



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/51

Monday, 11 July 2016

Sovereign Gold Company Limited – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 9 June 2016 by Mr Brennan Westworth in relation to the affairs of Sovereign Gold Company Ltd (see [TP16/37](#)).

Background

The current directors of Sovereign Gold are Messrs Patrick Glovac, Rocco Tassone and Charles Thomas, who are also the directors of Applabs Technologies Limited and the founding partners and executive directors of GTT Ventures Pty Ltd.

On 18 May 2015, Sovereign Gold announced a non-renounceable 1 for 1 rights issue at \$0.002 per share to raise approximately \$790,000. The rights issue was originally not underwritten. On 29 June 2015, Sovereign Gold announced (among other things) that GTT had agreed to partly underwrite the rights issue and that upon completion of the rights issue GTT would appoint 2 nominees to the Sovereign Gold board and 2 directors would resign. On 8 July 2015, Sovereign Gold announced that it would place additional shares through GTT. Applabs was allocated Sovereign Gold shares by GTT following the rights issue and placement.

On or about 15 July 2015, Messrs Tassone and Thomas were appointed to the Sovereign Gold board and Messrs Dennis and Rebek resigned. In or around December 2015, GTT distributed shares in Sovereign Gold held by Hudson Resources Ltd to clients including Messrs Glovac, Tassone and Thomas and family members. As part of this, GTT required further resignations from the Sovereign Gold board. On or about 14 December 2015, Mr Glovac was appointed to the Sovereign Gold board and Messrs Dawkins AO and Leu resigned. On 29 February 2016, Simon Bird retired from the board, leaving Messrs Glovac, Tassone and Thomas as the directors of Sovereign Gold.

On 12 April 2016, Mr Westworth was nominated by another shareholder for election to the Sovereign Gold board to be put to shareholders at the company's annual general meeting. At the annual general meeting, Messrs Glovac, Tassone and Thomas were re-elected to the board. Mr Westworth was not elected.

Declaration

The Panel considers that Messrs Patrick Glovac, Rocco Tassone and Charles Thomas and Applabs (the Associated Parties) are associated:

1. under s12(2)(b) for the purpose of controlling or influencing the composition of Sovereign Gold's board or
2. under s12(2)(c) in relation to the affairs of Sovereign Gold.

The Panel considers that the Associated Parties' voting power in Sovereign Gold increased beyond the 20% threshold in s606 to 21.59% (later diluted to approximately 21.07% following a rights issue) as a result of share acquisitions which occurred without using one of the exceptions in section 611. The Panel also considers that the combined voting power of the Associated Parties with respect to Sovereign Gold had not been disclosed in accordance with Chapter 6C.

The factors taken into account by the Panel included:

1. structural links between the Associated Parties, including common directorships
2. the conduct of the Associated Parties and
3. a common purpose of obtaining control of the board of Sovereign Gold.

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

Orders

Interim orders

On 20 June 2016, the Panel made interim orders (see [TP16/40](#)) prohibiting the Associated Parties and others from disposing, transferring, charging or otherwise dealing with their shares in Sovereign Gold. The interim orders were made to preserve the status quo while the Panel considered the matter. The interim orders remain in effect.

Final orders

The Panel is considering what final orders it will make (or what undertakings it will accept) and will publish details in due course.

The sitting Panel was Karen Evans-Cullen (sitting President), Karen Phin and Sharon Warburton.

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

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Australian Government

Takeovers Panel

CORPORATIONS ACT SECTION 657A DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

SOVEREIGN GOLD COMPANY LIMITED

CIRCUMSTANCES

1. Sovereign Gold Company Limited (**Sovereign Gold**) is an ASX listed company (ASX code: SOC).
2. The directors of Sovereign Gold are Messrs Patrick Glovac, Rocco Tassone and Charles Thomas.
3. Messrs Glovac, Tassone and Thomas are the founding partners and executive directors of GTT Ventures Pty Ltd (**GTT**), which undertakes corporate advisory and venture capital investment.
4. In or around July 2015, GTT participated in Sovereign Gold's 2015 rights issue as part underwriter. GTT required (among other things):
 - (a) resignations from the Sovereign Gold board and the right to nominate two directors
 - (b) a guaranteed minimum number of shares and
 - (c) subsequently, a placement of shares in addition to a shortfall of 43% of the 1:1 rights issue.
5. GTT distributed the 2015 rights issue shortfall and placement to Mr Glovac, family members, colleagues and other clients.
6. In or around December 2015, GTT distributed shares in Sovereign Gold held by Hudson Resources Ltd to clients including Messrs Glovac, Tassone and Thomas and family members. As part of this, GTT required further resignations from the Sovereign Gold board.
7. On 14 December 2015, Sovereign Gold announced the appointment of Mr Glovac to the board and the retirement of Messrs John Dawkins AO and Michael Leu.
8. Also in December 2015, Sovereign Gold announced that the board (Messrs Bird, Glovac, Tassone and Thomas) would undertake a strategic review of Sovereign Gold.
9. On 29 February 2016, Simon Bird retired from the Sovereign Gold board.
10. In May 2016, Sovereign Gold announced completion of the strategic review and that the board (now Messrs Glovac, Tassone and Thomas) were in discussions regarding investment in Lithium opportunities.

