



Australian Government

Takeovers Panel

**Reasons for Decision
Sovereign Gold Company Limited 01R
[2016] ATP 14**

Catchwords:

Review application – decline to conduct proceedings – association – association hurdle – agreement, arrangement or understanding – acting in concert – common directors – family relationships – rights issue – shortfall allocation – vote canvassing – scope of review – adding parties to review application – procedural fairness

Corporations Act 2001 (Cth), sections 12(2)(b), 12(2)(c), 606, 608(1), 657EA, 671B

ASIC Act 2001, s195(4)

ASIC Regulations 2001, regulations 16(2)(c), 20

ASIC v Fortescue Metals Group Ltd [2011] FCAFC 19

Guidance Note 2: Reviewing decisions

Sovereign Gold Company Limited [2016] ATP 12, Brisbane Markets Limited [2016] ATP 3, Mungana Goldmines Limited 01R [2015] ATP 7, Gondwana Resources Limited 02R [2014] ATP 18, Dragon Mining Limited [2014] ATP 5, CMI Limited [2011] ATP 4, Tully Sugar Limited 01R [2010] ATP 1, Multiplex Prime Property Fund 03R [2009] ATP 23, Goldlink IncomePlus Limited 04R [2009] ATP 3, Boulder Steel Limited [2008] ATP 24, Mount Gibson Iron Limited [2008] ATP 4, BreakFree Limited 04(R) [2003] ATP 42

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

INTRODUCTION

- The Panel, Elizabeth Hallett, Rodd Levy (sitting President) and Sarah Rennie, declined to conduct proceedings on a review application by Mr Brennan Westworth to review the decision of the initial Panel in *Sovereign Gold Company Limited 01*.¹ The review Panel considered that it was unlikely to reach a different conclusion to the initial Panel. It also considered that certain persons alleged to be associates in the review were not appropriately the subject of the review application.
- In these reasons, the following definitions apply.

2015 Rights Issue Sovereign Gold’s 1-for-1 non-renounceable rights issue at \$0.002 per share announced on 18 May 2015 and the placement of an additional 159,657,036 new shares by GTT

2016 Placement Sovereign Gold’s placement of 38,765,711 shares on 1 February 2016

2016 Rights Issue Sovereign Gold’s 2-for-5 non-renounceable rights issue at \$0.003 per share announced on 1 April 2016

¹ [2016] ATP 12

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

Alissa Bella	Alissa Bella Pty Ltd
Applabs applicant	Applabs Technologies Limited (ASX:ALA) Mr Brennan Westworth
GTT	GTT Ventures Pty Ltd
Hudson	Hudson Corporate and Hudson Resources
Hudson Corporate	Hudson Corporate Ltd
Hudson Resources	Hudson Resources Ltd
Hudson Sale	Hudson Resources' sale of 100 million Sovereign Gold shares to clients of GTT for \$300,000
Raffles Capital	Raffles Capital Limited (ASX: RAF)
RafflesCo	RafflesCo Limited (this company was demerged from Raffles Capital in April 2015)
Sovereign Gold	Sovereign Gold Company Limited

FACTS

3. Sovereign Gold is an ASX listed company (ASX code: SOC).
4. On 18 May 2015, Sovereign Gold announced the 2015 Rights Issue to raise approximately \$790,000. Initially, the rights issue was not underwritten.
5. On 29 June 2015, Sovereign Gold announced that GTT and or its nominees had agreed to underwrite any shortfall up to a maximum of \$600,000 or 300 million shares and, upon the completion of the rights issue, GTT had the right to appoint two directors to the Sovereign Gold board with two directors to resign.
6. On 8 July 2015, Sovereign Gold announced that the shortfall under the 2015 Rights Issue was 170,342,964 shares and it had agreed to place an additional 159,657,036 new shares through GTT for a total of \$328,435, bringing the total number of shares to be allocated by GTT up to 330 million.
7. On 15 July 2015, Sovereign Gold announced that Messrs Tassone and Thomas had been appointed to its board as nominee directors of GTT and that Messrs Bruce Dennis and Jacob Rebek had resigned.
8. On or about 7 December 2015, the Hudson Sale was completed and Hudson Resources lodged a notice of ceasing to be a substantial holder.
9. On 14 December 2015, Sovereign Gold announced that Mr Glovac was appointed to its board and that Hon John Dawkins AO and Mr Michael Leu had retired.
10. On 22 January 2016, Sovereign Gold announced (among other things) the 2016 Placement to raise approximately \$93,000 and that the Board was in the process of a strategic review and had broadened the scope of its considerations to include technology related projects and investment opportunities.
11. On 3 February 2016, Sovereign Gold announced the completion of the 2016 Placement with 38,765,711 new shares issued.

Takeovers Panel

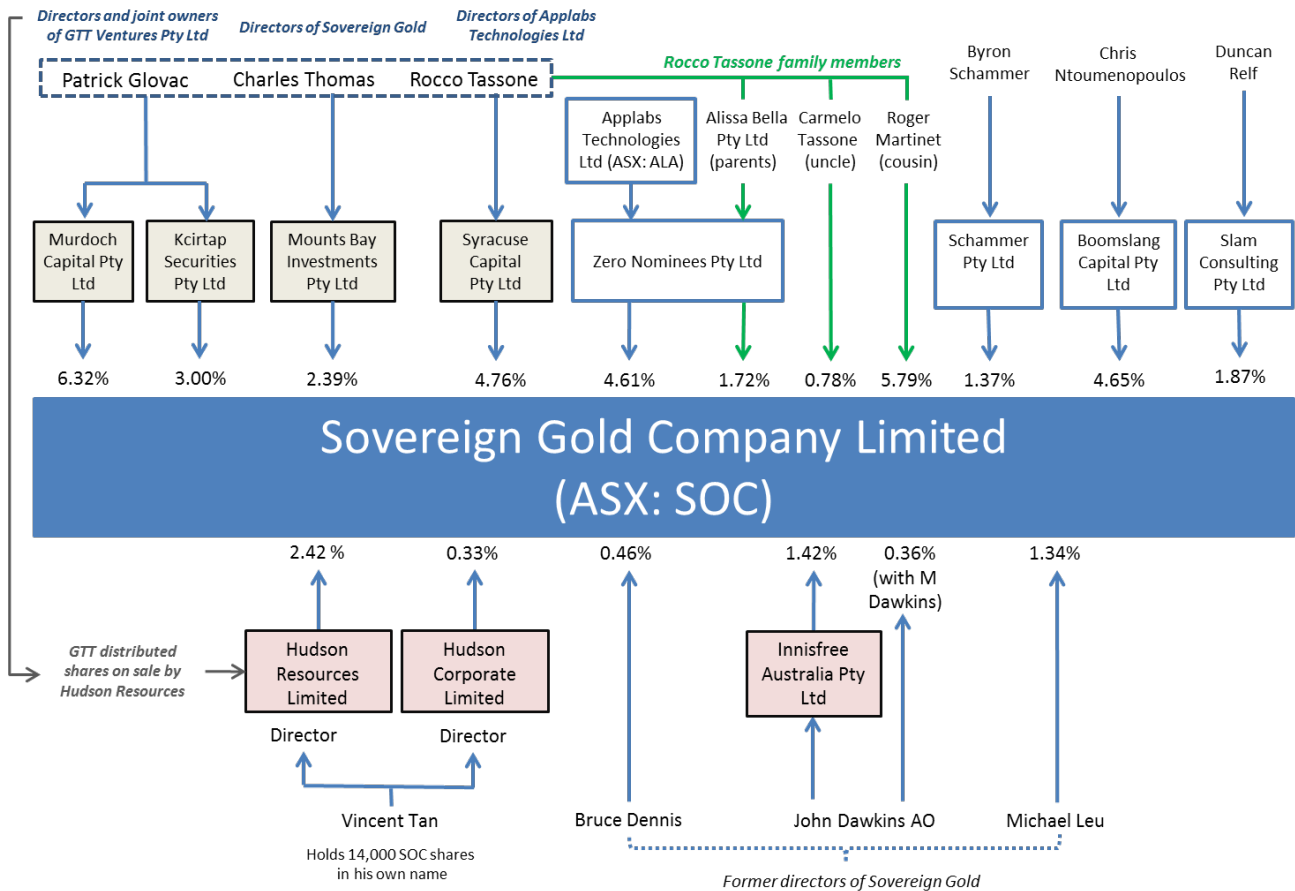
Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

