



Australian Government

Takeovers Panel

**Reasons for Decision
Richfield International Limited
[2015] ATP 4**

Catchwords:

Association – divestment of shares – efficient, competitive and informed market - declaration of unacceptable circumstances – orders – relevant interest – substantial holding notice – divestment – cost orders

Corporations Act 2001 (Cth), sections 12(2)(a)(iii), 12(2)(c), 250V, 205G, 602, 606, 608, 609, 610, 671B, 657D, 657E

ASIC Act 2001 (Cth), sections 11(2)(a), 199

Queensland North Australia Pty Ltd v Takeovers Panel [2014] FCA 591, CEMEX v Takeovers Panel [2009] 72 ACSR 482, Flinders Diamonds Ltd v Tiger International Resources Inc (2004) 88 SASR 281, Australian Securities Commission v Bank Leumi Le-Israel (Switzerland) (1996) 14 ACLC 157

ASIC Regulatory Guide 5: Relevant interests and substantial holding notices

Northern Iron Limited [2014] ATP 11; Avalon Minerals Limited [2013] ATP 11; Touch Holdings Ltd [2013] ATP 3; CMI Limited [2011] ATP 4; Viento Group Limited [2011] ATP 1; Azumah Resources Limited [2006] ATP 34; Orion Telecommunications Limited [2006] ATP 23; Rusina Mining NL [2006] ATP 13; Austral Coal Limited 03 [2005] ATP 14; LV Living Limited [2005] ATP 5; Skywest Limited 03 [2004] ATP 17; Village Roadshow Limited [2004] ATP 4; Advance Property Fund [2000] ATP 7

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	NO	YES	YES	YES	NO

INTRODUCTION

1. The Panel, Peter Day (sitting President), Christian Johnston and Byron Koster, made a declaration of unacceptable circumstances and orders in relation to the affairs of Richfield International Limited. The application concerned contraventions of s606¹ and the substantial holder provisions by Sinotrans and Grand Orient, companies holding in aggregate 35.77% of Richfield, and by the controller of those companies, Siew Tze Lim. The Panel ordered divestment of Sinotrans and Grand Orient’s shareholding in excess of 20% and ordered disclosure.

2. In these reasons, the following definitions apply.

- Grand Orient** Grand Orient Capital Co Limited, a company incorporated in the British Virgin Islands, BVI company number 1745819
- Richfield** Richfield International Ltd ACN 103 306 403
- Sinotrans** Sinotrans Investment Co Ltd, a company incorporated in the British Virgin Islands, BVI company number 1745762

¹ References are to the *Corporations Act 2001 (Cth)* unless otherwise indicated

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FACTS

3. Richfield is an ASX listed company (ASX code: RIS). Richfield manages two wholly-owned Singaporean registered companies that provide port and shipping related services.
4. Prior to 3 April 2013, Poh Choo (Jennifer) Lim, a director of Richfield, held 23,381,550 shares (37.17%) in Richfield. PC Lim is married to Mr Chak Chew Tan, the managing director of Richfield.
5. On 3 April 2013, PC Lim transferred the following Richfield shares:
 - (a) 11,000,000 shares to Sinotrans, increasing its shareholding in Richfield from 0% to 17.49% and
 - (b) 11,500,000 shares to Grand Orient, increasing its shareholding in Richfield from 0% to 18.28%.
6. On 4 April 2013, PC Lim filed an Appendix 3Y (Change of Director's Interest Notice) disclosing that on 3 April 2013 she disposed of 22,500,000 shares in Richfield for \$3,712,500² by an "Off market sale transfer to overseas Chinese interests based investment companies". The notice disclosed that her shareholding following the disposal was 881,550 shares (1.4%).
7. On 5 April 2013, Sinotrans filed a Form 603 (Notice of Initial Substantial Holder) disclosing that on 3 April 2013 it became the registered holder of 11,000,000 shares in Richfield with voting power of 17.48%. The notice:
 - (a) was signed by "Siew Tze" in the capacity of "Director" and
 - (b) did not disclose any associates of Sinotrans as having a relevant interest in Richfield shares.
8. On 5 April 2013, Grand Orient filed a Form 603 (Notice of Initial Substantial Holder) disclosing that on 3 April 2013 it became the registered holder of 11,500,000 shares in Richfield with voting power of 17.49%³. The notice:
 - (a) was signed by "Petcharat Supachai" in the capacity of "Alternative Director" and
 - (b) did not disclose any associates of Grand Orient as having a relevant interest in Richfield shares.
9. On 3 October 2013, PC Lim filed a Form 605 (Notice of Ceasing to be a Substantial Holder) disclosing that on 3 April 2013:
 - (a) she ceased to be a substantial holder in Richfield and
 - (b) her relevant interest in Richfield shares decreased to 881,500 shares (1.4%) due to an 'Off market transfer' of 22,500,000 shares.

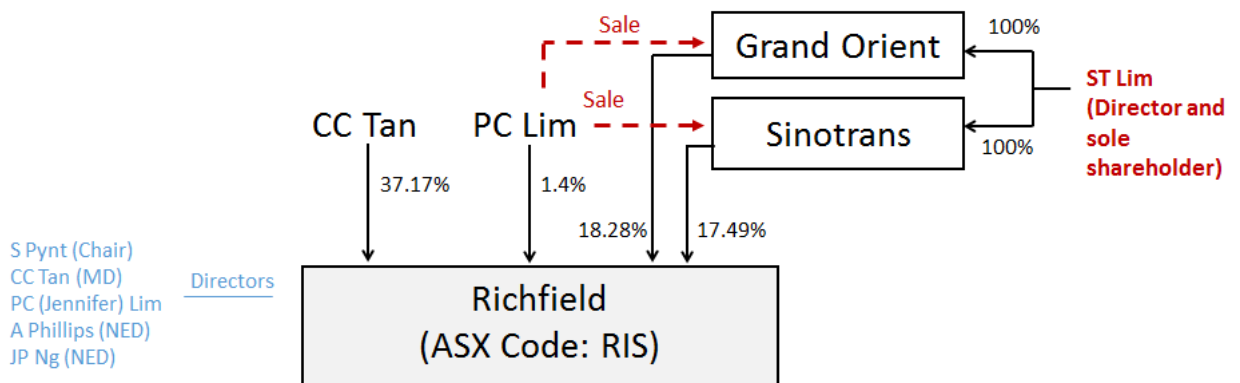
² The consideration for the shares transferred represented 16.5 cents per share. On 3 April 2013, Richfield's shares were trading at 5 cents per share

³ 11,500,000 shares in Richfield represents a voting power of 18.28% in Richfield, not 17.49%

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10. On 25 July 2014, ASIC served a beneficial tracing notice on Siew Tze Lim in her capacity as a director of Sinotrans. ASIC did not receive a response.
11. On 7 August 2014, ASIC served a beneficial tracing notice on Petcharat Supachai in his capacity as an “*Alternative Director*” of Grand Orient. ASIC did not receive a response.
12. On 10 September 2014, Richfield released to ASX copies of:
 - (a) a share sale agreement between PC Lim and Sinotrans dated 3 April 2013 in respect of the shares sold to Sinotrans and
 - (b) a share sale agreement between PC Lim and Grand Orient dated 3 April 2013 in respect of the shares sold to Grand Orient.
13. On 11 September 2014, ASIC commenced an investigation regarding suspected contraventions of s606 (the 20% threshold), s671B (the substantial holder notification provisions), and s205G (disclosure of directors’ interests) in respect of PC Lim’s transfer of shares to Sinotrans and Grand Orient.
14. On 13 November 2014, ASIC requested assistance from the British Virgin Islands Financial Services Commission to obtain further details regarding entities incorporated in the BVI with the same company names as Sinotrans and Grand Orient.
15. On 23 January 2015, Richfield’s then lawyers wrote to ASIC confirming, among other things, that the share sale agreements released to the ASX were “*prepared and signed in order to re-affirm the veracity of the two transactions*”, and that they were backdated to 3 April 2013 to coincide with the date of the transfers.
16. On 27 February 2015, the BVI Financial Services Commission provided ASIC with documentation relating to the incorporation of Sinotrans and Grand Orient indicating that:
 - (a) Sinotrans and Grand Orient were incorporated on 22 November 2012 and 23 November 2012 respectively
 - (b) documentation for incorporation of both companies was completed and signed by ST Lim on 20 November 2012 and
 - (c) the sole shareholder and director of each company was ST Lim.
17. The relationships between the parties are described in the diagram.



APPLICATION

Declaration sought

18. By application dated 24 March 2015, ASIC sought a declaration of unacceptable circumstances. ASIC submitted that:
- (a) Sinotrans and Grand Orient were associates pursuant to s12(2)(a)(iii)
 - (b) either:
 - (i) Sinotrans and Grand Orient each breached s606(1)(c) because their voting power increased from 0% to 35.77% or
 - (ii) alternatively, whichever of Sinotrans and Grand Orient was the last to acquire their parcel of Richfield shares, breached s606(1)(c) by increasing its voting power from below 20% to over the 20% threshold
 - (c) Sinotrans and Grand Orient failed to comply with s671B(1) by failing to disclose their association and the number of voting shares in Richfield in which the other holds a relevant interest and
 - (d) ST Lim failed to file a substantial holder notice in contravention of s671B(1).
19. ASIC submitted that the effect of the circumstances was that the acquisition of control over voting shares in Richfield had not taken place, and continued not to take place, in an efficient, competitive and informed market.

