear whether any advice was given. We note also that our initial brief may have been understood as if it required World Oil to approach these parties.

***Actions that are uncommercial - Bisan share purchases***

191. Bisan acquired World Oil shares on 6 March 2013 (9,110,145 shares) and 7 March 2013 (889,885 shares), totalling 10 million shares.

192. Bisan submitted that in relation to these acquisitions:

    *…David Herzberg was at an investment review meeting with David Bernard examining proposals for investments by Bisan. At that meeting David Herzberg referred to the WLR takeover announcement and proposed they should consider increasing their shareholding in WLR as the Holdrey takeover offer at 1.3 cents seemed low compared to their assessment of WLR share value.*

    *David Bernard who was a recent appointment to the Bisan Board and who had been reviewing its assets agreed that the Holdrey takeover offer undervalued the WRL shares.*

193. Bisan submitted that John Ceccon and Maurice Silman did not take part in the resolution of Bisan to acquire the 10 million shares in World Oil, because of John Ceccon's role as a director of World Oil and Maurice Silman's personal interest in World Oil shares.

194. However, Rokeba submitted that Maurice Silman "*did discuss with the Bisan board his view that an investment in World Oil was attractive*" prior to excusing himself from Bisan's decision making process. No board minutes evidencing this declaration of conflict or removal from the decision-making process have been provided.

195. Rokeba submitted that Bisan should have provided these board minutes. We note that Maurice Silman is the chairman of Bisan.

196. It seems likely that the discussion happened and then the board formally resolved to make the acquisition in the absence of John Ceccon and Maurice Silman. We infer that either or both materially influenced the decision.

197. Holdrey submitted that Bisan's acquisitions were for an average price of 1.84 cents, notwithstanding:

    (a) "*YAD Investments issuing a letter of demand to World Oil for $75,000*"

    (b) *"according to public documents, as at 31 December 2012, Bisan had available cash assets of only $843,006. By Holdrey's calculations, Bisan's purchase of World Oil shares equates to approximately 21.8% of its available cash assets"* and

    (c) "*the average purchase price of World Oil shares purchased by Bisan was at a 55% premium to the price offered under Holdrey's takeover bid*".

198. YAD is connected to David Herszberg; he is a director and Myer Herszberg is the sole shareholder.

199. It is unclear when YAD Investment's letter of demand was received by World Oil relative to Bisan acquiring World Oil shares. However, it appears that they occurred within a short time of each other. Therefore it seems that David Herszberg, as a director of Bisan, approved the investment in World Oil at around the same time as he knew that YAD would, or may, serve the letter of demand. Given World Oil's financial position, this seems to be a risky decision.

200. Moreover, the purchases by Bisan were made in circumstances that caused a price spike on market, were at too great a premium to the Holdrey Bid to constitute the type of typical opportunistic buying that occurs after a bid is announced and consumed a significant proportion of Bisan's available cash.

201. We infer that Bisan's acquisitions were uncommercial.

202. We infer that this uncommercial behaviour by Bisan was undertaken to increase control of World Oil in association with others.

**Conclusion**

203. As stated earlier, circumstances which are relevant to establishing an association include:

    (a) a shared goal or purpose

    (b) prior collaborative conduct

    (c) structural links

    (d) common investments and dealings

(e) common knowledge of relevant facts and

(f) actions which are uncommercial.[20]

204. Elements of each of these circumstances exist here.

205. We accept that there is no direct evidence of any agreements. We also note that the allegations of association are strongly denied.

206. However, we infer that:

(a) Maurice Silman (Rokeba/Templefield) and Ariel Silman (Ariel Nominees)

(b) Maurice Silman (Rokeba/Templefield) and Ezra Silman (New Hopetoun) and

(c) Maurice Silman (Rokeba/Templefield) and Bisan

are associated in relation to World Oil.