12. On 1 March 2016, Sovereign Gold announced that Mr Thomas had been elected Chairman of the company, Mr Simon Bird had retired from the board and Mr Tassone would function as acting CEO. Mr Tassone was shortly thereafter confirmed as Managing Director.
13. On 1 April 2016, Sovereign Gold announced the 2016 Rights Issue to raise approximately \$1.2 million. The rights issue was not underwritten.
14. On 20 April 2016, Sovereign Gold announced (among other things) that nominations had been received for the appointment of three additional directors to the board, two of which (from Hudson Resources and RafflesCo) had since been withdrawn and the remaining one was for the appointment of the applicant.
15. On 12 May 2016, Sovereign Gold announced that its strategic review was complete and the board saw considerable upside by adding gold and lithium opportunities to its existing portfolio. It subsequently announced entering into a lithium deal on 20 May 2016.
16. The 2016 Rights Issue closed on 20 May 2016 with shortfall shares oversubscribed. A total of 393,613,914 new shares were issued on 25 May 2016.
17. On 31 May 2016, Sovereign Gold held its annual general meeting. Messrs Glovac, Tassone and Thomas were re-elected to the board. The applicant was not elected.
18. On 9 June 2016, the applicant sought a declaration of unacceptable circumstances and orders, submitting (among other things) that alleged associations he identified in his application had resulted in contraventions of s606 and s671B.²
19. The initial Panel made a declaration of unacceptable circumstances and orders. It considered:
 - (a) Messrs Glovac, Tassone and Thomas and Applabs are associated under s12(2)(b) for the purpose of controlling or influencing the composition of Sovereign Gold's board or s12(2)(c) in relation to Sovereign Gold's affairs
 - (b) the association had not been disclosed to the market in breach of the substantial holder provisions in s671B and resulted in acquisitions of shares in contravention of s606 and
 - (c) apart from the association found in (a), there was sufficient material to conduct proceedings in relation to whether there was an association among any of Messrs Glovac, Tassone and Thomas, GTT, Applabs, Mr Cosimo Tassone, Mrs Angelina Tassone, Mr Carmelo Tassone, Mr Roger Martinet and Hudson but concluded there was insufficient direct evidence to establish any such association.
20. Shareholdings in Sovereign Gold and various relationships between the persons included in the review application are set out in the diagram below.

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

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14



APPLICATION

Declaration sought

21. By application dated 11 July 2016, the applicant sought a review of the initial Panel's decision. The review application consists of an email seeking a review on the following bases:
 - (a) the initial Panel did not make enquiries of all the alleged associates and listed those associates
 - (b) new evidence was introduced during the initial proceedings that implicated additional parties which had not been explored by the initial Panel. The review application email listed those parties
 - (c) the initial Panel did not explore all the issues raised in the application and submissions before the initial Panel
 - (d) the initial Panel did not draw appropriate inferences but based its decision "on what can be conclusively proven" and
 - (e) various parties had misled the Panel.
22. In our view there is nothing additional in the review application to the initial application, save the allegation that parties had misled the initial Panel. No additional material was submitted by any party to the initial proceedings.
23. It may have assisted the review application had the applicant detailed what he submitted had been misleading. Simply making an allegation adds little to the

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

decision whether to conduct proceedings on the review, notwithstanding the constraint that the review must be made within 2 business days after the date on which the decision of the initial Panel is made and the reasons of the initial Panel are not usually available.

Consent

24. Unless the initial Panel has made a declaration or orders, a person may apply for a review only with the consent of the President.³ Given the inclusion in the review application of persons who had not been named in the initial application or considered by the initial Panel, the President's consent was sought in relation to the review. On 11 July 2016, the President gave her consent to the review (to the extent consent was required).

Additional parties

25. On 13 July 2016, the applicant submitted a request to include five additional persons in the review application. While the applicant acknowledged that these persons no longer held Sovereign Gold shares, he submitted that they were connected to the issues raised in the initial application including because they received shares under the 2015 Rights Issue, Hudson Sale or 2016 Placement. Some information about these persons had been provided during the initial Panel proceedings.
26. We treated the applicant's request to extend the review application to the five additional persons as a request to amend the review application and agreed to consider the request. This is discussed below.
27. On 19 July 2016, the applicant also submitted a request for confirmation that RafflesCo, a party named in the initial application, was included in the review. We also agreed to consider this request.

Interim orders

28. While the review application did not specifically request any interim orders, as a *de novo* review we considered anew the request for interim orders in the initial application that had been the subject of consideration by the initial Panel.
29. At the time of our consideration, the interim orders of the initial Panel were still in effect but would cease to have effect upon the completion of the initial Panel's proceedings (orders of the initial Panel still being outstanding). Given the imminent completion of the initial Panel's proceedings,⁴ we made interim orders (Annexure A) replacing the interim orders in the initial Panel's proceedings in order to maintain the status quo prior to considering whether to conduct proceedings on the review application.

³ Section 657EA(2). See Guidance Note 2: Reviewing decisions at [27]

⁴ The initial Panel had made a declaration of unacceptable circumstances, on which this review was launched, but was still finalising its orders

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

30. The interim orders restricted the disposal of shares by any of the persons we consider to be properly included in the review (see paragraph 45).⁵ This included certain persons who were not covered by the interim orders of the initial Panel. To ease any potential hardship that may have arisen subsequent to the making of the interim orders, we specified that the restrictions would apply in the absence of Panel consent. Accordingly, if any affected persons considered that their circumstances required the sale of shares, they could contact the Panel executive and explain those circumstances.

DISCUSSION

Materials considered

31. In determining this matter, we have been provided with the following materials:
- (a) all the material before the initial Panel including the initial application, preliminary submissions of ASIC and Sovereign Gold, submissions on interim orders, submissions and rebuttal submissions on the initial Panel's brief, the initial Panel's preliminary findings, submissions and rebuttal submissions on the preliminary findings and submissions and rebuttal submissions on the initial Panel's supplementary brief on orders
 - (b) the initial Panel's decision email, declaration of unacceptable circumstances and final orders
 - (c) the review application email
 - (d) an email from the Panel executive asking a preliminary question as to whether the persons named in the review application, but not in the initial application, should be included in the review application
 - (e) the applicant's request to include in the review five additional persons and the Panel executive's response that it would ask us whether we were willing to consider the request
 - (f) preliminary submissions to the review application (and, in some cases, to the Panel executive's preliminary question) from Sovereign Gold, Hudson and Messrs Amzalak, Dennis, Thomas, Ntoumenopoulos, Relf, Carmelo Tassone, Martinet and Tassone
 - (g) the applicant's response to the preliminary submissions of Sovereign Gold and the Panel executive's response which related to procedural matters
 - (h) the Panel executive's response to the preliminary submissions of Mr Relf which related to procedural matters and the operation of the interim order and
 - (i) the applicant's request seeking confirmation that RafflesCo would be included as a party in the review (see paragraph 136).

⁵ The interim orders excluded GTT and RafflesCo which held no Sovereign Gold shares but included Zero Nominees Pty Ltd which held shares on trust for Applabs and Alissa Bella

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

32. We have considered all the material, but address specifically only those things that we consider necessary to explain our reasoning.