Interim orders sought

20. ASIC sought interim orders that until further order by the Panel:
- (a) Sinotrans and Grand Orient be restrained from exercising any voting rights and
 - (b) Sinotrans and Grand Orient be restrained from disposing of their shares in Richfield and/or that a holding lock be applied to those holdings to prevent transfer.
21. On 24 March 2015, the President made interim orders (Annexure A) restraining Sinotrans and Grand Orient from disposing of any shares in Richfield and restraining Richfield from registering any transfers. As there was no general meeting of Richfield proposed at that stage,⁴ the President considered that an interim order restraining voting was not necessary.

Final orders sought

22. ASIC sought final orders to the effect that:
- (a) the shares transferred to Sinotrans and Grand Orient be vested in the Commonwealth on trust for Sinotrans and Grand Orient, to be sold by an appointed seller

⁴ Richfield released to ASX a notice of annual general meeting on 29 April 2015

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- (b) Sinotrans, Grand Orient, ST Lim and PC Lim (and their associates) be prohibited from purchasing the shares on disposal and
- (c) Sinotrans, Grand Orient and ST Lim disclose their substantial holdings in Richfield and their associations.

DISCUSSION

Application timing

23. Under s657C(3), an application must be made within two months after the circumstances have occurred or a longer period determined by the Panel. Section 657B provides that the Panel can only make a declaration within three months after the circumstances occur or one month after the application was made (whichever ends last). The relevant reference point is the circumstances.⁵
24. ASIC submitted that the application was made within the time permitted by s657C(3).
25. The relevant share transfers occurred on 3 April 2013 and the application was made on 24 March 2015. ASIC submitted that the relevant circumstances are:
 - (a) the undisclosed associations and substantial holdings, non-disclosures of which are continuing and
 - (b) a continuing contravention of s606.
26. In our view, the application alleged contraventions of the Corporations Act which are ongoing circumstances.⁶ The application relates to the non-disclosure of an association which is alleged to be continuing, in contravention of s671B.⁷ The application also relates to alleged contraventions of s606 that, if established, are continuing.⁸
27. In the alternative, ASIC sought an extension of time for the application to be received by the Panel. We sought submissions on whether we should extend time.
28. In considering whether to extend time, we took into account the following principles stated by the Panel in *Austral Coal 03*:⁹
 - (a) we should not exercise the discretion lightly because the time limit was set by the legislature to provide certainty to market participants in the context of takeovers that actions could not be challenged indefinitely and
 - (b) unacceptable circumstances should not go unremedied because their existence was hidden, particularly if:

⁵ *Northern Iron Limited* [2014] ATP 11 at [28]

⁶ *Queensland North Australia Pty Ltd v Takeovers Panel* [2014] FCA 591 at [61]. This decision is subject to appeal

⁷ *Northern Iron Limited* [2014] ATP 11 at [29]

⁸ *Touch Holdings Ltd* [2013] ATP 3 at [28]

⁹ *Austral Coal Limited 03* [2005] ATP 14 at [18] – [19]

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- (i) essential matters supporting the case first came to light during the 2 month period preceding the application and
 - (ii) the application makes credible allegations of clear, serious and ongoing unacceptable circumstances.
29. We consider that the factors in paragraph 28(b) are present. ASIC first received information that ST Lim was the sole shareholder and director of Sinotrans and Grand Orient on 27 February 2015. ST Lim's shareholding in the companies was essential information supporting the case for an association between the two companies and the application was made within 2 months of receiving that information. The application makes clear and serious allegations that Sinotrans or Grand Orient, or both, have contravened s606 and continue to hold shares in excess of the 20% limit, and that ST Lim, Sinotrans and Grand Orient continue to contravene the substantial holder provisions.
30. We also take into account the factors considered in *Advance Property Fund*¹⁰, namely "*the reasons for the delay in applying, the prospects of the application succeeding, the public and private interest in finalising disputes and unfairness to parties who have relied on the status quo*". The delay was in getting information and the prospects looked reasonable. There is a clear public interest in the market knowing the identity of persons holding or controlling approximately 35% of a listed company.
31. Richfield submitted that ASIC significantly delayed in making its application and referred to discussions and meetings held with ASIC in September 2014 regarding the share transfers. It further submitted that it would be unfair and prejudicial to "*a number of parties, including Richfield*" to grant an extension given the transactions "*occurred over two years ago and that all parties have acted on the basis that these matters have been implemented*". This submission overlooks the impact of the information deficiencies.
32. ASIC submitted that the prior discussions between ASIC and Richfield did not relate to any allegations of association between Sinotrans and Grand Orient. They related to the adequacy of PC Lim's disclosures in her Notice of Ceasing to be a Substantial Holder of 3 October 2013. However, that is not the case now being made by ASIC.
33. We have given serious consideration to whether the discretion should be exercised. In all the circumstances, we decided to grant an extension of time for ASIC to make its application. In our view, ASIC has not delayed in making its application, which made credible allegations of clear, serious and ongoing unacceptable circumstances. Factors relevant to the application only recently came to light. We are not satisfied that any unfairness to Richfield and PC Lim, including due to their reliance on the status quo, warrants the extension not being granted. Indeed, one would expect that Richfield would want to know who controlled approximately 35% of its shares.

¹⁰ *Advance Property Fund* [2000] ATP 7 at [24]

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34. On the alternative basis, namely extending time, we had one month within which to make a declaration from the time the application was made.¹¹

Decision to conduct proceedings

35. We did not receive any preliminary submissions. On consideration of ASIC's application, we decided to conduct proceedings.
36. We invited Richfield, ST Lim, Sinotrans and Grand Orient to become parties to the proceedings. PC Lim is a director of Richfield and so we considered that she had notice of the application and could apply to become a party to the proceedings. PC Lim, ST Lim, Sinotrans and Grand Orient did not file Notices of Appearance.
37. Richfield filed a Notice of Appearance and became a party. In the course of the proceedings, Richfield stated that it had obtained direct information and representations from PC Lim and ST Lim prior to making its submissions and that these formed the basis of its submissions. Further, Richfield provided:
- (a) signed statements from ST Lim and PC Lim in response to a supplementary brief in which they each attested to the representations made by Richfield in its submissions as true and accurate and
 - (b) signed statements from PC Lim, and on behalf of Sinotrans and Grand Orient, in response to a supplementary brief on orders in which each made statements regarding their shareholding in Richfield. Sinotrans and Grand Orient's statements were each signed by ST Lim.
38. Moreover, in the submissions on our supplementary orders brief, Richfield confirmed that it had *"forwarded the email of 16 April 2015 from the Panel, attaching the Supplementary Orders Brief and the Proposed Declaration to each of PC Lim and ST Lim, and has requested that they forward the same to the financiers."*¹²
39. We directly invited ST Lim, Sinotrans and Grand Orient¹³ to make submissions as non-parties on questions relevant to them in the brief, the supplementary brief, and the supplementary briefs on orders. We did not receive any direct responses from ST Lim, Sinotrans or Grand Orient. We also sent copies of each of the draft declaration and the orders briefs directly to ST Lim, Sinotrans and Grand Orient at the email address that had been provided to ASIC by the BVI Financial Services Commission.
40. Accordingly, we are satisfied that PC Lim, ST Lim, Sinotrans and Grand Orient were aware of the proceedings and the material provided to the Panel, and in particular of the proposed declaration and orders, and had an opportunity to make submissions.¹⁴ To the extent they were making submissions, they did so through Richfield.

¹¹ Section 657B

¹² The identity and relevance of the financiers is discussed below

¹³ ST Lim, Sinotrans and Grand Orient's email addresses were identical

¹⁴ See s657A(4) and s657D(1)

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41. Notwithstanding this, we regard it as unusual that persons with a direct interest in proceedings, which may affect their holdings, did not participate other than by an intermediary, namely Richfield. We also consider it unusual that a listed company would take carriage of making submissions for individual shareholders.

Transfer of shares to Sinotrans and Grand Orient

42. As noted, in April 2013 PC Lim essentially split her holding by transferring it to Grand Orient and Sinotrans in approximately equal amounts. Those companies were wholly owned by ST Lim, her aunt.
43. In short, ASIC submitted in its application that ST Lim was the sole beneficial owner of Grand Orient and Sinotrans, had a relevant interest in those companies' holdings and had failed to lodge a substantial holder notice. By reason of that ownership, ASIC also submitted that Grand Orient and/or Sinotrans had failed to disclose information required in their substantial holder notices and had breached s606.
44. ASIC's case, *prima facie*, looked reasonably compelling.
45. In light of the submissions in ASIC's application, we asked Richfield in our brief whether there was any evidence that would establish that there had not been contraventions of these sections.

