



Australian Government

Takeovers Panel

MEDIA RELEASE

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Tribune Resources Limited – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to an application dated 20 August 2018 by R Hedley Pty Ltd in relation to affairs of Tribune Resources Limited (see [TP18/61](#)).

Declaration

Sierra Gold Ltd, Trans Global Capital Limited and Rand Mining Limited are the three largest shareholders of Tribune, holding 16.04%, 16.91% and 26.32% of Tribune shares respectively.

The Panel considered that:

- The market has not been informed, and continues not to be informed, of persons who have a relevant interest in Tribune shares held by Sierra, Trans Global and Rand.
- Tracing notice responses by Sierra, Sierra Gold Pty Ltd, Trans Global and Rand contain material that, in the submissions made by those parties to the Panel, was and is false.
- If material provided to the Panel in the submissions by Tribune, Sierra, Sierra Gold Pty Ltd, Trans Global and Rand is accurate, there have been numerous contraventions of the substantial holding provisions in relation to Tribune shares.

The Panel was concerned that there may be contravention of the takeovers prohibition in s606, but did not reach any conclusions noting that:

- R Hedley Pty Ltd had reserved the right to make a further application in relation to any breach of s606 and
- further historical material would be required to allow the Panel to reach conclusions on that issue.

Orders

The Panel is considering what final orders it will make and will publish details in due course.

On 28 August 2018, the Panel made interim orders (see [TP18/62](#)) prohibiting Sierra, Trans Global, Rand, Nimby WA Pty Ltd, Mr Anthony Billis, Lake Grace Exploration Pty Ltd, Northwest Capital Pty Ltd and Ms Phanatchakorn Wichaikul from disposing, transferring, charging or otherwise dealing with their shares in Tribune (in the absence of the consent of a member of the Panel). The interim orders were made to preserve the status quo while the Panel considered the matter. The interim orders remain in effect.

The sitting Panel was Chelsey Drake, Teresa Dyson and Christian Johnston (sitting President).

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

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ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

TRIBUNE RESOURCES LIMITED

CIRCUMSTANCES

1. Tribune Resources Limited (**Tribune**) is a company listed on the Australian Securities Exchange (ASX Code: TBR). Tribune's directors are Messrs Anthony Billis, Otakar Demis and Gordon Alfred Sklenka.
2. Tribune has the following major shareholders:
 - (a) Sierra Gold Ltd (**SGL** – a company incorporated in the Seychelles), with a relevant interest of 16.04% in Tribune.
 - (b) Trans Global Capital Ltd (**Trans Global** – a company incorporated in the Seychelles), with a relevant interest of approximately 16.91% in Tribune.
 - (c) Rand Mining Limited (**Rand** – an ASX listed company, ASX Code: RND) with a relevant interest of approximately 26.32% in Tribune.

SGL

3. SGL lodged a substantial holder notice on 10 November 2009 in relation to its shareholding in Tribune. It did not disclose any other person who had a relevant interest in those shares.
4. On 19 June 2018, SGL replied to a beneficial ownership notice issued by ASIC under s672A(1) of the *Corporations Act 2001* (Cth) (**Act**) disclosing, among other things, that:
 - (a) SGL holds its Tribune shares on trust for Sierra Gold Pty Ltd (ACN 009 138 783).
 - (b) The shareholders of Sierra Gold Pty Ltd, including SGL, have a relevant interest in SGL's Tribune shares "*by virtue of their shareholding in Sierra Gold Pty Ltd and as a result of the Shares being held on trust for Sierra Gold Pty Ltd*".