Preliminary submissions

33. Curiously, Sovereign Gold submitted (among other things) that we should decline to conduct proceedings on the review because it raised new allegations that were not logically connected to the factual matters and issues raised in the initial application and were more appropriately the subject of a new application. Sovereign Gold strongly argued against the existence of any associations throughout the initial proceeding. We would have expected the company to be neutral in this matter.
34. Mr Thomas submitted (among other things) that the applicant had not provided a sufficient body of evidence of association with respect to all of the alleged associates included in the review, noting that the applicant had merely listed individuals without drawing the Panel's attention to the evidentiary basis for a review.
35. Mr Thomas also submitted that the Panel was not an investigative body which considers issues where no evidence has been provided. Mr Tassone made similar submissions, noting that ASIC was the appropriate body to investigate the associations, but (he submitted) ASIC's investigations to date had not produced evidence of association with the alleged associates included by the applicant in the review.
36. Hudson and Mr Carmelo Tassone each submitted that, in respect of it (him), the applicant had not put forward any evidence to cause a different decision to be made from that of the initial Panel.
37. Mr Amzalak was unsure why he had received the review application email.
38. Mr Dennis submitted that he did not understand that any allegations had been made against him, other than retiring as a director, and added "*I received no benefit for this resignation or from the takeover.*"
39. Messrs Ntoumenopoulos, Relf, Martinet and Carmelo Tassone made submissions regarding the interim order.

Scope of the review

40. As a preliminary matter, we addressed which persons should properly be included in the review.
41. For this purpose we divided the alleged associates into five groups:
- (a) the persons found by the initial Panel to be associates:
 - (i) Mr Glovac
 - (ii) Mr Tassone
 - (iii) Mr Thomas and
 - (iv) Applabs

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

- (b) the persons in respect of which the initial Panel considered there was sufficient material to conduct proceedings but no associations were found:
 - (i) Mr Cosimo Tassone and Mrs Angelina Tassone (and Alissa Bella, a company controlled by them)
 - (ii) Mr Carmelo Tassone
 - (iii) Mr Roger Martinet and
 - (iv) Hudson
- (c) the persons named in the initial application in respect of which the initial Panel considered there was insufficient material to conduct proceedings:⁶
 - (i) Mr Chris Ntoumenopoulos
 - (ii) Mr Duncan Relf
 - (iii) Mr Byron Schammer
 - (iv) Mr Vincent Tan
 - (v) Mr Michael Leu
 - (vi) Mr Bruce Dennis and
 - (vii) Hon John Dawkins AO
- (d) the persons named in the review application as having been identified during the initial proceedings based on new evidence presented during the initial proceedings:
 - (i) Mr Henry Kinstlinger
 - (ii) Mr Jeremy Kinstlinger
 - (iii) Mr Samson Roberts
 - (iv) Mr Benjamin Amzalak
 - (v) Mr Alis Trakilovic and
 - (vi) Mr Christopher Zielinski
- (e) the persons named as additional persons to be included in the review application as separately requested by the applicant:
 - (i) Mr Jan Glovac, director of MV Agusta Investments Pty Ltd (and said to be Mr Glovac's brother)
 - (ii) Ms Chloe Thomas (said to be Mr Thomas' sister)
 - (iii) Mr Toby Relf (said to be Mr Relf's brother)
 - (iv) Ms Paola Dawe, director of Kempo Capital Pty Ltd (said to be Mr Tassone's sister) and

⁶ We included RafflesCo in this group

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

(v) Mr Michael Zaninovich, director of Zani Holdings Pty Ltd and former director of Kempo Capital Pty Ltd.

42. The powers of a review Panel are set out in s657EA. Subsection (4) provides that a review Panel has the same powers to make a declaration or orders as the initial Panel and may vary, set aside or substitute the decision reviewed. It may also affirm the decision reviewed after conducting proceedings or decline to conduct proceedings and allow the initial Panel decision to stand.⁷
43. The review application did not expressly ask us to review the associations found by the initial Panel or the associations on which the initial Panel conducted proceedings but found no associations (the alleged associates described in clauses (a) and (b) of paragraph 41). In preliminary submissions, Mr Thomas submitted that he had accepted the decision of the initial Panel and did not seek a review of its decision.
44. More broadly, Mr Carmelo Tassone and Hudson each submitted that the applicant had not provided any new evidence to change the initial Panel's findings. The fact that there is no new evidence in the review application does not determine the matter.
45. We consider all persons alleged to be associates in the initial application to be properly included in the review (that is, the alleged associates described in clauses (a), (b) and (c) of paragraph 41). This is because our review is a *de novo* hearing of the matters before the initial Panel based on the information now available and on which we exercise our own discretion. It is open for us to re-consider all aspects of the initial application.⁸
46. In considering whether any of the other alleged associates being those described in clauses (d) and (e) of paragraph 41 (the **Additional Persons**) should be included in the review, we look at whether there are any limitations on a review Panel's power.
47. In the present case, we considered the submissions made against each Additional Person, when those submissions were made and whether there was an opportunity for the Additional Persons to respond to those submissions. While the Additional Persons were introduced or mentioned during the course of the initial proceedings, the initial Panel did not make any inquiries in respect of those persons or consider them as potential parties and it was not clear from the application, and it would not have been clear to any of the Additional Persons, that they were potential parties.
48. The initial Panel considered, for example, the allegation of preferential treatment in the allocation of shortfall under the 2016 Rights Issue. Some of the Additional Persons received shares in that shortfall. To this extent, it could be said that the facts and issues in respect of the Additional Persons are not 'new' issues or are

⁷ *Goldlink IncomePlus Limited 04R* [2009] ATP 3 at [8]-[15]. See also Guidance Note 2 – Reviewing Decisions at [26]

⁸ See, for example, *Mungana Goldmines Limited 01R* [2015] ATP 7 at [30] and *Gondwana Resources Limited 02R* [2014] ATP 18 at [27]-[28]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

otherwise logically connected with those factual matters and issues considered in the initial application.⁹ However, the preferential treatment issue had been raised in relation to Mr Martinet but had not been specifically raised in relation to any other Sovereign Gold shareholder. It does not follow that other persons who received shares in that shortfall were therefore necessarily included in the initial application. In our view, the alleged association in respect of each Additional Person is a 'new' issue and not sufficiently logically connected to the initial application.

49. We consider it important when considering the scope of a review to ensure that parties are given appropriate procedural fairness.¹⁰ In the performance of its functions and the exercise of its powers in relation to Panel proceedings, the Panel must act fairly and reasonably in so far as its consideration of the matters before it allow.¹¹ The Panel, unlike an investigating body, makes a determination and that determination creates new rights and obligations. It can often be difficult for the Panel to expand a matter as information comes to light because the Panel deals with parties who have rights of submission and rebuttal to allegations and expansion of the scope may work unfairly to persons subsequently brought in.
50. Here, the Additional Persons had no opportunity to make submissions or rebuttals to allegations made against them during the course of the initial proceedings. In the time available for the review, they would have to digest a significant amount of complicated and detailed material from the initial Panel if they were to be able to make submissions and rebuttals on the review application. This would be very difficult. Further, and perhaps more importantly, we are concerned that by considering the Additional Persons for the first time in the review proceedings, the Additional Persons will not have a right to a Panel review of any determination made by us.
51. Accordingly, we do not include the Additional Persons in the review. It is open for the applicant to bring a new application in respect of any of the Additional Persons.
52. Even if we were to extend the review to the Additional Persons, we note that the applicant must meet the "association hurdle" before the Panel will conduct proceedings. The "association hurdle" was expressed in *Mount Gibson Iron Limited* as follows:

*The Panel's starting point was that it was for Mount Gibson – the applicant - to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn.*¹²

⁹ See *BreakFree Limited 04(R)* [2003] ATP 42 at [41] and *Mungana Goldmines Limited 01R* [2015] ATP 7 at [29]-[49]

¹⁰ Similarly, see *Brisbane Markets Limited* [2016] ATP 3 at [28] where the Panel considered procedural fairness concerns when expanding the scope of an initial application