Richfield's submissions regarding security and financing arrangements

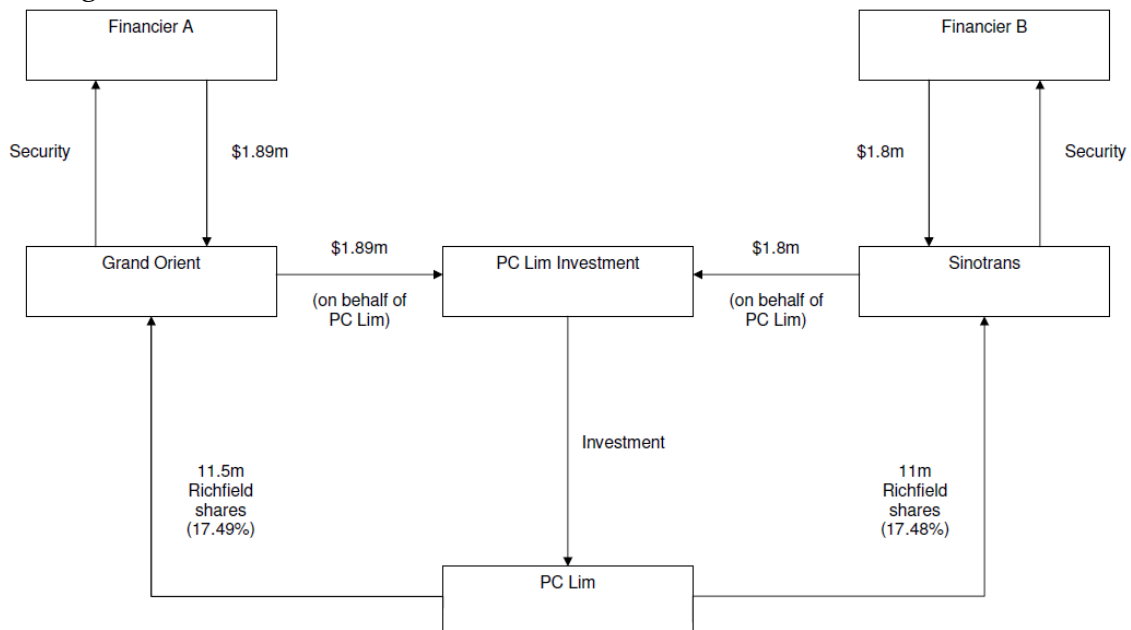
46. Richfield submitted that ST Lim held the shares in Sinotrans and Grand Orient for the benefit of two Chinese financiers as part of security and financing arrangements involving PC Lim. Richfield submitted that it "*understands the arrangements were structured as follows*":
- (a) PC Lim transferred the shares to Sinotrans and Grand Orient as part of a broader security and financing arrangement for an investment that PC Lim made in China
 - (b) PC Lim appointed ST Lim, her aunt, to act as "*security agent/arranger*" to arrange financing for PC Lim to invest in the Chinese investment project
 - (c) two unrelated Chinese financiers, who have remained unnamed, lent funds to PC Lim on the following terms:
 - (i) 'Financier A' was granted security over the shares of Grand Orient and was granted control over the shares of Grand Orient and Grand Orient's Richfield shares
 - (ii) 'Financier B' was granted security over the shares of Sinotrans and was granted control over the shares of Sinotrans and Sinotrans' Richfield shares
 - (iii) interest of 4.75% per annum was payable on the loaned funds
 - (iv) upon repayment of the loan amounts, PC Lim was entitled to have the shares transferred back to her or to direct they be sold

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- (d) ST Lim had incorporated Sinotrans and Grand Orient for each of the financiers “for the exclusive purpose of providing security for the loan. Grand Orient and Sinotrans do not undertake any business activities and do not hold any assets (other than the Richfield shares transferred to them by PC Lim)”
- (e) the Richfield shares were split between Grand Orient and Sinotrans because the two financiers were unrelated and each wanted sole and absolute security over the shares of the respective holding company
- (f) ST Lim holds the shares in Sinotrans and Grand Orient “for the benefit of each financier. She is not permitted to transfer, encumber, sell or otherwise deal with these shares or the Richfield shares held by these companies. She must act only on the direction of the relevant financier (including in relation to voting rights) in relation to Grand Orient and Sinotrans and the Richfield shares held by them”
- (g) the consideration payable for the shares transferred to Sinotrans and Grand Orient, which was equal to the loan funds provided by the financiers, was paid directly to a “Chinese Asset Management Fund” for the purposes of the investment in China and
- (h) upon repayment of the loan amounts (including interest of 4.75% per annum on the loan amounts) to the financiers, PC Lim “was entitled to, subject to compliance with Australian law, have the Richfield shares transferred back to her or direct they be sold”.

47. Richfield submitted the following diagram, illustrating the security and financing arrangements:¹⁵



48. These arrangements had not been disclosed.

¹⁵ The percentage holdings submitted in the diagram are incorrect. Grand Orient’s holding of 11.5m shares is 18.28% and Sinotrans’ holding of 11m shares is 17.49%

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49. Moreover, Richfield submitted that these arrangements were not documented, which Richfield submitted was *“not uncommon practice”* for transactions of this nature in China.
50. ASIC submitted (among other things) that Richfield had not provided any evidence to support its understanding of the above facts, including in relation to the identity of the financiers and *“the relevant finance agreements that underpin the financing and security arrangements”*.
51. Richfield submitted in response that the following documents supported the existence of the security and financing arrangements:
 - (a) an email from CC Tan to Richfield’s company secretary on 4 April 2013 in respect of PC Lim’s draft Appendix 3Y (Notice of Change of Director’s Interest), in which CC Tan stated that the transfers were to *“foreign Chinese interest based investment companies”* and not to *“Singaporean and Malaysian based companies”* as had been drafted in the original Appendix 3Y and
 - (b) a letter from lawyers then representing Richfield to ASIC on 25 November 2013 stating that the shares held by Sinotrans and Grand Orient *“have been transferred to Sinotrans and Grand Orient as security to show good financial standing and sincerity in relation to project (sic) occurring in provincial China of which Ms [PC] Lim is involved”*. A similar statement was made by in a further letter from Richfield’s lawyers dated 23 January 2015.
52. Richfield did not provide the identity of the financiers or any documentation to support the security and financing arrangements. However, Richfield also submitted that it *“understands that PC and ST Lim are prepared to provide corroborative evidence to the Panel to support the Additional Facts and other relevant matters contained in Richfield’s submissions if required by the Panel”*.
53. We issued a supplementary brief and invited Richfield, ST Lim and PC Lim to provide any corroborating evidence of the security and financing arrangements. Richfield then provided signed statements from ST Lim and PC Lim to the effect that Richfield’s submissions were true and accurate representations of the arrangements. PC Lim’s statement also confirmed that the arrangements were not documented. Again, Richfield did not provide the identity of the financiers.
54. Richfield also submitted that, although the security and financing arrangements were not formally documented, the substance of the transactions was evidenced by the following:
 - (a) PC Lim’s transfer of the Richfield shares to Sinotrans and Grand Orient
 - (b) the funds provided to PC Lim in connection with the share transfers *“were to be paid directly to a Chinese Asset Management Fund for the purposes of the Investment, as provided in the Share Sale Agreements”* and
 - (c) an unsigned receipt from a company named Infinity Enterprise Development (Shanghai) Co., Ltd dated 21 January 2015 titled *“China North Provincial Project Certification”*, confirming that the funds loaned to PC Lim had been invested in projects in provincial China.

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55. In our supplementary brief, we also asked for any company records, such as board minutes, accounting records or financial statements, of Sinotrans and Grand Orient that support the existence of the security and financing arrangements. Richfield submitted that *“such documents are not required by companies incorporated in the British Virgin Islands and accordingly, that such documentation does not exist.”*
56. We also asked for the identities of the financiers and details of the nature of their businesses. Richfield submitted that it was unaware of the names of the financiers, or the nature of their businesses, and also that *“it understands that those financiers have not consented to provide the information requested by the Panel.”* No details have been provided to the Panel as to the identity of the financiers.
57. We also asked for an explanation of the investment made by PC Lim in China. Richfield submitted that the investment *“related to an investment consortium in projects which have good rental yield and capital gains”* and that the agreement related to the investment was in Mandarin and that it did not have a copy of it. No other details were provided.

Contradictory evidence regarding the existence of security and financing arrangements

58. ASIC submitted that we should not place any weight on Richfield’s submissions that rely on the existence of the security and financing arrangements because:
- (a) no evidence had been provided about the details of these arrangements and
 - (b) there is other evidence that contradicts aspects of Richfield’s submissions.
59. We turn to that contradictory evidence.
60. ST Lim (on behalf of Sinotrans) signed a statutory declaration on 20 January 2015 stating¹⁶ that:

Sinotrans Co., Ltd is an investment firm, makes available funds and for investments in micro-cap, small-cap and mid-cap industry, and projects, both in privately-held and publicly-listed companies. Our focus is on profitable projects, businesses and companies and especially companies/businesses that are looking to make future growth acquisitions to bring them higher profitability. We focus in all industries. We pride ourselves on our efficient and thorough due diligence process, which allows us to close transaction once we established.

I confirm that Sinotrans Investment Co., Ltd., on the 3rd of April 2013 having lodged with the share registry, hence subscribed and invested to purchase 11,000,000 shares from Ms Poh Choo Lim in Richfield International Ltd, a company listed on ASX.

The [Richfield] shares were acquired for our future acquisitions and investments and various realization purposes and all shares were kept and held to-date and there is no intention at this moment.

I further confirm that the shares are legally, fully and duly controlled by us only and NONE has any controlling including the seller.

