



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/54

Friday, 8 November 2013

STI-Global Limited – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) on an application dated 23 October 2013 by Sasser Family Holdings, Inc in relation to the affairs of STI-Global Limited (see [TP13/51](#)).

Background

STI-Global is an unlisted public company with more than 50 members.

Redheart Investments Pty Ltd, Donald Searle and RIQ Pty Ltd, among others, are parties to a shareholders' agreement in relation to STI-Global dated 30 December 2010. Entry into the shareholders' agreement was approved under item 7 of s611¹ by STI-Global shareholders at a meeting on 23 February 2011.

Donald Searle has a relevant interest of 13.69% in STI-Global, held directly and through RIQ. Kevin Reichelt is a director of, and has a relevant interest of 12.28% in, STI-Global, held directly and through Redheart.

On 23 August 2013, Mr Searle appointed Mr Reichelt as his proxy, and RIQ authorised Mr Reichelt as a corporate representative, in relation to the 13.69% interest held by them.

On 26 August 2013, an agreement was entered under which Redheart would acquire Mr Searle and RIQ's 13.69% interest over a two year period. The agreement also irrevocably appointed Mr Reichelt as proxy for Mr Searle, and as representative for RIQ, for all future meetings of STI-Global's shareholders prior to completion.

While there is a dispute about whether the proxy and agreement are still in effect, the Panel considers it likely that they are. The Panel also considers that they may be terminated on 10 November 2013 if, notice having been given, a default is not remedied. Separately, there is a dispute about whether the shareholders' agreement is still in effect.

Declaration

The Panel considers that the circumstances are unacceptable because:

¹ All references are to the *Corporations Act 2001* (Cth) unless otherwise specified

- (a) If the shareholders' agreement is not (or was not at relevant times) in effect, the proxy arrangements and share sale agreement increased the voting power of Mr Reichelt and Redheart in STI-Global from 12.28% to 25.98%. This occurred in contravention of s606 and has an effect on the control of STI-Global contrary to principles in s602.
- (b) Alternatively, even if the shareholders' agreement was and is in effect, the proxy arrangements and share sale agreement give voting and disposal powers in Mr Searle's and RIQ's shares to Redheart (and Mr Reichelt) that were not covered by the item 7 approval obtained on 23 February 2011 and have an effect on the control of STI-Global contrary to principles in s602.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Referral to ASIC

During the course of the matter the Panel became concerned that Sasser Family Holdings may have acquired shares in STI-Global otherwise than in accordance with the Item 7 approval given on 23 February 2011. The Panel will refer this to ASIC under Regulation 18 of the *ASIC Regulations 2001* for ASIC to consider whether to make an application to the Panel.²

Orders

The Panel has cancelled the proxy arrangements and share sale agreement. The Panel requires STI-Global to re-convene and hold the shareholders' meeting adjourned from 31 October 2013 between 25 November and 10 December 2013. This provides sufficient time for shareholders to be given notice of the re-convened meeting and for ASIC to consider whether to make an application to the Panel.

The sitting Panel was Geoff Brunsdon, Stephanie Daveson and John Fast (sitting President).

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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² Regulation 18 provides:

- (1) *The Panel may refer a matter to the Commission for the Commission to consider with a view to making an application.*
- (2) *If the Panel refers a matter to the Commission, the reference must be made:*
 - (a) *in writing; and*
 - (b) *in sufficient detail to allow the Commission to make a decision about the matter.*