¹¹ ASIC Regulations 2001, regulation 16(2)(c). See also s195(4) of the ASIC Act

¹² [2008] ATP 4 at [15]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

53. The difficulty of meeting this hurdle was noted by the Panel in *Dragon Mining Limited*:

*Dromana Estate Limited 01R acknowledges the difficulties that an applicant faces in gathering evidence in association matters. In deciding whether to conduct proceedings on an association case, this must be kept in mind. However, the Panel has limited investigatory powers which means, before we decide to conduct proceedings, an applicant must do more than make allegations of association and rely on us to substantiate them. An applicant must persuade us by the evidence it adduces that we should conduct proceedings.*¹³

54. In respect of the Additional Persons, the applicant has not done this.

Association

55. We turn then to a consideration of the review application in so far as the alleged associates described in clauses (a), (b) and (c) of paragraph 41 are concerned.
56. *Mount Gibson Iron Limited*¹⁴ sets the Panel standard for a consideration of whether association has been established, as well as setting the standard for the hurdle.
57. In particular we also note *CMI Limited*:
- ... we had in mind that, while we must be satisfied by logical and probative material, the potential seriousness of a finding of association suggests that "the circumstances appearing from the evidence [must be established to] give rise to a reasonable and definite inference and not merely to conflicting inferences of equal degrees of probability".*¹⁵
58. The initial Panel found that Messrs Glovac, Tassone and Thomas had a shared goal of achieving control of the board of Sovereign Gold, and an agreement, arrangement or understanding for the purpose of controlling or influencing the composition of Sovereign Gold's board and are associated under s12(2)(b); alternatively, they are acting in concert in relation to Sovereign Gold's affairs and are associated under s12(2)(c). It also found that Applabs was used to further the shared goal and was associated with them under s12(2)(b); alternatively, it was acting in concert with them under s12(2)(c).
59. Like the initial Panel, we have drawn inferences based on our experience and skills and have kept in mind the potential seriousness of association findings.
60. As noted above, a review Panel can decline to conduct proceedings thus allowing the initial Panel's decision to stand.¹⁶ We do so for the reasons that follow. For simplicity we have followed the structure of the initial Panel's consideration, namely we have looked at whether:
- (a) Messrs Glovac, Tassone and Thomas are associated
 - (b) Applabs and Messrs Glovac, Tassone and Thomas are associated

¹³ [2014] ATP 5 at [60] (footnotes excluded). See also *Boulder Steel Limited* [2008] ATP 24 at [22]

¹⁴ [2008] ATP 4

¹⁵ *CMI Limited* [2011] ATP 4 at [42], quoting from *ASIC v Fortescue Metals Group Ltd* [2011] FCAFC 19 at [78]

¹⁶ *GoldLink IncomePlus Limited 04R* [2009] ATP 3, *Multiplex Prime Property Fund 03R* [2009] ATP 23 and *Tully Sugar Limited 01R* [2010] ATP 1

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

- (c) Mr Tassone is associated with his relatives and
- (d) Messrs Glovac, Tassone and Thomas and Hudson group companies are associated.

61. We also agree with the initial Panel's conclusion not to conduct proceedings in relation to other alleged associates included in the initial application, each of whom we address below.

Messrs Glovac, Tassone and Thomas

62. We agree with the initial Panel that Messrs Glovac, Tassone and Thomas are associated; and for the reason given by the initial Panel in its decision email and declaration of unacceptable circumstances, namely that they have a shared goal or purpose of controlling the Sovereign Gold board.
63. We do not want to repeat the evidence set out in detail in the initial Panel's preliminary findings.¹⁷ We base our decision on the following factors.
64. *First*, Messrs Glovac, Tassone and Thomas shared that goal or purpose. It was clearly open to the initial Panel to draw that inference, in our view, and we draw it as well. Once in control, as the new board of Sovereign Gold, they embarked on a strategic review. This is not uncommon for a new board, although it is less common to strike out in a wholly new direction (ie, in this case, lithium projects). We consider this as evidence of control which supports our inference that the directors of GTT had a shared goal or purpose.
65. *Second*, they have a number of historical structural links, such as previous employment; and current links, such as through GTT and some directorships in other companies common to two or more of them. Clearly they work together closely. Common directorships do not, of course, necessarily make them associates but we find that there is more - they used GTT as the vehicle through which they achieved their shared goal or purpose.
66. *Third*, they have collaborated in connection with the achievement of the shared goal or purpose in unusual ways that, in our view, go beyond merely being directors of GTT.
67. GTT underwrote the 2015 Rights Issue requiring changes to the Sovereign Gold board, which ultimately led to all 3 of Messrs Glovac, Tassone and Thomas being the only directors of Sovereign Gold. Subsequently, GTT requested that Sovereign Gold reject shortfall applications, which got resolved by an additional placement of shares to GTT.
68. Based on our experience, we consider the requirement for board seats is unusual for an underwriter unless that underwriter has a control or other objective. As the initial Panel noted in its preliminary findings regarding an early proposal to underwrite the rights issue and obtain one board seat, "*If it was GTT's plan to disperse its underwriting commitment, it seems unusual that Glovac would be seeking*

¹⁷ See now the initial Panel's reasons [2016] ATP 12 at [35]-[78]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

board representation." We think that Messrs Glovac, Tassone and Thomas had a control objective.

69. Similarly, GTT's requirement for an allotment of no less than a minimum number of shares from the 2015 Rights Issue is unusual behaviour for an underwriter. The initial Panel (in its preliminary findings) was prepared to infer that this "*shows a desire to place more shares in friendly hands*". We agree and we think this also supports the inference of a control objective. The 'friendly hands' in this case included Murdoch Capital Pty Ltd (a company controlled by Mr Glovac) and Applabs (a company of which Messrs Glovac, Tassone and Thomas were directors, discussed below). Murdoch Capital Pty Ltd received an allotment of 42.5 million shares (approximately 4.45%) and Applabs received an allotment of 40 million shares (approximately 4.20%). Neither had shares before then.¹⁸
70. There is additional evidence of collaboration, in that the sale of the shares in the Hudson Sale was split, initially at least, by GTT (which arranged the deal) to each of Messrs Glovac, Tassone and Thomas (see paragraph 113). It was also a condition of the deal that there were board changes at Sovereign Gold, leading the initial Panel to consider that this showed that there had been a continuing intention to achieve board control of Sovereign Gold that came to fruition with this deal. We agree.
71. Following the 2015 Rights Issue, GTT nominated 2 directors to the Sovereign Gold board. In our view, collaboration is evident from an email dated 19 June 2015 that Mr Glovac sent to Messrs Tassone and Thomas in relation to their appointments: "*Goodwork Roc...Hahaha enjoy the new appointments lads !!! no doubt we will find some new interesting skeletons*". Not only in content, but in tone, it clearly shows that they work closely together and, we infer, were doing so in relation to Sovereign Gold.
72. *Fourth*, there are common investments and dealings involving Messrs Glovac, Tassone and Thomas, including the allocation of Sovereign Gold shares and shares in other companies, and a period when they acquired almost 80% of the shares available on-market in Sovereign Gold. We agree with the initial Panel that this is a strong pattern, even accepting (as was submitted to the initial Panel) that directors may want to acquire shares ahead of a rights issue and have only a 'trading window' in which to do so.
73. For these reasons, considering all the material before the initial Panel, we agree with the inference drawn by the initial Panel that Messrs Glovac, Tassone and Thomas are associated in relation to the affairs of Sovereign Gold.

Messrs Glovac, Tassone and Thomas and Applabs

74. The initial Panel's preliminary findings said that the Panel was prepared to infer that Applabs shared in Messrs Glovac, Tassone and Thomas' purpose. Essentially, the initial Panel based its view on:
 - (a) at material times the identity of the board was the same as for Sovereign Gold

¹⁸ Mr Glovac and Applabs sold out of Sovereign Gold in the subsequent few months before reinvesting in the stock in December and November 2015, respectively

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

- (b) the application for shares in Sovereign Gold by Applabs, the reason for making that application, and the curious way the directors documented Applabs' decision to subscribe
 - (c) the appointment of Mr Glovac (before his appointment to the Sovereign Gold board) as the investment decision-maker in respect of Applabs' dealings in Sovereign Gold shares and
 - (d) the curious way in which Applabs sought to (but did not) establish independent decision-making in respect of Applabs' dealings in Sovereign Gold shares after Mr Glovac was appointed to the Sovereign Gold board.
75. This led the initial Panel to be prepared to infer that Applabs' actions created a level of "*apparent independence*", not true independence.
76. The common directorships in this case go a long way to establishing that Applabs shared in the objective of Messrs Glovac, Tassone and Thomas to obtain board control of Sovereign Gold. The documentary evidence (such as it is), like Applabs' board minutes, and the actions of the company, fortify such a conclusion.
77. We agree with the position adopted by the initial Panel in respect of Applabs.