207. The Associated Parties had an understanding amounting to a relevant agreement or were acting in concert. There is no direct evidence of the terms of the understanding. But that is not required. Silman family members, and very likely others who served as officers of the companies, would have known what was expected of them, namely that they would work in the Silman family's interests in relation to the affairs of World Oil. We infer that shares were acquired and positions filled on the basis of such an understanding.

208. The Panel is a specialist, peer review tribunal. When making an assessment of all the material in this matter, we have relied on our skills and experience as practitioners (which has been made known to the parties) and as members of the sitting panel.

209. Rokeba submitted :

*Rokeba/Templefield remind the Panel, that the burden of proof lies with Holdrey to establish collaboration, and thus far no hard evidence (including correspondence or statements or demonstration of similar voting, or even* ***incentive*** *by Rokeba/Maurice Silman* ***OR*** *by the directors) has been provided to show an association between Rokeba/Templefield, and other Relevant Entities, or between Rokeba/Templefield and the other Identified Persons*
(original emphasis)

210. We agree that the burden lies initially with the applicant,[21] however ours is not a court process. And we do not agree that there is no hard evidence. We are satisfied about the associations we have found based on logical and probative material, drawing appropriate inferences, and have borne in mind that "*the circumstances appearing from the evidence [must be established to] give rise to a reasonable and definite inference and not merely to conflicting inferences of equal degrees of probability.*"[22]

211. We reached our conclusion based on the overall weight of material, including the combination of family relationships, timing of significant events, uncommercial

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[20] *Mount Gibson Iron Limited* [2008] ATP 4

[21] Ibid at [15]

[22] *ASIC v Fortescue Metals Group Ltd [No 5]* [2009] FCA 1586 at [82], referred to in *ASIC v Fortescue Metals Group Ltd* [2011] FCAFC 19 at [78]

transactions, related party consultancy arrangements, lack of relevant board minutes, common shareholdings, common and often contemporaneous investments, common registered addresses and common directors and officers.

212. A similar pattern of investments, director resignations and appointments, changes in company secretary and changes in registered address occurred in other listed companies in which the Associated Parties have interests.

213. The material provided also indicates that Maurice and Ariel Silman may be associates in relation to Bisan. However, we have not found it necessary to come to a view on this for the purposes of this matter.

**Substantial holding notice disclosure**

214. Lodged substantial holder notices disclose that:

(a) Rokeba and Templefield are associates and

(b) Bisan and Elken are associates.

215. The notices lodged by Rokeba/Templefield are incorrect in so far as they do not record that Maurice Silman or other entities controlled by him have a relevant interest in the shares held by Rokeba and Templefield. Rokeba addressed one of these deficiencies in an updated substantial holder notice dated 5 April 2013.

216. Rokeba submitted that these deficiencies showed "*merely an ignorance/sloppiness by Rokeba/Templefield*". It also submitted that:

*There was no attempt by Maurice Silman or Rokeba or Templefield to hide anything. Quite the opposite – Rokeba/Templefield, openly acknowledged they are associates, when the Silman group office manager became aware of their common shareholdings and the need to disclose this.*

217. While the association between Rokeba and Templefield was disclosed, Maurice Silman was not included in the notices, nor were the other entities he controls. Moreover, no substantial holder notices have been lodged by Ariel Silman, Ezra Silman or Bisan disclosing the association with Maurice Silman.

218. As a result, the market has been uninformed in relation to the control of World Oil.

## DECISION

219. It appears to us that the circumstances are unacceptable in relation to the rights issue having regard to:

(a) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on the control, or potential control, of World Oil and

(b) the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth).

220. It appears to us that the circumstances are unacceptable in relation to association between various World Oil shareholders:

    (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 the control, or potential control, of World Oil

    (b) having regard to the purposes of Chapter 6 set out in section 602 and

    (c) because they constitute or give rise to contraventions of sections 606 and 671B.

221. We make a declaration of unacceptable circumstances in relation to the rights issue (Annexure A), and a further declaration of unacceptable circumstances in relation to the association (Annexure B). In each case we consider that it is not against the public interest to do so and have had regard to the matters in s657A(3).