¹⁶ including typographical and grammatical errors

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61. ASIC submitted that ST Lim’s statutory declaration contradicted the following aspects of Richfield’s submission in relation to security and financing arrangements:
 - (a) that ST Lim set up Sinotrans for the exclusive purpose of providing security for the loan provided by the financier and
 - (b) the security arrangements granted each financier control (including in relation to control over voting rights) over the shares in Sinotrans, and the underlying shares held by them in Richfield.
62. We agree with ASIC that the statutory declaration contradicts those aspects of Richfield’s submissions. Richfield did not provide any explanation as to how ST Lim’s statutory declaration can be reconciled with its submissions in relation to the security and financing arrangements.
63. ST Lim’s statutory declaration also contradicts her later signed statement - that Richfield’s submissions were *“a true and accurate representation in all material respects of the security and financing arrangements”*.
64. ASIC also referred to other documents which it submitted contradicted aspects of Richfield’s submissions in relation to the security and financing arrangements:
 - (a) Grand Orient confirming, by letter dated 2 September 2014, that it was the *“controlling owner”* of the shares it held in Richfield and that its shareholding was *“legally owned and solely by us (sic)”* and
 - (b) a summary of the terms and conditions of the share sale agreements referred to in paragraph 12, dated 5 September 2014 and signed by PC Lim, indicating that Sinotrans and Grand Orient had unrestricted control over the exercise of voting power of their Richfield shares.
65. We agree with ASIC that these documents contradict Richfield’s submission that ST Lim does not have any control over the shares in Sinotrans, Grand Orient and Richfield.

Are the security and financing arrangements real?

66. ASIC in effect invited us to infer that Richfield’s submissions in relation to the security and financing arrangements were a recent invention, in other words that the financing was a fabrication. On the basis of the material it is a reasonable submission to make. But it would be a serious finding to make.¹⁷ In all the circumstances, we are not prepared to go that far.
67. We acknowledge that there is little contemporaneous evidence of the security and financing arrangements and note that Richfield’s submissions in relation to the arrangements were made on the basis of its understanding of the facts, and were prefaced with expressions including *“Richfield understands the arrangements were structured as follows”*, *“we believe”* and *“[w]e understand that”*.
68. However, the letter from Richfield’s then lawyers dated 25 November 2013 does refer to PC Lim’s shares in Richfield having been transferred to Sinotrans and

¹⁷ See s199, ASIC Act 2001 (Cth)

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Grand Orient on 3 April 2013 as security for a project in China (see paragraph 51(b)). This letter appears to have been sent to ASIC early in its enquiries. In addition, the Share Sale Agreements and the unsigned receipt (see paragraph 54), while making no reference to any security and financing arrangements, are not necessarily inconsistent with those arrangements.

69. We also take into account that Richfield submitted that, on the basis of the security and financing arrangements, PC Lim, ST Lim and the financiers had not complied with the substantial holder provisions (see paragraphs 92 and 93). This is an admission of non-compliance with s671B and is consistent with the existence of the security and financing arrangements.
70. Therefore, on balance, we are prepared to accept that PC Lim transferred her shares in Richfield as part of security and financing arrangements; although, as discussed below, we are not prepared to accept some of Richfield's submissions in relation to the detail of those arrangements as a reason why there have not been contraventions of s606 and s671B.

Contravention of section 606

71. The material from the BVI Financial Services Commission disclosed that the sole shareholder and director of each of Sinotrans and Grand Orient was ST Lim. As a result of PC Lim's transfer of 22,500,000 Richfield shares on 3 April 2013, Sinotrans holds 11,000,000 Richfield shares and Grand Orient holds 11,500,000 Richfield shares.
72. Richfield submitted that ST Lim held the shares in Sinotrans and Grand Orient for the benefit of the financiers, and that she was "*subject to their control and direction both in relation to those companies and the shares they each hold in Richfield*". It further submitted that:

As a result, we believe the true controllers of Grand Orient and Sinotrans are the respective financiers. We understand these financiers are unrelated and are not associates in relation to Richfield. If this is correct, Grand Orient and Sinotrans are not under the common control of any person and are not therefore associates as alleged. It follows that their acquisition of a relevant interest of Richfield shares did not contravene section 606(1) of the Act.
73. It does not follow from Richfield's submission that ST Lim does not have a relevant interest in the shares of Sinotrans and Grand Orient. ST Lim as a holder of those shares (s608(1)(a)) has a relevant interest in Sinotrans and Grand Orient's shares in Richfield (s608(3)(a) - as a person who has more than 20% voting power in Sinotrans and Grand Orient).
74. Richfield's submission that ST Lim does not control Sinotrans and Grand Orient is relevant to the question of whether she has a relevant interest in Richfield shares under s608(3)(b) and whether Sinotrans and Grand Orient are associated under s12(2)(a)(iii). However, we do not accept that aspect of Richfield's submission either. We have not been provided with any documentation in support of its submission that the financier's control over Sinotrans and Grand Orient is such that ST Lim must "*act only on the direction of the relevant financier (including in relation to voting rights) in relation to Grand Orient and Sinotrans and the Richfield*

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shares held by them". Nor have we been given any specific details relating to the security and financing arrangements that would establish the true extent of the financiers' control, or ST Lim's lack of control, in relation to Sinotrans and Grand Orient.

75. As noted, ST Lim's and PC Lim's signed statements are contradicted by other evidence, including an earlier statutory declaration by ST Lim.
76. We also do not have any explanation of how the financiers' control of Sinotrans and Grand Orient operates in relation to PC Lim's entitlement to have the Richfield shares transferred back to her in certain circumstances.
77. In its submissions on the draft declaration of unacceptable circumstances, Richfield submitted that ST Lim *"is subject to [the financiers'] complete control and direction in relation to these shares, and also they (sic) shares they each hold in Richfield. She is effectively a 'nominee' holder in relation to the shares in Grand Orient and Sinotrans (i.e. 609(2) exception) and, as a result does not have voting power in Grand Orient, Sinotrans or Richfield"*. This was the first time reference to this exception had been made.
78. Section 609(2) provides:

"A person who would otherwise have a relevant interest in securities as a bare trustee does not have a relevant interest in the securities if a beneficiary under the trust has a relevant interest in the securities because of a presently enforceable and unconditional right of the kind referred to subsection 608(8)."
79. We are not satisfied on the material provided that either financier has a presently enforceable and unconditional right to the shares in Sinotrans or Grand Orient held by ST Lim. Other than the signed statements provided by ST Lim and PC Lim in support of Richfield's submissions, there were no supporting documents to enable us to determine the circumstances in which the financiers could have the shares in Sinotrans and Grand Orient transferred to them. Nor was this explained. Also, ST Lim's statutory declaration and the other documentation referred to in paragraph 64 contradicts Richfield's submission that the financiers have complete control over ST Lim's shares in Sinotrans and Grand Orient.
80. It is also unclear how the financiers could have a presently enforceable and unconditional right to the shares in Sinotrans and Grand Orient if PC Lim has a right to have the Richfield shares transferred back to her in certain circumstances. The prospect of a re-transfer of the Richfield shares held by Sinotrans and Grand Orient may be inconsistent with there being a presently enforceable and unconditional right to Sinotrans shares and Grand Orient shares.
81. We consider that Richfield has not established that the bare trustee exception applies to ST Lim as the sole shareholder in Sinotrans and Grand Orient. It is not clear from Richfield's submissions whether it was also submitting that the bare trustee exception applied to Sinotrans and Grand Orient in relation to those companies' shareholdings in Richfield. If Richfield was making that submission, we consider that the exception has not been established, for the same reasons that the exception does not apply to ST Lim.

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82. Therefore we are satisfied that:
- (a) ST Lim controls Sinotrans and Grand Orient. As a result, Sinotrans and Grand Orient are associated under s12(2)(a)(iii)
 - (b) ST Lim has a relevant interest in 35.77% of Richfield shares by operation of s608(3)(a) and s608(3)(b) and
 - (c) Sinotrans and Grand Orient have voting power in 35.77% in Richfield.
83. ASIC submitted that Sinotrans and Grand Orient contravened s606(1) because their acquisitions of Richfield shares resulted in the voting power in Richfield of both of them increasing from 0% to more than 20%, other than through an exception in s611.
84. ASIC submitted that the transfer of the Richfield shares were two transfers that occurred simultaneously and should be treated as a single transaction because they were transferred by PC Lim to two entities with the same controller, namely ST Lim, and occurred on the same day. ASIC produced emails between CC Tan and Richfield's company secretary indicating that CC Tan was coordinating the documentation for the share transfers (i.e. the share transfer forms and letters of authorisation required by the share registry) for both Sinotrans and Grand Orient at the same time. If the acquisitions occurred simultaneously, ASIC submitted, ST Lim's voting power in Richfield also increased from 0% to more than 20%.
85. ASIC submitted in the alternative that:
- (a) if Sinotrans acquired its parcel of shares in Richfield after Grand Orient, Sinotrans' acquisition resulted in its own voting power in Richfield, and Grand Orient's voting power, increasing from below 20% to more than 20% (i.e. from 18.28% to 35.77%). We consider that it would have also caused ST Lim's voting power to increase from 18.28% to 35.77% and
 - (b) if Grand Orient acquired its parcel of shares in Richfield after Sinotrans, Grand Orient's acquisition resulted in its own voting power in Richfield, and Sinotrans' voting power, increasing from below 20% to more than 20% (i.e. from 17.49% to 35.77%). We consider that it would have also caused ST Lim's voting power to increase from 17.49% to 35.77%.
86. The share sale agreements released to the market on 10 September 2014 were not signed at the time of the transaction; they were backdated to 3 April 2013. There is no other documentary evidence to establish which of the two entities acquired the shares in Richfield last, although Richfield submitted that it understood it to be Grand Orient. It is not clear how it established that position. Richfield further submitted that the transactions should not be treated commercially as a single transaction because they comprised separate financing transactions with two unrelated financiers.
87. In our view, the acquisition of the Richfield shares should be treated as having occurred simultaneously for the reasons given by ASIC. Accordingly, we consider that Sinotrans and Grand Orient's acquisition of shares in Richfield resulted in

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Sinotrans, Grand Orient and ST Lim's voting power in Richfield increasing from 0% to 35.77%, other than through one of the exceptions in s611 and therefore in contravention of s606(1).