Mr Tassone, Mr Cosimo Tassone and Mrs Angelina Tassone

78. Mr Cosimo Tassone and Mrs Angelina Tassone are Mr Tassone's parents. Alissa Bella received shares under the 2015 Rights Issue and 2016 Rights Issue. Alissa Bella holds the shares for the account of "The Cosimo & Angelina Tassone Super Fund". As of early February 2016, the shares were held by Zero Nominees Pty Ltd as bare trustee for Alissa Bella. Alissa Bella submitted that Sovereign Gold represented 68% of its share portfolio, it being one of three stocks owned. Mr Cosimo Tassone submitted that he purchased Sovereign Gold shares "*because of management and I thought it was a good investment*".
79. Mr Cosimo Tassone, Mrs Angelina Tassone and/or Alissa Bella were also allocated shares under a rights issue and a placement, respectively, in two other companies which rights issue and placement had been conducted by GTT.
80. In its preliminary findings, the initial Panel was prepared to infer that Mr Tassone was associated with his parents based on:
- (a) a shared goal of assisting Mr Tassone (with Messrs Glovac and Thomas) in controlling the board of Sovereign Gold
 - (b) while not determinative, the family relationship
 - (c) the common investments and dealings in Sovereign Gold and other companies in which GTT and/or its directors were involved and
 - (d) an investment in a micro-cap company constituting 68% of a superannuation fund as being uncommercial.
81. After receiving submissions and rebuttals on the preliminary findings, the initial Panel noted in its decision email that it was not satisfied that there was an association between Mr Tassone and his parents.

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

82. Mr Cosimo Tassone submitted that *“he probably would have discussed acquisitions and disposals with [his] son”*. This is not sufficient evidence of any agreement, arrangement or understanding to assist Mr Tassone (and the other GTT directors) in controlling or influencing the composition of Sovereign Gold’s board or the conduct of its affairs. We agree with the initial Panel that the size and risk profile of Alissa Bella’s investment in Sovereign Gold is unusual but it is plausible based on their son’s involvement with the company that they thought it was a good investment and there was nothing more by way of any agreement, arrangement or understanding. There was also no evidence that Alissa Bella’s investment decisions were not independent and in fact some evidence that Alissa Bella was receiving advice from Mr Relf at Euroz Securities after the shares had been transferred to Zero Nominees Pty Ltd. We note that the applicant alleged that Mr Relf was himself one of the associates, but the evidence produced to support that is very limited and we have not conducted proceedings in respect of Mr Relf (see paragraph 122). We are not persuaded by that connection to view the evidence in respect of Alissa Bella any differently.
83. We are also prepared to accept Mr Tassone’s submission on the preliminary findings that Alissa Bella’s trading in its Sovereign Gold shares was inconsistent with an inference of association to control or influence the composition of the Sovereign Gold board. Alissa Bella had undertaken 10 on-market buys and 18 on-market sales between 23 July 2015 and 14 June 2016.
84. We agree with the final position adopted by the initial Panel.

Messrs Tassone and Carmelo Tassone

85. Mr Carmelo Tassone is Mr Tassone’s uncle. He has traded shares on a regular basis since 1998. He heard about Sovereign Gold in February 2016 after speaking to his nephew at a family event. Mr Carmelo Tassone first purchased shares in Sovereign Gold in April 2016 after, he submitted, doing his own due diligence. He bought and sold out of the stock twice, before applying for and receiving shortfall shares under the 2016 Rights Issue.
86. He holds shares in several other companies with connections to GTT.
87. In its preliminary findings, the initial Panel was prepared to infer that Mr Tassone was associated with his uncle primarily based on a text message conversation between the two:
- Tassone: Hi Zio, I’m just chasing some votes to be re-elected to the board of SOC. Do you have a voting form you would like to complete?*
- Carmelo: I do have one which i was going to send tonight how do you want me to vote*
- Tassone: thanks zio.... I have voted YES to everything except resolution 16, that’s a BIG NO.... . The guy Brennan Westworth is a trouble maker and constantly harasses me....¹⁹*
88. However, after receiving submissions and rebuttals on the preliminary findings, the initial Panel noted in its decision email that it was not satisfied that there was an association between Mr Tassone and his uncle.

¹⁹ See now the initial Panel’s reasons [2016] ATP 12 at [109]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

89. We agree with Mr Tassone's submissions that a shareholder who is responsive to vote canvassing or who receives a voting recommendation would not, without more, be considered an associate of the canvasser or the maker of the recommendation. Given the level of satisfaction to be applied in association cases, we consider Mr Carmelo Tassone's response to Mr Tassone's canvassing of "*how do you want me to vote*" at least represents an openness to acting a certain way, but falls short of an understanding between the two that he will act in a certain way. In this respect we have since seen what the initial Panel subsequently explained in its reasons: "*His uncle's response could imply an association or alternatively simply a willingness to consider and be guided by Tassone's advice. The latter alternative appears to us to be the more natural reading. Without more we consider there is insufficient evidence to suggest any agreement, arrangement or understanding between them or that they are acting in concert in relation to Sovereign Gold.*"²⁰ We agree with that reasoning.
90. We also consider that Mr Carmelo Tassone's trading in and out of Sovereign Gold shares is inconsistent with having a goal of assisting Mr Tassone in controlling the board of Sovereign Gold.
91. Accordingly, we agree with the final position adopted by the initial Panel and consider there is insufficient evidence to infer an association between Mr Tassone and Mr Carmelo Tassone.

Messrs Glovac, Tassone, Thomas and Martinet

92. Mr Martinet is Mr Tassone's cousin. He has provided IT services to two companies connected with Mr Tassone and has provided general IT services and support to Applabs since September 2015. Mr Martinet also participated in placements in two other companies which were conducted by GTT. He has been accumulating shares in Sovereign Gold since late February 2016. He applied for and received 46 million or 35% of shortfall shares in the 2016 Rights Issue. Mr Martinet submitted that his investment in Sovereign Gold represented approximately 40% of his share portfolio.
93. In its preliminary findings, the initial Panel was prepared to infer that Mr Tassone was associated with Mr Martinet based on:
- (a) a shared goal of assisting Mr Tassone (with Messrs Glovac and Thomas) in controlling the board of Sovereign Gold
 - (b) while again not determinative, the family relationship
 - (c) his business dealings with Mr Tassone and Applabs
 - (d) the common investments and dealings in Sovereign Gold and other companies in which GTT and/or its directors were involved
 - (e) his significant investment in a micro-cap company being uncommercial
 - (f) his preferential treatment under the 2016 Rights Issue and
 - (g) the timing of his investment shortly before the 2016 annual general meeting.