**Orders**

222. Under s657D the Panel's power to make orders is very wide. The Panel is empowered to make any order[23] if 4 tests are met:

    (a) it has made a declaration under s657A. This was done on 4 April 2013 and 12 April 2013

    (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.

        In relation to the rights issue, we required the rights issue to be put to shareholders for approval, but did not delay progress of the rights issue. We also prevented Holdrey relying on its prescribed occurrence condition unless shareholders approved the rights issue.

        In relation to the association, we required that shares held by the Associated Parties representing in excess of 20% of the total voting power in World Oil be vested for sale by ASIC, limitations imposed on voting and creep,[24] and disclosure. This requires Rokeba, Templefield and Bisan to divest 9.1% of the shares acquired in World Oil. See also paragraphs 231 and 232.

    (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 28 March 2013 relation to the rights issue and on 10 April 2013 in relation to association. Each party potentially affected by the proposed orders was invited to make submissions. Rebuttals were also received and

    (d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons, or ensure that a takeover or proposed takeover proceeds as it would have if the circumstances had not occurred. The orders

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[23] Section 657D

[24] Section 611, Item 9

do this by remedying the frustrating action and the contravention of the 20% limit, and by requiring disclosure of the associations to the market.

*Rights issue*

223. World Oil made no submissions in relation to the rights issue orders (although it did on the association issue).

224. Holdrey submitted that the orders would remedy the unacceptable circumstances. It later submitted that the record date and ex entitlements date should be after the approval of shareholders had been obtained. We decided that this was not necessary.

225. ASIC supported the order that Holdrey not be allowed to rely on its prescribed occurrence condition unless shareholders approved the rights issue.

*Association*

226. World Oil submitted that divestment during the Holdery Bid would have an adverse impact on other shareholders because Holdrey was a potential buyer. We do not agree that there will necessarily be any adverse impact. In fact, the Holdrey Bid is likely to ensure that the sale does not depress the share price much, if at all. And Holdrey, having less than 20%, is entitled to buy sale shares.

227. Rokeba submitted that, as an alternative to divestment, World Oil shareholders should be given the opportunity to ratify the share acquisitions (under s611 Item 7), failing which the shares should be offered pro rata to existing World Oil shareholders.

228. ASIC and Holdrey each submitted that a s611 Item 7 vote was intended to approve acquisitions that had not yet occurred, rather than apply retrospectively, and therefore this was not appropriate. We decided not to follow the path suggested by Rokeba. We consider that divestment as proposed is the appropriate remedy to the unacceptable circumstances.

229. Rokeba also submitted that the Associated Parties should be allowed the benefit of creep as they had held 20% for more than 6 months. Accordingly the divestment should only be down to 23%, not 20%. ASIC submitted that this would be inconsistent with the objective in s602(a) and the principle underlying the creep exception.

230. We agree with ASIC. The holding of 20% was undisclosed.[25] We limited the Associated Parties' ability rely on Item 9 of s611 so that none of them would benefit from the acquisitions that occurred in breach of s606.

231. Until the shares to be divested are actually sold, the ability of Rokeba, Templefield and Bisan to vote additional shares in which they have voting power is scaled back. This is so that the Associated Parties' voting power does not exceed 20% of the total votes that may be cast after the application of our orders. A similar order was made in *Mesa Minerals*[26] and *Viento*.[27]

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[25] See *Orion Telecommunications Ltd* [2006] ATP 23 at [117]
[26] *Mesa Minerals Limited* [2010] ATP 4

232. Rokeba submitted that the Associated Parties' voting power was reduced by this order to 17.7%, which was unfairly prejudicial, but this is incorrect. If the sale shares are excluded from the electorate, the voting power is 20%.

233. We also limited the ability of Rokeba, Templefield and Bisan to participate in the Rights Issue so that the Associated Parties, collectively, could only apply for 20% of the shares available for subscription.