88. If we are wrong and they did not occur simultaneously, either Sinotrans or Grand Orient's acquisition of shares resulted in Sinotrans, Grand Orient and ST Lim's voting power in Richfield increasing from below 20% to more than 20%, other than through one of the exceptions in s611 and therefore in contravention of s606(1). There is a breach of s606 irrespective of whether or not Grand Orient acquired its shares last. We do not think a declaration of unacceptable circumstances should be prevented in this case by uncertainty about which of Sinotrans or Grand Orient first acquired its shares. It does not affect the situation in this case. And to avoid a declaration on this basis may open the door to avoidance of the law.

Contraventions of section 671B (Substantial holder provisions)

89. ASIC submitted that ST Lim had failed to give Richfield and ASX a substantial holder notice in relation to her 35.77% of Richfield, "*containing the information required by s671B(3) of the Act, namely, her name, address and details of her relevant interest in voting shares in Richfield*". We agree.
90. ASIC also submitted that, in relation to Grand Orient's and Sinotrans' substantial holder notices dated 5 April 2013, they each "*failed to disclose information which was required to be disclosed pursuant to s671B(3) of the Act, namely, their association with each other, and the number of voting shares in Richfield in which the other holds a relevant interest*". We agree.
91. Given we are prepared to accept, on balance, that PC Lim transferred her shares in Richfield as part of security and financing arrangements, there is a question whether Sinotrans and Grand Orient should have disclosed details of these arrangements in their substantial holder notices dated 5 April 2013. We consider that this information was required to be disclosed under s671B(4).
92. Our conclusion appears also to have been the conclusion that Richfield came to. Richfield submitted that:

Whilst Richfield acknowledges that there may have been some deficiencies in relation to the disclosure of the interests of PC Lim, ST Lim and the financiers, it does not consider these deficiencies sufficient to give rise to unacceptable circumstances in relation to Richfield. These appear to be matters of genuine oversight and can be easily remedied through supplementary disclosure to the market in a form of updated substantial holder notices.

93. Further, Richfield made a specific submission in relation to the financiers:

It appears to us that the financiers have misunderstood the application of Australian disclosure requirements when entering into the security and financing arrangements, and in particular, had not understood that the disclosure of their identities would be required as part of these requirements.

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94. Richfield also submitted that the financiers' ceased to have a relevant interest in the Richfield shares when the security and financing arrangements were subsequently unwound (see paragraph 108), which we also take as Richfield acknowledging that the financiers' had previously had a relevant interest in Richfield shares.
95. Given the refusal to provide contact details, we were not in a position to put to the financiers that they had contravened s671B by failing to disclose their respective substantial holdings in Richfield. In view of the fact that PC Lim and ST Lim were making submissions through Richfield, we have no reason to believe that information in relation to these proceedings was not passed to the financiers and it has never been suggested otherwise.
96. We consider that the identities of the financiers, and details of the security and financing arrangements, should have been disclosed by Sinotrans and Grand Orient in their 5 April 2013 substantial holder notices.¹⁸
97. That failure, and the failure to disclose relevant interests, by Sinotrans, Grand Orient, ST Lim and PC Lim was contrary to an efficient, competitive and informed market in relation to the acquisition of control over voting shares of Richfield.
98. The existence of relevant interests, of the security and financing arrangements, and of the identities of the financiers and the terms on which they exercised any control over substantial holdings in Richfield, have not been disclosed for 2 years.
99. PC Lim's substantial holder notice of 3 October 2013 disclosed to the market that she had disposed of a substantial holding in Richfield. PC Lim failed to disclose that she had a right to have the Richfield shares held by Sinotrans and Grand Orient transferred back to her or sold at her direction in certain circumstances. It is likely that PC Lim has retained a relevant interest in those shares and the market remains uninformed of this. We consider this lack of disclosure to be contrary to an efficient, competitive and informed market in relation to the acquisition of control over voting shares of Richfield. Moreover, the holders of Richfield's shares, and its directors, were entitled to, but did not, know the identity of a person who continued to have a substantial interest in the company.
100. Richfield did not provide any evidence to support its submission that any deficiencies in PC Lim, ST Lim and the financiers' disclosure were "*matters of genuine oversight*". We do not accept the submission. It is also unclear whether Richfield's submission was based on any discussion it had with the financiers, but it is hard to imagine that it did given that its submissions did not identify the financiers.
101. In a letter addressed to the Panel and provided through Richfield, PC Lim stated that "*unawareness of the clear definition of related parties*" played a part in the issues arising before us. It is not clear what she meant. In any event, it is of little

¹⁸ See s602 and s671B

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assistance to her. It is the responsibility of substantial shareholders to make themselves aware of their obligations under the law.

102. In *Azumah Resources Limited* the Panel said¹⁹:

The person who has a substantial holding must themselves take ultimate responsibility for ensuring proper completion of such notices. Those who fail to obtain appropriate professional advice in doing so must bear the consequences. Ignorance of the law is not a defence and will not determine whether or not circumstances are unacceptable.

103. Moreover, ASIC submitted that PC Lim is an executive director of an Australian public company listed on ASX and is responsible for ensuring that Richfield is in compliance with Australian law, and therefore her lack of awareness of the law should not be accepted as justifying or mitigating a contravention of s671B. We agree with ASIC's submission on this point.

104. We do not consider ignorance of the law to be an excuse for any of the breaches we have identified.

DECISION

105. It appears to us that the circumstances are unacceptable:

- (a) having regard to:
 - (i) the effect that we are satisfied the circumstances have had, are having, will have or are likely to have on:
 - (A) the control, or potential control, of Richfield or
 - (B) the acquisition by a person of a substantial interest in Richfield
 - (ii) the purposes of Chapter 6 set out in s602 and
- (b) because they gave or give rise to contraventions of provisions of Chapter 6 and 6C of the Act.

106. Accordingly, we made the declaration set out in Annexure B and consider that it is not against the public interest to do so. We had regard to the matters in s657A(3).

Orders

Introduction

107. Following the declaration, we made the final orders set out in Annexure C. Under s657D the Panel's power to make orders is very wide. The Panel is empowered to make 'any order'²⁰ if 4 tests are met:

¹⁹ [2006] ATP 34 at 48. See also *Skywest Limited 03* [2004] ATP 17 at [88] and *LV Living Limited* [2005] ATP 5 at [107]

²⁰ Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

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- (a) it has made a declaration under s657A. This was done on 22 April 2015.
- (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. For the reasons below, we are satisfied that our orders do not unfairly prejudice any person.
- (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. We issued two supplementary briefs on orders on 16 April 2015 and 23 April 2015. Richfield confirmed that it had forwarded both supplementary briefs on orders to PC Lim and ST Lim and that Richfield had requested they forward the same to the financiers. Given that PC Lim and ST Lim refused to become parties to the proceedings, and given the refusal to identify the financiers, this was all that could be done. Furthermore, we do not consider that the orders are directed to the financiers.
- (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. The orders do this by:
 - (i) divesting shares held by Sinotrans and Grand Orient in excess of 20%, with ASIC (**Sale Shares**) acquired in contravention of s606 and
 - (ii) requiring replacement substantial holder notices, including further disclosure of the association between Sinotrans and Grand Orient, ST Lim's voting power in Richfield, and details of the security and financing arrangements in a form acceptable to ASIC. This is discussed further below.

Subsequent transaction

108. Richfield stated that, due to the declaration of unacceptable circumstances made on 22 April 2015, and our proposed orders in the first supplementary brief on orders, the following occurred on 24 April 2015:

- (a) the financiers required either replacement security for each loan provided to PC Lim or repayment of each of the loans in full by PC Lim
- (b) the financiers each accepted a personal guarantee from CC Tan in respect of PC Lim's loan obligations, in substitution for the Richfield shares held by Sinotrans and Grand Orient respectively
- (c) the financiers ceased to have any relevant interest in the Richfield shares held by Sinotrans and Grand Orient as a result of the substitution and
- (d) the shares in Richfield were now held by each of Sinotrans and Grand Orient on trust for PC Lim, to be dealt with only in accordance with her instructions. Documents titled 'Statutory declaration certificates' from each of PC Lim, Sinotrans and Grand Orient were provided to the Panel, each confirming the release of the shares in Richfield held by those companies from the security and financing arrangements.

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109. Richfield provided two documents signed by CC Tan dated 23 April 2015 as evidence of the personal guarantees. In effect, each document stated that CC Tan would guarantee the performance of PC Lim in relation to the financing arrangements of Sinotrans and Grand Orient and in consideration, “*you hereby irrevocable agreeing (sic) to the full release of the shares back to*” PC Lim. Although the guarantees are for the benefit of each of the financiers, no details of the identity of the financiers are stated in the guarantees. We find this odd. However while this adds to the general lack of transparency in relation to the security and financing arrangements, it does not lead us to reconsider the need for disclosure of the position as has been the case for the past two years.
110. Even accepting that there have been subsequent transactions, for the reasons below, disclosure of the former position is still required.