²⁰ [2016] ATP 12 at [110]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

94. Following submissions and rebuttals on the preliminary findings, the initial Panel also noted in its decision email that an inference of association between Mr Tassone and Mr Martinet was not warranted. We agree with the initial Panel's conclusion.
95. There is insufficient evidence for us to infer an agreement, arrangement or understanding between Mr Tassone and Mr Martinet given the relevant level of satisfaction required. Mr Martinet submitted that his shortfall application was driven by a profit motive with shares trading at double the price (\$0.006 per share) of the rights issue price of \$0.003 per share. He also submitted that he had confidence in the stock based on management. While his monetary investment in Sovereign Gold was large, his reasons are plausible. We also accept it as improbable (in the absence of evidence to the contrary), as submitted by Mr Tassone, that Mr Martinet would commit to buying shortfall shares for \$135,000 simply to enable him to assist Mr Tassone to be re-elected and to oppose the applicant's attempt at election to the Sovereign Gold board.
96. The method for allocating shortfall under the 2016 Rights Issue was that it was allocated at the directors' discretion on the basis of preference for larger shareholdings. Thus, according to Sovereign Gold, shareholders:
- (a) with more than 2,000,001 shares received 100% of their shortfall applications (with one exception)
 - (b) with more than 1,000,000 shares received 81.337% and
 - (c) with fewer than 1,000,000 shares received no shares (with two exceptions).²¹
97. Mr Martinet received approximately 46 million shares (or 35% of the shortfall). The applicant submitted to the initial Panel that "*This indicates that Mr Martinet received favourable treatment by the [Sovereign Gold] Board in exchange for his vote at the AGM on 31 May 2016.*" We do not think the material supports this submission.
98. In our view, the allocation method appears to be a case of GTT giving a preference to its group of loyal investors, including Mr Martinet. It may go a little further and be a case of 'mates looking after mates (and family)'. Without more, we do not infer from the preferential treatment given to Mr Martinet that there was any corresponding consensus as to voting or otherwise.

Messrs Glovac, Tassone and Thomas and Hudson

99. The Hudson Sale was agreed via email correspondence on 3 December 2015, with the terms negotiated between Mr Tassone and Mr Benjamin Amzalak as follows:
- GTT to purchase off-market 100,000,000 shares of SOC at 0.003 for \$300,000*
- GTT to receive a fee of 6% + GST*
- \$10,000 per month corporate services provided by Hudson Corporate till June 30 2016*
- resignation of John Dawkins to be announced on the 9th and take effect on the 15th Dec.*
- Charles to be appointed Chairman*

²¹ It is unclear from Sovereign Gold's submission how a shareholder with exactly 1,000,000 shares or with exactly 2,000,001 shares was to be treated

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

Simon to step down and will be paid out his contract to Feb 2016

Michael Leu to become Chief Geologist and step down from his role as Director

Henry K and Benny A to stay on and provided services

Julian Rockett will resign

GTT Ventures and or its nominees will have first right of refusal to purchase the balance of any SOC shares held by Hudson prior to any disposal.

100. Following the final change to the terms, Mr Amzalak stated: *“Rocco please confirm and then Vincent will confirm back”*. Mr Tassone responded: *“Agreed to believe (sic). I assume Michael will step down on the day of announcement?”* to which Mr Tan replied: *“Agree Rocco. Benny to advise Michael”*.
101. The applicant submitted that the negotiation of the Hudson Sale demonstrated that Hudson exercised complete control over the Sovereign Gold board. He submitted that the effect of the 2015 Rights Issue and the Hudson Sale was tantamount to a ‘takeover’. This sentiment was also reflected in the materials. In an email from Mr Amzalak to Mr Tassone on 4 December 2015 regarding the potential appointment of a new managing director, Mr Amzalak says *“Your call your company you decide!!!!”*. This email appears to be recognition that the Hudson Sale resulted in Messrs Glovac, Tassone and Thomas obtaining control of the Sovereign Gold board. Similarly, in his preliminary submission to the review, Mr Dennis submitted in reference to his resignation from the Sovereign Gold board that *“I received no benefit for this resignation or from the takeover”* (emphasis added).
102. Hudson submitted that GTT was only engaged by it to act as a broker to arrange the sale of its shares in Sovereign Gold for a standard fee. While GTT did perform this function (albeit after redistribution over one-third of the shares remained with Messrs Glovac, Tassone and Thomas), the additional terms do suggest a broader intent. However, while we consider that these arrangements evidence an association among the directors of GTT, which we have found to be continuing, any potential association between the directors and Hudson appears to be historical.
103. It appears that the initial Panel took the same view and its brief to parties focused on whether there was any agreement, arrangement or understanding between GTT and Hudson in respect of Hudson’s remaining shares in Sovereign Gold (representing approximately 3%).
104. ASIC submitted that GTT and its associates may have voting power pursuant to s608(1) in the remaining Sovereign Gold shares held by Hudson as a result of the first right of refusal included in the terms of the Hudson Sale.
105. Hudson submitted that there was no agreement, arrangement or understanding with Messrs Glovac, Tassone and Thomas in respect of Hudson’s remaining Sovereign Gold shares, including any first right of refusal. Hudson noted that:
 - (a) it had not agreed to a first right of refusal and the statement by Mr Tan *“Agree Rocco”* related to the resignation of Mr Leu and not the first right of refusal in the earlier email to which Mr Tan was not a party

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

- (b) it had sold shares on market on 10 and 16 June 2016 without having to offer the shares to GTT first
 - (c) the email containing the terms referred to GTT acquiring the shares which never occurred and this was evidence that the terms in that email chain were not agreed
 - (d) the email chain was confusing and ambiguous
 - (e) any first right of refusal (if it existed) would be void for uncertainty
 - (f) GTT was engaged as a broker and so at best any first right of refusal could only have been a right to arrange a further sale of shares and
 - (g) *"in any event for the avoidance of doubt"* the first right of refusal was terminated on 9 June 2016.
106. While there is much to doubt in this submission, given that the first right of refusal no longer exists, any potential association based on the first right of refusal is historical.
107. One aspect of the applicant's case, which may be inconsistent with his submissions, is that two days prior to his initial application he sent an email to Messrs Glovac, Tassone and Thomas stating that *"through discussion with Patrick I have come to realise that you guys are as much victims of Hudson's master plan as we long term shareholders are...I don't want to see you guys end up getting dragged down with Vincent's sinking ship"*. He then suggested that Messrs Glovac, Tassone, Thomas and their *"mates"* exit Sovereign Gold by spinning off the lithium deal. While we do not have the benefit of the context of the discussion between Mr Glovac and the applicant, this email can be viewed as contrary evidence of an association between Messrs Glovac, Tassone and Thomas and Hudson (and/or Mr Tan).
108. The applicant submitted in the review that the initial Panel did not consider the additional (non-cash) consideration paid in the Hudson Sale. The applicant did not specify what non-cash consideration we should consider. The applicant had previously referred to *"benefits"* which Hudson and its representatives received including the *"extension"* of the corporate services agreement with Hudson Corporate and 'in the money' options provided to Hudson representatives providing services to Sovereign Gold. If this is the non-cash consideration to which the applicant is referring, there is no linking of this to any agreement, arrangement or understanding.
109. On 8 April 2016 and 11 April 2016, Hudson Resources and RafflesCo, respectively, lodged nominations for election to the Sovereign Gold board ahead of the 2016 annual general meeting which were later withdrawn. The applicant was also nominated for election to the board. The applicant submitted that the nominations by Hudson Resources and RafflesCo were withdrawn after discussions between Mr Tan and Mr Tassone. As a result of the withdrawals, the applicant submitted that GTT would not lose control of the board and this was evidence of an association between Hudson and/or Mr Tan and GTT in respect of the composition of the board. We think it is evidence of nothing more than that there

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

was a discussion and a withdrawal. We have no evidence of the content of the discussion or how it links to an agreement, arrangement or understanding.

110. The initial Panel did not inquire into why these nominations were withdrawn. However, the nominations themselves potentially contradict the alleged association between Hudson and the GTT directors.

111. We do not pursue this further.

Messrs Glovac, Tassone, Thomas and Ntoumenopoulos

112. Mr Chris Ntoumenopoulos submitted that he controls all investment and voting decisions with respect to Boomslang Pty Ltd. Boomslang Pty Ltd holds 4.65% of Sovereign Gold.²² Boomslang Pty Ltd received Sovereign Gold shares under the 2015 Rights Issue. The applicant submitted that Boomslang Pty Ltd subsequently sold the shares on market and then received shares in the Hudson Sale.