234. We required the Associated Parties to lodge updated substantial holder notices disclosing their association and consequent voting power.

235. In our view, the orders remedy the unacceptable circumstances without seeking to punish the Associated Parties.

*Costs*

236. Holdrey requested a cost order against the Associated Parties. We did not make any cost orders.

**David Friedlander**
**President of the sitting Panel**
**Decisions dated 4 April 2013 and 12 April 2013**
**Reasons published 30 April 2013**

[27] *Viento Group Limited* [2011] ATP 1

**Advisers**

| Party | Advisers |
|---|---|
| Ariel Nominees | Corporate Counsel |
| Holdrey | Minter Ellison<br>MAP Capital Advisors |
| Rokeba | Cyngler Kaye Levy (until 22 April 2013) |
| Templefield | Cyngler Kaye Levy (until 22 April 2013) |
| World Oil | K&L Gates |

Australian Government
Takeovers Panel

# ANNEXURE A

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

## WORLD OIL RESOURCES LIMITED

## CIRCUMSTANCES

1. On 25 February 2013 Holdrey Pty Ltd, as trustee for the Don Mathieson Family Trust (**Holdrey**), announced its intention to make an off-market takeover bid for all the issued shares of World Oil Resources Limited (**World Oil**) at 1.3 cents per share.

2. The Holdrey bid is subject to conditions including that:

   *None of the following events happen in the period commencing on the Announcement Date and ending at the end of the Offer Period:*

   …

   *(d) WLR or a subsidiary of WLR issuing any shares or granting an option over its shares or agreeing to make such an issue or grant such an option*

3. On 12 March 2013 World Oil announced a 1-for-2 non-renounceable rights issue at 1.3 cents per share to raise approximately $2.5 million (**Rights Issue**).

4. The Rights Issue is not subject to shareholder approval or any mechanism that minimised the potential for the rights issue to frustrate the Holdrey bid.

5. The announcement of the Rights Issue did not adequately disclose information material to shareholders, including:

   (a) that the announcement of, or issue of shares under, the Rights Issue would trigger a condition of the Holdrey bid or

   (b) the relative merits of the Rights Issue and the Holdrey bid.

6. The announcement of the Rights Issue triggered the condition set out in paragraph 2 and is a frustrating action.

7. 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, are having, will have or are likely to have on the control, or potential control, of World Oil and

   (b) the purposes of Chapter 6 set out in section 602 of the Corporations Act 2001 (Cth) (Act).

8. 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).

9. The application by Holdrey raised allegations of association between various shareholders of World Oil. Panel proceedings in relation to the allegations of association are continuing.

## DECLARATION

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

**Alan Shaw**
**Counsel**
**with authority of David Friedlander**
**President of the sitting Panel**
**Dated 4 April 2013**

Australian Government
Takeovers Panel

# ANNEXURE B

# CORPORATIONS ACT
# SECTION 657A

# FURTHER DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

## WORLD OIL RESOURCES LIMITED

## CIRCUMSTANCES

1. The shareholders of World Oil Resources Limited (**World Oil**) include:
   (a) Rokeba Nominees Pty Ltd (**Rokeba**) (13.97% of World Oil's issued shares), a company of which Maurice Silman is a director and the sole shareholder
   (b) Templefield Pty Ltd (**Templefield**) (3.59%), a company of which Maurice Silman is a director and 75% shareholder (his wife holds the remaining 25%)
   (c) Ariel Nominees Pty Ltd (**Ariel Nominees**) (2.56%), a company of which Ariel Silman, a son of Maurice Silman, is the sole director and shareholder
   (d) New Hopetoun Pty Ltd (**New Hopetoun**) (2.56%), a company of which Ezra Silman, another son of Maurice Silman, is the sole director and shareholder
   (e) Bisan Limited (**Bisan**) (2.56%), a listed company of which Maurice Silman is a director and which Rokeba, Templefield, Ariel Nominees and New Hopetoun are shareholders (in aggregate 29.56%) and
   (f) Elken Tower Pty Ltd (**Elken**) (3.85%), a company of which Maurice Silman is a director and Bisan is the sole shareholder.
2. The entities listed in paragraph 1 acquired their shareholdings in World Oil as follows:
   (a) Rokeba commenced acquiring shares on 14 September 2011 and on 6 September 2012 held 16.90%
   (b) Templefield commenced acquiring shares on 10 October 2011 and at least by 25 September 2012 held 1.48%. The substantial holder notices lodged by Rokeba prior to the notice dated 2 October 2012 did not disclose Templefield's interest
   (c) Ariel Nominees and New Hopetoun were gifted their holdings by Rokeba on 7 September 2012, reducing Rokeba's holding to 11.78%
   (d) From September 2012 to March 2013 Rokeba increased its holding to 13.97% and Templefield increased its holding to 3.59%
   (e) Bisan acquired its holding on 6 and 7 March 2013 and
   (f) Elken has had its holding since 1998.