Divestment orders

111. Richfield submitted that, if the Sale Shares were vested with ASIC, PC Lim would be unfairly prejudiced because:
- (a) PC Lim would be immediately liable to the financiers for her loan or would be required to provide alternative security. We do not accept this. The security has been substituted with a personal guarantee from CC Tan, which occurred promptly after we made a declaration of unacceptable circumstances. The submission did say why this substitution was prejudicial but not why it was unfair, and it is not apparent why it would be. We note that there has been no submission since the substitution took place (following the declaration and before the orders) identifying actual prejudice that has been suffered.
 - (b) its shares were thinly traded and PC Lim was likely to suffer a significant loss if the Sale Shares were divested. This was because PC Lim would be required to compensate the financiers for the difference between the proceeds remitted back if the Sale Shares were vested in ASIC and the amount that she had received on loan (including interest). Richfield did not explain whether CC Tan’s personal guarantee would impact on PC Lim’s potential loss.
112. Richfield submitted that a divestment order in relation to the Sale Shares would also result in a significant disruption to the management of Richfield, due to the likely effect on PC Lim and her important role in the company. We do not know why this would be the case. She must fulfil her director’s duties or resign if she cannot. We do not consider that an effect on PC Lim constitutes unfair prejudice, even if it were the case, because dealing with sales of shares is a necessary corollary of running a publicly-listed company and there are other officers of the company also responsible for its management. Even if there may be prejudice to Richfield, which we do not accept, it is not unfair prejudice, and if we were to think otherwise, it must be the case in every Panel matter where divestment of the shares of a director is an appropriate remedy. That would render such a remedy unavailable.

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113. Richfield submitted a number of alternatives to our divestment orders, including:

- (a) the relevant parties cancelling the share transfers to Grand Orient and Sinotrans and unwinding the transactions entered into under the security and financing arrangements so that PC Lim would be transferred back the Richfield shares. This, it was submitted, would “*restore the pre-transaction position, and will overcome the impracticality and prejudice*” from the divestment orders sought by ASIC.²¹ We agree with ASIC’s submission that unwinding the share transactions does not adequately remedy the contraventions of s606 and s671B or
- (b) shares being divested by Richfield, rather than by ASIC. Richfield submitted that an independent broker nominated by the directors of Richfield would be better at placing the divested shares to receive a greater return than an ASIC nominated broker, minimising the prejudice to PC Lim and Richfield from the divestment orders. We do not accept this. ASIC engages a professional broker to undertake the sale process. We also agree with ASIC’s submission that divestment of the shares by Richfield is not appropriate because it could give PC Lim and CC Tan control over the share sale process.

114. ASIC also submitted that cancelling the share transfers would result in PC Lim’s voting power increasing from below 20% to more than 20% in contravention of section 606(1).

115. ASIC submitted that the divestment of the Sale Shares would increase the free float of shares, resulting in higher liquidity and ultimately less loss for PC Lim. While the divestment may not necessarily increase liquidity, the potential for loss through the divestment of the Sale Shares does not mean that PC Lim or Richfield will suffer any unfair prejudice.²² This is because the potential loss to PC Lim does not “*far outweigh the benefits*”²³ of ensuring there is compliance with s606 and the significance of the 20% threshold.

116. We are satisfied that the orders that ASIC divest the shares held by Sinotrans and Grand Orient in excess of 20% are an appropriate remedy to the unacceptable circumstances. This is in line with previous divestment orders made by us.²⁴ The Panel’s power to make orders is remedial.²⁵ In our view, divestment is necessary to protect the rights and interests of Richfield shareholders who were unaware of the identity of the controllers of 35.77% of Richfield for over 2 years. We considered whether the entire 35.77% parcel of Richfield shares should be divested

²¹ Richfield later submitted that the vesting orders were no longer necessary and submitted that the Panel should make orders that all of the Richfield shares held by Sinotrans and Grand Orient be transferred back to PC Lim

²² *Touch Holdings Limited* [2013] ATP 3, [125]-[128]

²³ *Touch Holdings Limited* [2013] ATP 3, [127]

²⁴ See for example, *Viento Group Limited* [2011] ATP 1 and *Avalon Minerals Ltd* [2013] ATP 11

²⁵ *Flinders Diamonds Ltd v Tiger International Resources Inc* (2004) 88 SASR 281; *Orion Telecommunications Limited* [2006] ATP 23 at [135]

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because it formed part of (or at least should be treated as) a single transaction. This was done in CMI Limited²⁶, but in that case the associated parties retained more than 20% voting power in the company. There may be a matter in the future when it is appropriate for the Panel to order divestment of a whole parcel of shares acquired in contravention of s606, leaving the contravening party with less than 20% voting power. However we consider that the circumstances of this case do not warrant such an order.

117. ASIC submitted that it was willing to consider a divestment period of longer than 3 months²⁷ and proposed a 4 month period if all of the Richfield shares held by Sinotrans and Grand Orient were divested. Richfield was supportive of a longer period. Even though we have decided not to order divestment of the entire 35.77% parcel, we ordered a 4 month divestment period. This will assist the divestment in an illiquid market.

Disclosure

118. Richfield submitted that, given the termination of the security and financing arrangements, disclosure of the identities of the financiers was no longer required in order for ST Lim, PC Lim, Sinotrans and Grand Orient to comply with the disclosure requirements in s671B. It submitted that ST Lim, PC Lim, Sinotrans and Grand Orient cannot comply with the disclosure orders concerning the financiers as they are subject to confidentiality obligations under the laws of a foreign jurisdiction (which it did not identify) preventing each from disclosing the identity of the financiers.
119. Non-compliance with the substantial holder provisions is not excused by a requirement to comply with foreign legislation.²⁸ In considering the Panel's discretion to make orders, it is however appropriate to take into account whether the specific relief sought may compel conduct which is in breach of a law.²⁹ Richfield did not give us any information such that we could take this into account.
120. ASIC submitted that PC Lim, as a director of an Australian publicly listed company, should be aware of her disclosure obligations under the Corporations Act and she should not have entered into the security and financing arrangements if the effect was that a foreign jurisdiction would impose confidentiality obligations contrary the requirements of Corporations Act. We agree with ASIC in this respect.
121. We do not accept that termination of the security and financing arrangements removes the need for the information under s671B regarding the arrangements or the identity of the financiers. If the financiers have no continuing substantial holding, the information may be of less interest to the market, but we cannot safely assume it is of no interest. Historical information may still be relevant. Furthermore, the market has been misled as to the control of more than 35% of a

²⁶ [2011] ATP 4

²⁷ which has been the usual period for Panel divestment orders, see *Avalon Minerals Limited* [2013] ATP 11

²⁸ *Rusina Mining NL* [2006] ATP 13 at [32] and *Australian Securities Commission v Bank Leumi Le-Israel (Switzerland)* (1996) 14 ACLC 157

²⁹ *Village Roadshow Limited* [2004] ATP 4 at [101]

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listed company's shares for 2 years and it is appropriate, in our view, that the market be given full information about the arrangements and the identities of those involved. Moreover, if the financiers are associates of Sinotrans or Grand Orient they cannot acquire any of the Sale Shares in accordance with our orders.

122. ASIC submitted that, if there was inadequate disclosure in relation to the identity of the financiers, the Panel should make a further divestment order in respect of all the remaining Richfield shares held by Sinotrans and Grand Orient. It submitted that, it was clearly contrary to an efficient, competitive and informed market if shareholders, the market, and Richfield itself, do not know the identity of persons who control 35.77% of Richfield. It submitted that if the financiers did not consent to Richfield knowing their identity, divestment of the entire 35.77% of shares held by Sinotrans and Grand Orient was justified to remedy the unacceptable circumstances.
123. We consider that it is appropriate to make orders requiring replacement substantial holder notices with additional information in relation to the financing arrangements and the identity of the financiers. We consider it is important that ST Lim, PC Lim, Sinotrans and Grand Orient comply with the substantial holding requirements. We also consider that an explanation should be given in relation to the security and financing arrangements, given that the market was uninformed about these arrangements for over 2 years. We do not think we should go as far as ASIC proposed, and in any event the arrangements have now been unwound.
124. In the circumstances, we consider it remains appropriate to make orders requiring disclosure of the financiers.
125. We have given ST Lim, PC Lim, Sinotrans and Grand Orient one week from the date of the orders to provide the additional disclosure in a form approved by ASIC. ASIC is a statutory body and the corporate regulator. It has a statutory function of providing support facilities to the Panel.³⁰ It is the body with primary responsibility for considering compliance with the substantial holding provisions. It would be inefficient for ASIC to approve the substantial holder notices and for the Panel to approve the additional information. We consider that ASIC is best placed to consider compliance with both, with the opportunity for ASIC or Richfield to approach us for a variation of the orders if necessary.
126. We consider that one week is adequate time for compliance, given the substantial holder provisions require disclosure within a shorter timeframe (i.e. 2 business days) and the apparent speed within which PC Lim, Sinotrans and Grand Orient were able to substitute the security arrangements.
127. We do not consider that it is appropriate at this stage to order divestment of the shares remaining with Sinotrans and Grand Orient. If the disclosure by Sinotrans, Grand Orient, Siew Tze Lim and Poh Choo Lim is not made to the satisfaction of ASIC, ASIC is able to apply to us for a variation of these orders (including further orders).