113. The applicant submitted that, by participating in the Hudson Sale, Mr Ntoumenopoulos assisted the directors of GTT take control of the Sovereign Gold board. He submitted that GTT allocated the shares from the Hudson Sale evenly between Messrs Glovac, Tassone and Thomas who then split their allocation of shares between themselves and their associates as follows:

(a) Mr Thomas received 33,333,333 shares which were then split to:

- (i) Boomslang Pty Ltd 23,333,333 shares and
- (ii) Mounts Bay 10,000,000 shares

(b) Mr Glovac received 33,333,334 shares which were then split to:

- (i) Murdoch Capital 12,166,667 shares and
- (ii) MV Agusta Investments Pty Ltd (a company in which Mr Jan Glovac is a director) 21,166,667 shares and

(c) Mr Tassone received 33,333,333 shares which were then split to:

- (i) Syracuse Capital 13,333,333 shares and
- (ii) Kempo Capital Pty Ltd (a company in which Ms Dawe is a director) 20,000,000 shares.

114. Mr Ntoumenopoulos works for a stock broking firm in Perth. The applicant submitted that Mr Ntoumenopoulos is a close friend of Mr Thomas, having attended school and university with him. While acknowledging that attending the same school is not evidence of association, the applicant submitted that *"a close friend would be able to exert influence over the voting rights attached to the shares held by*

²² Mr Ntoumenopoulos submitted in preliminary submissions to the review that he also controls all investment and voting decisions of Davinch Pty Ltd. Davinch Pty Ltd received shares under the 2015 Rights Issue but currently holds no Sovereign Gold shares. Assuming that Mr Ntoumenopoulos controlled Davinch Pty Ltd at the time of the 2015 Rights Issue, the combined holding of Boomslang Pty Ltd and Davinch Pty Ltd would have been 5.29% of Sovereign Gold. Mr Ntoumenopoulos did not lodge a substantial holder notice in respect of this holding. This appears to have been a breach of s671B, but as Davinch Pty Ltd no longer holds Sovereign Gold shares, this is no longer a matter for the Panel

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

his friend", particularly where the friend was up for re-election. This is supposition, and does not satisfy the legal test for association.

115. The applicant also submitted that Messrs Ntoumenopoulos, Relf, Schammer, Glovac, Tassone and Thomas: *"are all members of the Perth financial services community and it is reasonable to expect they would have regular contact at events such as conferences"*. So they may be, but again this is well short of establishing an association.
116. The initial Panel did not conduct proceedings in relation to an association involving Mr Ntoumenopoulos and therefore made no inquiries in relation to the alleged association. We agree with the initial Panel's position, namely that conducting proceedings in respect of Mr Ntoumenopoulos is not warranted. We do not consider it reasonably likely that an association might be established based on the material.
117. Mr Ntoumenopoulos' participation alone in the 2015 Rights Issue and Hudson Sale is not evidence enough on which we can potentially draw an inference of association. While being a close friend of Mr Thomas may be a relevant structural link, there is no evidence of or suggesting any voting agreement between the friends or any other agreement or understanding between Mr Ntoumenopoulos and GTT's directors in relation to Sovereign Gold.

Messrs Glovac, Tassone, Thomas and Relf

118. Mr Duncan Relf controls all investment and voting decisions with respect to Sovereign Gold shares owned by Slam Consulting Pty Ltd. Slam Consulting Pty Ltd currently holds 1.87% of Sovereign Gold. It received shares under the 2015 Rights Issue, 2016 Placement and 2016 Rights Issue and would appear at various times to have sold shares. Mr Relf's brother, Mr Toby Relf, was also allocated shares under the 2015 Rights Issue.
119. The applicant submitted that Mr Relf and his brother attended the same school as Messrs Thomas and Ntoumenopoulos. He works for Euroz Securities Limited and therefore, the applicant submitted, was part of the same Perth financial services community as Messrs Ntoumenopoulos, Schammer, Glovac, Tassone and Thomas. Slam Consulting Pty Ltd was also allocated shares under a rights issue and a placement, respectively, in two other companies which were conducted by GTT.
120. In his employment at Euroz Securities, Mr Relf received instructions from Mr Tassone to transfer the Sovereign Gold shares held by Applabs and Alissa Bella to the Euroz entity, Zero Nominees Pty Ltd, as bare trustee for Applabs and Alissa Bella. Around that time, Mr Tassone also instructed Mr Relf to purchase a parcel of Sovereign Gold shares for Alissa Bella on market.
121. Mr Relf appears to be closely connected to GTT having regularly participated in deals in which GTT is involved. However, it is not unexpected that GTT, as a corporate advisory and investment firm, has a 'go to' list of investors for capital raisings and share sales in respect of which it is involved. In this regard, we accept a submission by Mr Tassone on the initial Panel's brief (which we apply by analogy to Mr Relf, as well as Messrs Ntoumenopoulos and Schammer):

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

It is, we would submit, of little revelation that a boutique corporate adviser has a limited pool of contacts whose names may appear as participants across numerous of its supported transactions. And insofar as it relates to the companies themselves, we would submit that it is not uncommon for small companies to access the same source of funds when it needs to raise capital; a fact acknowledged by the Panel.²³

122. For this reason, and the other reasons expressed above in respect of Mr Ntoumenopoulos, given the level of satisfaction required, we agree with the initial Panel's decision not to conduct proceedings in respect of Mr Relf.

Messrs Glovac, Tassone, Thomas and Schammer

123. Mr Byron Schammer is the sole shareholder and director of Schammer Pty Ltd. Schammer Pty Ltd currently holds 1.37% of Sovereign Gold. It received shares under the 2015 Rights Issue, 2016 Placement and 2016 Rights Issue and would appear at various times to have sold shares. The applicant submitted that Schammer Pty Ltd was allocated more than five times its entitlement under the 2016 Rights Issue.
124. The applicant submitted that Mr Schammer works for Bell Potter where Messrs Glovac, Tassone and Thomas previously worked and is accordingly a member of the Perth financial services community like Messrs Ntoumenopoulos, Relf, Glovac, Tassone and Thomas. The applicant also submitted that Mr Schammer is the co-founder and director of a website which had the financial backing of Mr Tassone. He further submitted that Mr Schammer was part owner of a racehorse with Messrs Glovac and Tassone, providing to the initial Panel a form guide from May 2013 which listed all three as part owners of a horse that was then racing at the Northam Race Club in Western Australia.
125. We do not consider the preference given to certain shareholders in connection with the allocation of shortfall under the 2016 Rights Issue (see paragraph 98) as sufficient to create a reasonable likelihood that an association might be established. Without some evidence to show (or suggest), for example, that the shares were allocated to Mr Schammer in connection with some voting agreement, or some other arrangement or understanding in relation to the nomination of directors at the 2016 annual general meeting, the allocation could simply be evidence that GTT gave preference to its 'go to' group of investors. Given the level of satisfaction required, we consider there is insufficient evidence to warrant conducting proceedings.
126. The applicant, referring to Mr Tassone's text message to Mr Carmelo Tassone that he is "...just chasing some votes to be re-elected to the board..." (see paragraph 87), further submitted that "it is reasonable to infer from this statement that Rocco Tassone also contacted other members of his personal network, including Byron Schammer, regarding their voting intentions at the AGM". It is highly unlikely that we would draw any inference from a text between Mr Tassone and his uncle that Mr Tassone contacted Mr Schammer soliciting his vote.

²³ Quoting *Gondwana Resources Limited 02R* [2014] ATP 18 at [22]

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

127. While the applicant provided some evidence of business dealings and other connections between Mr Schammer and the GTT directors, for reasons similar to those relating to Messrs Ntoumenopoulos and Relf, we agree with the initial Panel's conclusion not to conduct proceedings in respect of Mr Schammer.
128. The connections between Messrs Ntoumenopoulos, Relf and Schammer on the one hand and Messrs Glovac, Tassone and Thomas on the other may be, in our view, enough to justify starting an investigation, but they are not enough to justify a Panel to conduct proceedings much less conclude that there is an association.