3. Maurice and Ariel Silman each have (through their respective entities) investments in World Oil, Bisan and Lemarne Corporation Ltd (**Lemarne**). Investments in Bisan and Lemarne occurred at similar times. Ariel Silman's investments in World Oil, Bisan and Lemarne were gifted to him by Maurice Silman or Maurice Silman provided the funds for their acquisition. Silkman Consultants Pty Ltd (**Silkman Consultants**), an entity associated with Ariel Silman, holds options in Cohiba Minerals Ltd (**Cohiba**).

4. Maurice and Ezra Silman each have (through their respective entities) investments in World Oil, Bisan and Cohiba. Investments in Cohiba occurred at similar times. Maurice Silman and Cohiba have investments in Altius Mining Ltd. Ezra Silman's investments in World Oil, Bisan and Cohiba were gifted to him by Maurice Silman or Maurice Silman provided the funds for their acquisition.

5. Silkman Consultants provides services to World Oil. Global Constructive Solutions Pty Ltd (**Global Constructive Solutions**), an entity also associated with Ariel Silman, provides services to World Oil, Bisan, Elken, Lemarne and Cohiba.

6. The collective shareholding of Maurice Silman, Ariel Silman and Ezra Silman (through their respective entities) and of Bisan and Elken in World Oil increased to over 20% in August 2012. Shortly after that time:

   (a) 3 of 4 World Oil directors resigned

   (b) 2 new directors were appointed

   (c) a company secretary employed by Global Constructive Solutions was appointed and

   (d) a change in registered address to the address used by Global Constructive Solutions occurred.

7. A similar pattern of investments, director resignations and appointments, changes in company secretary and changes in registered address occurred in Bisan, Lemarne and Cohiba.

8. The Panel considers that:

   (a) Maurice Silman and Ariel Silman

   (b) Maurice Silman and Ezra Silman and

   (c) Maurice Silman and Bisan

   are associated:

   (d) under section 12(2)(b)[28] for the purpose of controlling or influencing the composition of World Oil's board or the conduct of World Oil's affairs and

   (e) under section 12(2)(c) in relation to the affairs of World Oil.

9. Accordingly, Maurice Silman, Rokeba and Templefield have voting power of 29.10% (the aggregate of the shareholdings stated in paragraph 1) in World Oil shares and acquired this power otherwise than as permitted under Chapter 6.

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[28] References are to sections of the *Corporations Act 2001* (Cth) unless otherwise indicated.

10. The rights issue announced by World Oil on 12 March 2013 provides shareholders with an opportunity to acquire World Oil shares on a pro-rata basis. That Maurice Silman, Rokeba and Templefield have voting power of 29.10% in World Oil entitles them to benefit from a breach of s606.

11. Substantial holder notices lodged by Rokeba have not disclosed all the relevant interests in the shares held by Rokeba and its associates. Rokeba addressed one of these deficiencies in an updated substantial holder notice dated 5 April 2013.