³⁰ See s11(2)(a), *ASIC Act 2001* (Cth) and *CEMEX v Takeovers Panel* [2009] 72 ACSR 482 at 504-505

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Costs

128. The Panel's policy is that an award of costs is the exception not the rule and is generally informed by the following considerations:
- (a) the Panel's primary role is to resolve disputes expeditiously and informally
 - (b) a declaration relates to circumstances, not conduct, and may involve no finding of fault
 - (c) costs orders are the exception not the rule, so may not follow to a 'successful' party and
 - (d) a party is entitled to make, or resist, an application once without exposure to a costs order, provided it presents a case of reasonable merit in a businesslike way.³¹
129. We invited the parties to make submissions on whether costs in favour of ASIC were appropriate. ASIC submitted that it should be awarded costs of \$33,336: \$14,889 of costs incurred prior to the application and \$18,447 of costs incurred since the application to the Panel.
130. Richfield submitted that a costs order should not be made against it, as Richfield was not the subject of any wrongdoing and no breaches of the Corporations Act had been committed by Richfield.
131. In our view, a costs order was appropriate in the circumstances and we made it against Sinotrans and Grand Orient given our primary finding that their acquisitions breached s606. Moreover, Sinotrans and Grand Orient had breached clear disclosure obligations in s671B by failing to disclose details of the security and financing arrangements that contributed to those companies holding shares in Richfield, and Richfield failed to give full and accurate details of the arrangements to ASIC in its enquiries regarding the circumstances of the share transfers from PC Lim. The failure to disclose these details to ASIC warranted the costs order extending to the costs unnecessarily incurred by ASIC in its enquiries prior to the Panel application.
132. We decided not to make a costs order against Richfield. Richfield has already spent shareholder funds defending PC Lim, ST Lim and others. In our view, this additional burden should not fall on Richfield's minority shareholders.
133. We consider that there has been a failure by Richfield, PC Lim, Sinotrans and Grand Orient to conduct themselves in a professional and businesslike fashion generally,³² which has resulted in ASIC unnecessarily incurring costs in having to make an application to the Panel.
134. Richfield and PC Lim failed to disclose the details of the security and financing arrangements to ASIC in its earlier dealings with ASIC when further information was requested regarding the original share transfers. ASIC was provided with statements that suggested that a financing arrangement existed but it was also

³¹ Guidance Note 4 Remedies – General at [27]

³² *Skywest Limited* 03 [2004] ATP 17 at [83]

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provided with inconsistent statements, namely those regarding Sinotrans and Grand Orient's control over the Richfield shares. The details of those arrangements, such as the existence of the two unrelated Chinese financiers and PC Lim's right to acquire the shares back, only came to light following ASIC's Panel application. Even then, the information given to us regarding the financing arrangements has been scarce, inconsistent and quite unsatisfactory. In our view, there has been an unreasonable reluctance to provide full and adequate disclosure of information relevant to the proceedings including, for example, the details of PC Lim's investment in China.

135. ASIC requested that Richfield, CC Tan and PC Lim provide contact details for Sinotrans and Grand Orient, which they did not provide even though it was likely known to them given that ST Lim was the sole shareholder of both companies and ST Lim is PC Lim's aunt. This resulted in ASIC incurring further costs and hindered ASIC's ability to serve tracing notices on the companies.
136. CC Tan requested ST Lim's name be recorded as "*Siew Tze*" in letters connected to the original share transfers, after first requesting her full name be included in those letters. It appears that this request then resulted in ST Lim's substantial holder notice not disclosing her full name. This created further difficulty for ASIC in identifying the controller of Sinotrans. ASIC obtained ST Lim's full name after issuing a notice to produce to Richfield.
137. PC Lim, ST Lim, Sinotrans and Grand Orient decided not to become parties to the proceedings and provided submissions through Richfield. They would have personal knowledge of the identity of the financiers and could have addressed some of the inconsistencies in the materials provided to us.
138. Accordingly, we decided to make a costs order in favour of ASIC for its costs incurred in its enquiries and in the course of the proceedings against Sinotrans and Grand Orient in proportion to their respective shareholdings in Richfield prior to divestment. The costs are to be paid from the proceeds of sale of the vested Richfield shares.

Peter Day

President of the sitting Panel

Decision dated 22 April 2015

Reasons published 22 May 2015

Reissued with postscript on 27 May 2015

Postscript

1. *On 7 May 2015, Sinotrans, Grand Orient, ST Lim and PC Lim filed substantial holder notices and explanatory letters with ASX disclosing, among other things, the existence of the security and financing arrangements.*
2. *On 7 May 2015, ASIC filed a letter with ASX stating that the substantial holder notices and explanatory letters lodged by Sinotrans, Grand Orient, ST Lim and PC Lim were not in a form acceptable to ASIC and therefore the orders restricting Sinotrans and Grand*

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Reasons – Richfield International Limited [2015] ATP 4

*Orient from voting and dealing with the Richfield shares not divested (**Retained Shares**) remained in effect.*

3. *On 8 May 2015, Richfield applied for a variation to the final orders made on 30 April 2015 to remove the voting and dealing restrictions on the Retained Shares.*
4. *We refused the application on 12 May 2015. We considered, among other things, that ASIC should be allowed to do the job entrusted to it.*
5. *On 22 May 2015, Sinotrans, Grand Orient, ST Lim and PC Lim made additional disclosures to ASX in a form acceptable to ASIC.*
6. *On 25 May 2015, we granted a variation to the orders to remove the voting and dealing restrictions (see Annexure D).*

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Advisers

Party	Advisers
Richfield	Kemp Strang



Australian Government

Takeovers Panel

Annexure A
CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS

RICHFIELD INTERNATIONAL LIMITED

The Australian Securities and Investments Commission made an application to the Panel dated 24 March 2015 in relation to the affairs of Richfield International Limited (**Richfield**).

The President ORDERS:

1. Sinotrans Investment Co Limited (**Sinotrans**) must not dispose of, transfer or grant any security interest over any shares it holds in Richfield, or agree to any such disposal, transfer or grant.
2. Grand Orient Capital Co Limited (**Grand Orient**) must not dispose of, transfer or grant any security interest over any shares it holds in Richfield, or agree to any such disposal, transfer or grant.
3. If, notwithstanding orders 1 or 2, a transfer of any shares held in Richfield by Sinotrans or Grand Orient is lodged, Richfield must not register, or allow to be registered, the transfer.
4. These interim orders have effect until the earliest of:
 - (i) further order of the Panel
 - (ii) the determination of the proceedings and
 - (iii) 2 months from the date of these interim orders.

Alan Shaw
Counsel
with authority of Vicki McFadden
President
Dated 24 March 2015



Australian Government

Takeovers Panel

Annexure B

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

**RICHFIELD INTERNATIONAL LIMITED
CIRCUMSTANCES**

1. Richfield International Limited (**Richfield**) is an ASX listed company incorporated in Australia.
2. Sinotrans Investment Co Ltd (**Sinotrans**) and Grand Orient Capital Co Ltd (**Grand Orient**) are companies incorporated in the British Virgin Islands.
3. On 4 April 2013, Poh Choo Lim (**PC Lim**), a director of Richfield, filed an Appendix 3Y Change of Director's Interest Notice disclosing that on 3 April 2013 she disposed of 22,500,000 shares in Richfield for \$3,712,500 (16.5 cents per share) by an '*Off market sale transfer to overseas Chinese interests based investment companies*'.
4. On 5 April 2013, Sinotrans filed a Notice of Initial Substantial Holder disclosing that on 3 April 2013 it became:
 - (a) a substantial holder in Richfield and
 - (b) the registered holder of, and had a relevant interest in, 11,000,000 shares in Richfield with voting power of 17.48%.
5. On 5 April 2013, Grand Orient filed a Notice of Initial Substantial Holder disclosing that on 3 April 2013 it became:
 - (a) a substantial holder in Richfield and
 - (b) the registered holder of, and had a relevant interest in, 11,500,000 shares in Richfield with voting power of 17.49%.
6. On 3 October 2013, PC Lim filed a Form 605 Notice of Ceasing to be a Substantial Holder disclosing that on 3 April 2013:
 - (a) she ceased to be a substantial holder in Richfield and
 - (b) her relevant interest in Richfield decreased to 881,500 shares (1.4%) due to an '*Off market transfer*' of 22,500,000 shares.
7. Material provided to the Panel indicates that, on or around 3 April 2013:
 - (a) Sinotrans and PC Lim entered into a security and funding arrangement with a Chinese financier, pursuant to which:

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- (i) the financier may have an interest in the shares in Richfield held by Sinotrans and
 - (ii) PC Lim is entitled to have the Richfield shares transferred back to her or direct they be sold in certain circumstances and
- (b) Grand Orient and PC Lim entered into a security and funding arrangement with a Chinese financier (which may be different to the financier in paragraph 7(a)), pursuant to which:
- (i) the financier may have an interest in the shares in Richfield held by Grand Orient and
 - (ii) PC Lim is entitled to have the Richfield shares transferred back to her or direct they be sold in certain circumstances.
8. No written agreements evidencing the security and funding arrangements referred to in paragraph 7 have been provided to the Panel. Further, no details have been provided to the Panel as to the identity of the financiers.
9. Siew Tze Lim (**ST Lim**) is the sole shareholder and director of Sinotrans and Grand Orient and therefore has a relevant interest in the shares of those companies, and controls each of those companies.
10. Sinotrans holds 11,000,000 shares in Richfield and therefore has a relevant interest in those shares.
11. Grand Orient holds 11,500,000 shares in Richfield and therefore has a relevant interest in those shares.
12. No material has been provided to the Panel to establish that section 609³³ applies such that:
- (a) ST Lim does not have a relevant interest in all the shares of Sinotrans and Grand Orient or
 - (b) Sinotrans, Grand Orient and ST Lim do not have a relevant interest in Richfield.
13. No material has been provided to the Panel to establish that ST Lim does not control Sinotrans and Grand Orient. Therefore Sinotrans and Grand Orient are associated under section 12(2)(a)(iii) and:
- (a) ST Lim has a relevant interest in 35.77% of Richfield shares by operation of section 608(3)(a) and (b) and
 - (b) Sinotrans and Grand Orient have voting power of 35.77% in Richfield.
14. The transactions by Sinotrans and Grand Orient occurred simultaneously resulting in Sinotrans, Grand Orient and ST Lim's voting power in Richfield increasing from 0% to more than 20%, other than through one of the exceptions in section 611, contravening section 606.
15. In the alternative, either Sinotrans or Grand Orient's acquisition of shares in Richfield resulted in Sinotrans, Grand Orient and ST Lim's voting power in Richfield

³³ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated

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increasing from below 20% to more than 20%, other than through one of the exceptions in section 611, contravening section 606.