Messrs Glovac, Tassone, Thomas, Tan, Leu, Dennis and/or Dawkins

129. Prior to GTT's involvement in Sovereign Gold, Raffles Capital, RafflesCo, Hudson and related entities appear to have been heavily involved in Sovereign Gold. There was a corporate service agreement between Sovereign Gold and Hudson Corporate pursuant to which Hudson Corporate provided to Sovereign Gold its management, registered office, administrative accounting, secretarial and compliance services. Several directors and officers of Sovereign Gold are (or were) directors or officers of Raffles Capital, RafflesCo, Hudson or related entities.²⁴
130. Mr Tan is (or has been) a director of RafflesCo, Hudson Corporate, Hudson Resources and other related entities. The applicant submitted that through these positions he exercised control and influence over Sovereign Gold shares held by these entities. He also submitted that Mr Tan exercised control through his alleged associations with former directors of Sovereign Gold evidenced by certain transactions between Sovereign Gold and Raffles Capital, RafflesCo and/or Hudson entities.
131. On 4 July 2014, Sovereign Gold agreed to acquire Raffles Capital's stake in Mount Adrah Gold Limited for four Sovereign Gold shares for every one Mount Adrah share and make the same offer to remaining Mount Adrah shareholders (which included Hudson Resources).²⁵ The applicant submitted that the transaction with Raffles Capital was undertaken without shareholder approval,²⁶ an independent valuation or proper disclosure and this was evidence of an association between Mr Tan and the directors of Sovereign Gold at the time (which included Messrs Leu and Dawkins). The issues raised are not matters for the Panel and, as indicated by the initial Panel in its brief, could be raised separately in another forum. It is also not clear to us how this alleged association relates to current control issues in Sovereign Gold.
132. On 1 April 2015, Sovereign Gold and Mount Adrah sold shares they held in Frontier Capital Group Limited, which had been recently floated, to a buyer

²⁴ Raffles Capital, RafflesCo and Hudson file substantial holder notices in Sovereign Gold separately. Neither Raffles Capital nor RafflesCo currently holds shares in Sovereign Gold

²⁵ ASIC submitted that the effect of the Mount Adrah transaction appeared to result in a breach of s606 by Hudson Resources in that its relevant interest in Sovereign Gold shares increased to approximately 31%. It also submitted that there were historical breaches of s671B by Hudson Resources in respect of its holdings in Sovereign Gold. Given that Hudson Resources now held less than 2.5% this is no longer a matter for the Panel

²⁶ Shareholder approval was received for the shares issued to Hudson Resources

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

(referred to in a later announcement as Hudson Corporate) at the same price per share as the initial public offer. The consideration was payable in four equal instalments. The applicant submitted that the transaction was uncommercial including because it was under-priced, the identity of the buyer was concealed and the deferred payment was interest-free. He submitted that this was evidence of an association between Mr Tan and the directors of Sovereign Gold at the time (which included Messrs Dennis, Leu and Dawkins). Again, the issues raised are not matters for the Panel and it is not clear how this alleged association relates to current control issues in Sovereign Gold.

133. Part of the consideration owed by Hudson Corporate for the Frontier Capital shares was later offset against debt owed by Sovereign Gold to Hudson Corporate. In the initial application, the applicant submitted that the set-off of the debt was uncommercial and evidenced an association between Mr Tan and the directors of Sovereign Gold at the time (which included Messrs Dennis, Leu, Dawkins, Tassone and Thomas). In the review, the applicant submitted that the initial Panel did not consider the validity of the “purported” debt owed by Sovereign Gold. In the absence of further evidence of association, we do not think we need to inquire into this matter.
134. The applicant also submitted that Mr Tan was associated with GTT and Messrs Leu and Dawkins as a result of the Hudson Sale because, in connection with the sale of Hudson Resource’s shares, Mr Glovac was appointed to, and Messrs Leu and Dawkins resigned from, the Sovereign Gold board giving the directors of GTT control of the Sovereign Gold board. The applicant submitted that, despite having only approximately 10% of Sovereign Gold, the capacity of Hudson and Mr Tan to negotiate the Hudson Sale demonstrated that Hudson exercised complete control of the Sovereign Gold board. Even if Hudson (and Mr Tan) did have that control, we have no evidence that it (he) still does. And we have no evidence that any links between such former control of the Sovereign Gold board and an association with Messrs Glovac, Tassone and Thomas are continuing.
135. Messrs Leu, Dennis and Dawkins are former directors of Sovereign Gold. The applicant submitted that they were associated with each other, Mr Tan and the directors of GTT on the basis that they approved the transactions involving Raffles Capital and Hudson Corporate and they agreed to resign from the Sovereign Gold board in connection with transactions that resulted in Messrs Glovac, Tassone and Thomas being appointed to the board. It is hard to see how these matters could give rise to an association.

RafflesCo

136. RafflesCo no longer holds shares in Sovereign Gold. The applicant has not made any allegations in respect of RafflesCo. We assume that the submissions are the same as for Hudson and Mr Tan and, accordingly, we do not conduct proceedings in respect of RafflesCo.

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R [2016] ATP 14

DECISION

137. For the reasons above, we consider it unlikely that we would reach a different conclusion to the initial Panel in respect of the associations found by the initial Panel. We also consider it unlikely that we would reach a different conclusion to the initial Panel on the other allegations which the initial Panel did not find sufficient evidence to infer the associations. Lastly, we consider there to be insufficient material to conduct proceedings on the other alleged associates properly included in the review application.
138. Accordingly, we have decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

Orders

139. The initial Panel made orders to require that the shares acquired in contravention of s606 be divested and that disclosure be made of the previously undisclosed association. It further ordered that the associated parties could not have the benefit of the 'creeping takeover' provision in item 9 for 6 months.
140. The initial Panel made no orders as to costs and we agree with this decision.
141. As the matter is now determined, the interim orders are lifted.

Rodd Levy

President of the sitting Panel

Decision dated 20 July 2016

Reasons published 10 August 2016

Advisers

Party	Advisers
Brennan Westworth	NA



Australian Government

Takeovers Panel

Annexure A

**CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS**

SOVEREIGN GOLD COMPANY LIMITED 01R

Mr Brennan Westworth made a review application to the Panel dated 11 July 2016 in relation to the declaration made in Sovereign Gold Company Limited (“**Sovereign Gold**”).

The review Panel orders:

1. Without the consent of the review Panel the persons named in the schedule, and each of their respective associates, must not dispose of, transfer, charge or otherwise deal with any shares in Sovereign Gold in which they have a relevant interest.
2. These interim orders have effect until the earliest of:
 - (i) further order of the review Panel
 - (ii) the determination of the proceedings and
 - (iii) 2 months from the date of these interim orders.

Schedule
Mr Patrick Glovac Kcirtap Securities Pty Ltd Murdoch Capital Pty Ltd
Mr Rocco Tassone Syracuse Capital Pty Ltd
Mr Charles Thomas Mounts Bay Investments Pty Ltd
Applabs Technologies Ltd
Hudson Corporate Ltd Hudson Resources Ltd
Mr Roger Martinet
Mr Cosimo Tassone Mrs Angelina Tassone Alissa Bella Pty Ltd
Mr Carmelo Tassone
Mr Chris Ntoumenopoulos Boomslang Capital Pty Ltd Davinch Pty Ltd

Takeovers Panel

Reasons - Sovereign Gold Company Limited 01R
[2016] ATP 14

Schedule
Mr Duncan Relf Slam Consulting Pty Ltd
Mr Byron Schammer Schammer Pty Ltd
Mr Vincent Tan
Mr Michael Leu
Mr Bruce Dennis
Mr John Dawkins AO Innisfree Australia Pty Ltd
Zero Nominees Pty Ltd, to the extent that it holds shares in Sovereign Gold for or on behalf of any of the persons named in this schedule

Alan Shaw
Counsel
with authority of Rodd Levy
President of the review Panel
Dated 15 July 2016