12. No initial substantial holder notice or change in substantial holding notice has been lodged by Ariel Silman, Ezra Silman or Bisan disclosing the association with Maurice Silman. As a result, the market has been uninformed in relation to the control of World Oil.

13. 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, are having, will have or are likely to have on the control, or potential control, of World Oil

    (b) the purposes of Chapter 6 set out in section 602 and

    (c) because they constitute or give rise to contraventions of sections 606 and 671B.

14. 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).

## OTHER MATTERS

15. On 4 April 2013 the Panel made a declaration of unacceptable circumstances in relation to the rights issue announced by World Oil on 12 March 2013 and noted that proceedings in relation to the allegations of association were continuing.

## DECLARATION

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

**Allan Bulman**
**Director**
**with authority of David Friedlander**
**President of the sitting Panel**
**Dated 12 April 2013**

Australian Government

Takeovers Panel

# ANNEXURE C

# CORPORATIONS ACT

# SECTION 657D

# ORDERS

## WORLD OIL RESOURCES LIMITED

The Panel made a declaration of unacceptable circumstances on 4 April 2013.

## THE PANEL ORDERS

1. World Oil Resources Limited (**World Oil**) must not:
   (a) proceed with the rights issue announced on 12 March 2013 without the rights issue being subject to approval of World Oil shareholders at a general meeting or
   (b) make or announce another rights issue prior to the end of the offer period for the bid announced by Holdrey Pty Ltd, as trustee for the Don Mathieson Family Trust (**Holdrey**) on 25 February 2013 (**Holdrey Bid**) unless the rights issue is subject to approval of World Oil shareholders at a general meeting.
2. If World Oil proceeds with the rights issue announced on 12 March 2013, or announces another rights issue subject to shareholder approval, the following requirements apply:
   (a) World Oil must call and arrange to hold a general meeting at which shareholders consider, as an ordinary resolution, approval of the rights issue
   (b) World Oil must include in the notice of meeting, in a form approved by the Panel, the following information:
      (i) a comparison of the financial position of World Oil if the rights issue is approved and if it is not approved
      (ii) a description of the Holdrey Bid
      (iii) a statement that approval of the rights issue will result in Holdrey being entitled not to proceed with the Holdrey Bid and
      (iv) a voting exclusion statement. At the time the notice of meeting is dispatched, if the Panel has found any association as alleged in the application by Holdrey, the statement must exclude the associates from voting as ordered by the Panel; otherwise, the statement must be that a voting exclusion statement may be issued subsequently, depending on the Panel's conclusion in relation to alleged association between various World Oil shareholders.

3. Until World Oil shareholders at a general meeting have passed a resolution approving such rights issue:
   (a) World Oil must not issue shares to subscribers under the rights issue
   (b) any money received by World Oil as subscriptions for new shares under the rights issue must be held:
      (i) separately from all other World Oil funds and
      (ii) on trust for the subscribers.
4. If such rights issue is not approved any subscription money received by World Oil must be returned to the subscribers promptly.
5. If World Oil proceeds with the rights issue announced on 12 March 2013, or announces another rights issue subject to shareholder approval, unless impractical, World Oil must call the meeting to consider approval of such rights issue so that the meeting is held immediately after the conclusion or adjournment of the general meeting held in accordance with the notice issued on 8 March 2013 by Holdrey under section 249D including as a result of the operation of section 249E.
6. Until World Oil shareholders at a general meeting pass a resolution approving either the rights issue announced on 12 March 2013 or any other rights issue, in relation to triggering the condition of the Holdrey Bid that World Oil or a subsidiary of World Oil not issue any shares or grant an option over its shares or agree to make such an issue or grant such an option:
   (a) Holdrey is not entitled to rely on the condition to not proceed with the Holdrey Bid or otherwise rely on the condition once the bid has been made and
   (b) takeover contracts and acceptances under the Holdrey Bid will not be considered void under s650G as a result of non-fulfillment of the condition

   provided the meeting is held before the end of the offer period for the Holdrey Bid.