16. Sinotrans' substantial holder notice has failed to disclose information required by section 671B, including:
 - (a) details of the security and funding arrangement referred to in paragraph 7(a) and
 - (b) that Grand Orient was an associate of Sinotrans, the nature of that association and Grand Orient's relevant interest in Richfield.
17. Grand Orient's substantial holder notice has failed to disclose information required by section 671B, including:
 - (a) details of the security and funding arrangement referred to in paragraph 7(b) and
 - (b) that Sinotrans was an associate of Grand Orient, the nature of that association and Sinotrans' relevant interest in Richfield.
18. ST Lim has a relevant interest in 35.77% of Richfield and has failed to disclose her substantial holding in Richfield as required by section 671B.
19. Further, the failure to disclose the identity of the financiers by Sinotrans, Grand Orient, ST Lim and PC Lim was contrary to an efficient, competitive and informed market in relation to the acquisition of control of Richfield.
20. PC Lim has disclosed to the market, in her Notice of Ceasing to be a Substantial Holder on 3 October 2013, that she disposed of a substantial holding in Richfield (35.77%) but did not disclose that she had a right to have the shares held by Sinotrans and Grand Orient transferred back to her or sold at her direction in certain circumstances. This was contrary to an efficient, competitive and informed market in relation to the acquisition of control of Richfield.
21. It appears to the Panel that the circumstances are unacceptable:
 - (a) having regard to:
 - (i) the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (A) the control, or potential control, of Richfield or
 - (B) the acquisition by a person of a substantial interest in Richfield
 - (ii) the purposes of Chapter 6 set out in section 602 and
 - (iii) because they gave or give rise to contraventions of provisions of Chapter 6 and 6C of the Act.
22. 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).

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DECLARATION

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

**Allan Bulman
Director
with authority of Peter Day
President of the sitting Panel
Dated 22 April 2015**



Australian Government

Takeovers Panel

Annexure C

**CORPORATIONS ACT
SECTION 657D
ORDERS**

RICHFIELD INTERNATIONAL LIMITED

The Panel made a declaration of unacceptable circumstances on Wednesday, 22 April 2015.

THE PANEL ORDERS

Interpretation

A. 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
Company	Richfield International Limited
Grand Orient	Grand Orient Capital Co Ltd
Grand Orient Retained Shares	6,429,452 ordinary shares (10.22%) in the issued capital of the Company held by Grand Orient
Sale Shares	4,850,090 ordinary shares (7.71%) in the issued capital of the Company held by Sinotrans
	5,070,548 ordinary shares (8.06%) in the issued capital of the Company held by Grand Orient
Sinotrans	Sinotrans Investment Co Ltd
Sinotrans Retained Shares	6,149,910 ordinary shares (9.78%) in the issued capital of the Company held by Sinotrans

Divestment Order

1. The Sale Shares are vested in the Commonwealth on trust for each of Sinotrans and Grand Orient in respect of their Sale Shares.

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2. ASIC must:
 - (a) sell the Sale Shares in accordance with these orders and
 - (b) account to Sinotrans and Grand Orient for the proceeds of sale, net of:
 - (i) the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any) and
 - (ii) ASIC's costs incurred in its enquiries and in the course of the proceedings, in the following proportions:
 - (A) Sinotrans: \$16,668 and
 - (B) Grand Orient: \$16,668.
3. ASIC must:
 - (a) retain an Appointed Seller to conduct the sale and
 - (b) instruct the Appointed Seller:
 - (i) to use the most appropriate sale method to secure the best available sale price for the Sale Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale and the requirement that none of Poh Choo Lim, Siew Tze Lim, Sinotrans and Grand Orient or their respective associates may acquire, directly or indirectly, any of the Sale Shares
 - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Sale Shares
 - (iii) unless the Appointed Seller sells the Sale Shares on market, that it obtain from any prospective purchaser of Sale Shares a statutory declaration that it is not associated with any of Poh Choo Lim, Siew Tze Lim, Sinotrans or Grand Orient and
 - (iv) to dispose all of the Sale Shares within 4 months from the date of its engagement.
4. The Company, Poh Choo Lim, Siew Tze Lim, Sinotrans and Grand Orient must do all things necessary to give effect to these orders, including:
 - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Sale Shares in the form approved by ASIC and
 - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Sale Shares.
5. None of Poh Choo Lim, Siew Tze Lim, Sinotrans and Grand Orient, or their respective associates may, directly or indirectly, acquire any of the Sale Shares.
6. Sinotrans and Grand Orient must not otherwise dispose of, transfer, charge or vote any of the Sale Shares.

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7. Nothing in these orders obliges ASIC to invest, or ensure interest accrues on, any money held in trust under these orders.

Voting orders

8. Until completion of orders 13, 14, 15, 16 and 17, Sinotrans must not exercise, and the Company must disregard, any voting rights in respect of the Sinotrans Retained Shares.
9. Until completion of orders 13, 14, 15, 16 and 17, Grand Orient must not exercise, and the Company must disregard, any voting rights in respect of the Grand Orient Retained Shares.

Dealing orders

10. Until completion of orders 13, 14, 15, 16 and 17, Sinotrans must not dispose of, transfer or grant any security interest in respect of the Sinotrans Retained Shares, or agree to any such disposal, transfer or grant.
11. Until completion of orders 13, 14, 15, 16 and 17, Grand Orient must not dispose of, transfer or grant any security interest in respect of the Grand Orient Retained Shares, or agree to any such disposal, transfer or grant.
12. If, notwithstanding orders 10 or 11, a transfer of any shares held in the Company by Sinotrans or Grand Orient in respect of the Sinotrans Retained Shares or Grand Orient Retained Shares is lodged, the Company must not register, or allow to be registered, the transfer.

Substantial holding disclosure order

13. Sinotrans must as soon as practicable, and in any case no later than one week from the date of these orders, give to the Company and ASX a restated version of its substantial holding notice dated on or about 3 April 2013 in relation to the Company and an explanatory covering letter, including the information referred to in paragraph 17 and in each case in a form acceptable to ASIC.
14. Grand Orient must as soon as practicable, and in any case no later than one week from the date of these orders, give to the Company and ASX a restated version of its substantial holding notice dated on or about 3 April 2013 in relation to the Company and an explanatory covering letter, including the information referred to in paragraph 17 and in each case in a form acceptable to ASIC.
15. Siew Tze Lim must as soon as practicable, and in any case no later than one week from the date of these orders, give to the Company and ASX a substantial holding notice in relation to the Company in respect of the substantial holding she began to have on or around 3 April 2013 and an explanatory covering letter, including the information referred to in paragraph 17 and in each case in a form acceptable to ASIC.
16. Poh Choo Lim must as soon as practicable, and in any case no later than one week from the date of these orders, give to the Company and ASX a notice withdrawing or restating her substantial holding notice in relation to the Company dated on or around 2 October 2013 and an explanatory covering letter, including the information referred to in paragraph 17 and in each case in a form acceptable to ASIC.

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17. Sinotrans, Grand Orient, Siew Tze Lim and Poh Choo Lim must as soon as practicable give to ASIC drafts of the notices and letters referred to in orders 13, 14, 15 and 16 which:
- (a) in the case of Sinotrans, Grand Orient and Siew Tze Lim, must disclose:
 - (i) the name of each associate who has, or had, a relevant interest in voting shares in the Company
 - (ii) the nature of the substantial holder's association with each associate
 - (iii) the substantial holder's relevant interest and the relevant interests of each of its associates and
 - (iv) full and accurate details of any existing or previous security and financing arrangements entered into in respect of voting shares in the Company held by the substantial holder, including the identity of any existing or previous financier and
 - (b) in the case of Poh Choo Lim, must disclose full and accurate details of any relevant agreement through which she has, or had, a relevant interest in the voting shares of the Company, including full and accurate details of:
 - (i) any right or option to acquire those voting shares
 - (ii) any existing or previous security and funding arrangements relating to the voting shares in the Company held by Sinotrans, including the identity of any existing or previous financier and
 - (iii) any existing or previous security and funding arrangements relating to the voting shares in the Company held by Grand Orient, including the identity of any existing or previous financier.
18. Sinotrans and Grand Orient bear the costs of ASIC as described in paragraph 2(b)(ii).

Allan Bulman
Director
with authority of Peter Day
President of the sitting Panel
Dated 30 April 2015

Annexure D

**CORPORATIONS ACT
SECTION 657D
VARIATION OF ORDERS**

Richfield International Ltd

The Panel made a declaration of unacceptable circumstances on 22 April 2015 and orders on 30 April 2015.

Variation

The Panel orders that the orders made on 30 April 2015 in relation to the matter of Richfield International Ltd be varied by deleting paragraphs 8 to 12 (the voting and dealing orders).

**Allan Bulman
Director
with authority of Peter Day
President of the sitting Panel
Dated 25 May 2015**