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Annexure A

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

STI-GLOBAL LIMITED

CIRCUMSTANCES

1. STI-Global Limited (**STI-Global**) is an unlisted public company, with more than 50 members.
2. Donald Searle is the sole director and shareholder of RIQ Pty Ltd (**RIQ**). He has a relevant interest of 13.69% in STI-Global, held directly and through RIQ.
3. Kevin Reichelt, a director of STI-Global, is one of two directors and a 50% shareholder in Redheart Investments Pty Ltd (**Redheart**). He has a relevant interest of 12.28% in STI-Global, held directly and through Redheart.
4. On 23 August 2013, Donald Searle appointed Kevin Reichelt as his proxy and RIQ authorised Kevin Reichelt as a corporate representative in relation to the STI-Global shares held by them.
5. On 26 August 2013, Kevin Reichelt, Redheart, Donald Searle and RIQ entered into a deed of appointment with an attached term sheet. The term sheet involved the sale of the 13.69% interest held by Donald Searle and RIQ in STI-Global to Redheart over a two year period. The deed of appointment irrevocably appointed Kevin Reichelt as proxy for Donald Searle and RIQ for all future meetings of STI-Global's shareholders, prior to completion of the share sale.
6. There is a dispute about whether the proxy arrangements and share sale agreement described in paragraphs 4 and 5 are still in effect, although there is no dispute that they were valid at the time of execution. The Panel considers that they are likely to be still in effect. It is unclear whether they may be terminated from 10 November 2013 (being the date 30 days after notice of default was given).
7. Redheart, Donald Searle and RIQ, among others, are parties to a shareholders' agreement in relation to STI-Global dated 30 December 2010. Through a right of first refusal and an agreement to vote in a certain manner, the shareholders' agreement created a relevant interest in Donald Searle's and RIQ's shares, held by, among others, Redheart.³

³ And Kevin Reichelt under s608(3)

8. Entry into the shareholders' agreement was approved under item 7 of s611 by STI-Global shareholders at a meeting on 23 February 2011.⁴
9. There is a dispute about whether the shareholders' agreement is still in effect.
10. The proxy arrangements give Kevin Reichelt power to vote the shares beyond the ways contemplated in the shareholders' agreement.
11. Separately, the share sale was not conducted in compliance with the right of first refusal in the shareholders' agreement, removing from other parties to that agreement an opportunity to participate and excluding the possibility of the shares being dispersed more widely.
12. If the shareholders' agreement is not (and was not at relevant times) in effect, the proxy arrangements and share sale agreement increased the voting power of Kevin Reichelt and Redheart in STI-Global from 12.28% to 25.98% in contravention of s606 and have an effect on the control of STI-Global contrary to principles in s602, in that:
 - (a) the acquisition of voting shares did not take place in an efficient, competitive and informed market and
 - (b) as far as practicable shareholders did not have a reasonable and equal opportunity to participate in the benefits.
13. Alternatively, even if the shareholders' agreement is (and was at relevant times) in effect, the proxy arrangements and share sale agreement give voting and disposal powers in Donald Searle's and RIQ's shares to Redheart (and Kevin Reichelt) that were not covered by the item 7 approval obtained on 23 February 2011 and have an effect on the control of STI-Global contrary to principles in s602, in that:
 - (a) the acquisition of voting shares did not take place in an efficient, competitive and informed market and
 - (b) as far as practicable shareholders who were parties to the shareholders' agreement did not have a reasonable and equal opportunity to participate in the benefits.
14. It appears to the Panel that the circumstances are unacceptable :
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of STI-Global or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in STI-Global or
 - (b) having regard to the purposes of Chapter 6 set out in s602 or
 - (c) if the shareholders' agreement is not (and was not at relevant times) in effect, because they constituted or gave rise to a contravention of section 606.
15. 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 s657A(3).

⁴All references are to the *Corporations Act 2001* (Cth) unless otherwise specified

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of STI-Global.

Alan Shaw
Counsel
with authority of John Fast
President of the sitting Panel
Dated 7 November 2013



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Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

STI-GLOBAL LIMITED

The Panel made a declaration of unacceptable circumstances on 7 November 2013.

THE PANEL ORDERS

1. The:
 - (a) proxy form dated 23 August 2013 under which Donald Searle appointed Kevin Reichelt as his proxy in relation to his shares in STI-Global Limited (**STI-Global**)
 - (b) appointment of corporate representative dated 23 August 2013 under which RIQ Pty Ltd (**RIQ**) appointed Kevin Reichelt as its representative to exercise powers in relation to shares in STI-Global and
 - (c) deed of appointment dated 26 August 2013 between Donald Searle, RIQ, Kevin Reichelt and Redheart Investments Pty Ltd, including the attached term sheet, are cancelled with effect from the date of these orders.
2. STI-Global must re-convene and hold the shareholders' meeting adjourned from 31 October 2013:
 - (a) no earlier than 25 November 2013 and
 - (b) no later than 10 December 2013.

Alan Shaw
Counsel
with authority of John Fast
President of the sitting Panel
Dated 7 November 2013