**Alan Shaw**
**Counsel**
**with authority of David Friedlander**
**President of the sitting Panel**
**Dated 4 April 2013**

Australian Government
Takeovers Panel

# ANNEXURE D

# CORPORATIONS ACT
# SECTION 657D
# ORDERS

1. In these orders the following terms apply.

| | |
|---|---|
| Appointed Seller | an investment bank or stock broker |
| ASIC | Australian Securities and Investments Commission, as agent of the Commonwealth |
| Associated Parties | Maurice Silman |
| | Ariel Silman |
| | Ezra Silman |
| | Bisan |
| Bisan | Bisan Limited |
| on market | has the meaning in s9[29] |
| Rokeba | Rokeba Nominees Pty Ltd |
| Sale Shares | 11,500,000 ordinary shares in the issued capital of World Oil held by Rokeba |
| | 14,000,000 ordinary shares in the issued capital of World Oil held by Templefield |
| | 10,000,000 ordinary shares in the issued capital of World Oil held by Bisan |
| Templefield | Templefield Pty Ltd |
| World Oil | World Oil Resources Limited |

2. The Sale Shares are vested in the Commonwealth on trust for each of Rokeba, Templefield and Bisan in respect of their Sale Shares.
3. ASIC must:
   (a) sell the Sale Shares in accordance with these orders and
   (b) account to Rokeba, Templefield and Bisan 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).

[29] References are to the *Corporations Act 2001* (Cth) unless otherwise specified

4. ASIC must:
   (a) retain an Appointed Seller to conduct the sale and
   (b) instruct the Appointed Seller to:
      (i) 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 and the requirement that none of the Associated Parties or their respective associates may acquire, directly or indirectly, any of the Sale Shares
      (ii) 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, obtain from any prospective purchaser of Sale Shares a statutory declaration that the prospective purchaser is not an associate of any of the Associated Parties and
      (iv) dispose all of the Sale Shares within 3 months from the date of its engagement.
5. World Oil 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 as soon as reasonably practicable after these orders come into effect and
   (b) until the Commonwealth is so registered, complying with any request by ASIC in relation to the Sale Shares.
6. None of the Associated Parties or their respective associates may acquire, directly or indirectly, any of the Sale Shares.
7. The Associated Parties must not otherwise dispose of, transfer, grant or agree to grant a security interest over or vote any Sale Shares.
8. None of the Associated Parties may:
   (a) 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 a person six months before an acquisition exempted under Item 9 of s611 or
   (b) rely on Item 9 of s611 earlier than six months after these orders come into effect.
9. Nothing in these orders obliges ASIC to invest, or ensure interest accrues on, any money held in trust under these orders.
10. Until the Sale Shares have been sold and registered in the name(s) of their purchaser(s):

(a) Rokeba and Templefield, in aggregate, must not vote or allow to be voted an additional 6,375,000 ordinary shares in the issued capital of World Oil of the shares they continue to have voting power in and

(b) Bisan, including through any subsidiary, must not vote or allow to be voted an additional 2,500,000 ordinary shares in the issued capital of World Oil of the shares it continues to have voting power in.

11. For the purpose of calculating entitlements to subscribe for new shares, and pro-rata participation in any shortfall facility, under the rights issue announced by World Oil on 12 March 2013 the Sale Shares and shares excluded from voting under paragraph 10 must be disregarded.

12. Within two business days after the date after these orders, the Associated Parties must give notice of their substantial holding in World Oil and their association, including disclosing:

(a) the name of each associate who has a relevant interest in voting shares in World Oil

(b) the nature of their association

(c) the relevant interest of each associate and

(d) details of any relevant agreement through which they have a relevant interest in World Oil shares.

13. Orders 2, 3, 4 and 5 come into effect on Monday, 22 April 2013. All other orders come into effect immediately.

**Alan Shaw**
**Counsel**
**with authority of David Friedlander**
**President of the sitting Panel**
**Dated 16 April 2013**