11. Messrs Glovac, Tassone and Thomas have a history of previous common employment.
12. Messrs Glovac, Tassone and Thomas in various combinations share other common directorships, including as the directors of ASX listed company Applabs Technologies Limited (**Applabs**) (ASX code: ALA).
13. Applabs indirectly through a nominee currently holds approximately 4.61% of Sovereign Gold. Its original investment was a result of taking shortfall shares in Sovereign Gold's 2015 rights issue, which it had sold down by September 2015.
14. On 27 November 2015, Applabs purchased Sovereign Gold shares on market representing approximately 4.82% of the then issued capital. On 30 November 2015, it purchased additional shares. It transferred the shares in Sovereign Gold it held to the nominee and took up shares under a 2:5 rights issue announced by Sovereign Gold on 1 April 2016.
15. The Panel considers 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).¹ Alternatively, Messrs Glovac, Tassone and Thomas are acting in concert in relation to Sovereign Gold's affairs and are associated under s12(2)(c).
16. The Panel considers that Applabs was used to further the shared goal and had an agreement, arrangement or understanding with Messrs Glovac, Tassone and Thomas for the purpose of controlling or influencing the composition of Sovereign Gold's board and is associated with them under s12(2)(b). Alternatively, Applabs is acting in concert with Messrs Glovac, Tassone and Thomas in relation to Sovereign Gold's affairs and is associated with them under s12(2)(c).
17. Immediately prior to 13 April 2016:
 - (a) Mr Glovac had a relevant interest in approximately 8.38% of Sovereign Gold, held partly by Murdoch Capital Pty Ltd on behalf of the Glovac Super Fund and partly by Kcirtap Securities Pty Ltd on behalf of N&P Glovac.
 - (b) Mr Tassone had a relevant interest in approximately 3.86% of Sovereign Gold, held by Syracuse Capital Pty Ltd on behalf of the Rocco Tassone Super Fund.
 - (c) Mr Thomas had a relevant interest in approximately 1.39% of Sovereign Gold held by Mounts Bay Investments Pty Ltd.
 - (d) Applabs had a relevant interest in approximately 4.64% of Sovereign Gold.
 - (e) Each of the above had voting power in approximately 18.27% of Sovereign Gold.

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

Contraventions of s606

18. On 13 April 2016, the following acquisitions of Sovereign Gold shares occurred:
 - (a) Kcirtap Securities Pty Ltd acquired 10,000,000 shares and
 - (b) Mounts Bay Investments Pty Ltd acquired 10,000,000 shares.
19. By reason of whichever of these acquisitions occurred second, the voting power of each of Messrs Glovac, Tassone and Thomas and Applabs increased from below 20% to more than 20%. None of the exceptions in s611 applied and accordingly s606 was contravened.
20. On 14 April 2016, Syracuse Capital Pty Ltd acquired 11,406,509 shares in Sovereign Gold. By reason of this acquisition the voting power of each of Messrs Glovac, Tassone and Thomas and Applabs increased from a starting point that is above 20% and below 90%. None of the exceptions in s611 applied and accordingly s606 was contravened.
21. On 15 April 2016 Syracuse Capital Pty Ltd acquired a further 1,494,725 shares. By reason of this acquisition the voting power of each of Messrs Glovac, Tassone and Thomas and Applabs increased from a starting point that is above 20% and below 90%. None of the exceptions in s611 applied and accordingly s606 was contravened.

Contraventions of substantial holder notice provisions

22. In contravention of s671B:
 - (a) on 10 July 2015, Messrs Glovac, Tassone and Thomas and Applabs began to have a substantial holding in Sovereign Gold. No substantial holder notice was given
 - (b) on 8 September 2015, Messrs Glovac, Tassone and Thomas and Applabs ceased to have a substantial holding in Sovereign Gold. No notice of ceasing to be a substantial holder was given
 - (c) between 10 July 2015 and 8 September 2015, no substantial holder notices have been given to show changes in the substantial holding of more than 1%
 - (d) on 3 December 2015, Messrs Glovac, Tassone and Thomas and Applabs began again to have a substantial holding in Sovereign Gold. No substantial holder notice was given
 - (e) since 3 December 2015, no substantial holder notices have been given to show changes in the substantial holding of more than 1% and
 - (f) the acquisitions on 13 April 2016 and 14 April 2016 increased the voting power of each of Messrs Glovac, Tassone and Thomas and Applabs by more than 1%. No substantial holder notice has been given.

EFFECT

23. It appears to the Panel that:
 - (a) the acquisition of control over voting shares in Sovereign Gold has not taken place in an efficient, competitive and informed market and

- (b) the holders of shares in Sovereign Gold do not know the identity of persons who have acquired a substantial interest in Sovereign Gold.

CONCLUSION

24. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had and are having on:
 - (i) the control, or potential control, of Sovereign Gold or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Sovereign Gold
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602
 - (c) in the further alternative, because they constituted or constitute a contravention of a provision of Chapter 6 or Chapter 6C of the Act.
25. 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).

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Sovereign Gold Company Limited.

Allan Bulman
Director
with authority of Karen Evans-Cullen
President of the sitting Panel
Dated 8 July 2016