- (c) To the best of SGL's knowledge and recollection all instructions given to SGL in respect of the acquisition or disposal of its Tribune shares, the exercise of any voting or other rights attached to those shares or any other matter relating to those shares, *"at all or any time during the period that SGL has been the registered legal owner of the Shares, has been given to SGL by the shareholders...of Sierra Gold Pty Ltd in accordance with the terms of Sierra Gold Pty Ltd's constitution"*.¹
5. SGL and Sierra Gold Pty Ltd submitted to the Panel that SGL holds its 80.95% shareholding in Sierra Gold Pty Ltd as nominee and bare trustee for Mr Billis, accordingly Mr Billis has a relevant interest in SGL's 16.04% interest in Tribune and, to the extent that SGL and Sierra Gold Pty Ltd are aware, none of the other shareholders in Sierra Gold Pty Ltd nor the sole director of Sierra Gold Pty Ltd have a relevant interest in those shares. SGL and Sierra Gold Pty Ltd submitted that Mr Billis is the sole director of SGL.
6. SGL and Sierra Gold Pty Ltd submitted that Ms Phanatchakorn Wichaikul *"is the registered holder and beneficial owner of all the share capital of SGL"*. SGL and Sierra Gold Pty Ltd submitted in effect that SGL's substantial holder notice referred to in paragraph 3 and SGL's tracing notice response referred to in paragraph 4² contained inaccurate or deficient disclosure. Ms Phanatchakorn Wichaikul is Mr Billis's wife.
7. Mr Billis is a party to these proceedings and did not rebut any of the submissions made by SGL and Sierra Gold Pty Ltd.

Trans Global

8. Trans Global lodged a substantial holder notice on 9 April 2009 in relation to its shareholding in Tribune. It did not disclose any other person who had a relevant interest in those shares.
9. On 6 July 2018, Trans Global replied to a beneficial ownership notice issued by ASIC under s672A(1) of the Act disclosing, among other things, that Ms Phanatchakorn Wichaikul has a relevant interest in Trans Global's shareholding in Tribune and Mr Billis is a director of Trans Global.
10. Trans Global and Mr Billis submitted to the Panel that:
- (a) Trans Global holds 4,454,000 Tribune shares *"as nominee or bare trustee"* for Mr Billis and holds 4,000,000 Tribune shares *"as nominee or bare trustee"* for Ms Buasong Wichaikul

¹ On 5 July 2018, a shareholder in Sierra Gold Pty Ltd (Henley Point Pty Ltd) replied to a beneficial ownership notice under s672A(1) of the Corporations Act, issued by ASIC, disclosing, among other things, that the shareholders in Sierra Gold Pty Ltd provide the directors of SGL with instructions relating to SGL's Tribune shares

² And Sierra Gold Pty Ltd's response to a tracing notice dated 11 July 2018

- (b) Mr Billis has a relevant interest in the Tribune shares held by Trans Global because Mr Billis is the sole director of Trans Global and *“therefore has the power to exercise, or control the exercise, of the right to vote attached to the shares in Tribune held in the name of”* Trans Global *“and the power to dispose of, or control the exercise of a power to dispose of, those shares”*
 - (c) Ms Buasong Wichaikul has a relevant interest in 4,000,000 of the 8,454,000 shares in Tribune held by Trans Global and
 - (d) Trans Global’s tracing notice response inaccurately disclosed that Ms Phanatchakorn Wichaikul had a relevant interest in Trans Global’s shareholding in Tribune.
11. Trans Global’s Register of Members and Share Ledger states that:
- (a) Ms Phanatchakorn Wichaikul is Trans Global’s sole shareholder and
 - (b) Mr Billis was the sole shareholder in Trans Global between 18 September 2009 and 20 May 2010. On 20 May 2010 he sold his shareholding to Ms Phanatchakorn Wichaikul for US\$100.

Rand

12. Rand’s board is identical to Tribune’s board, comprising Messrs Anthony Billis, Otakar Demis and Gordon Alfred Sklenka.
13. On or about 27 January 2010, Tribune increased its voting power in Rand Mining Limited from 20.51% to 43.85%. As a result s259D(1) of the Act applied requiring within 12 months from that time that either Rand cease to hold Tribune shares or Tribune cease to control Rand, unless ASIC provided an extension of time. Subsection 259D(3) of the Act also applied, and continues to apply, prohibiting Rand from exercising voting rights to its Tribune shares while Tribune controls Rand.
14. On 24 December 2010, Tribune applied to ASIC for an extension of time under s259D(1). ASIC subsequently informed Tribune that it would not give an extension. Rand continues to be controlled by Tribune and holds Tribune shares.
15. On 3 July 2018, Rand replied to a beneficial ownership notice issued by ASIC under s672A(1) of the Act disclosing, among other things, that each of Messrs Anthony Billis, Otakar Demis and Gordon Alfred Sklenka has a relevant interest in Rand’s Tribune shares *“by virtue of their position as directors of Rand”*. In a submission to the Panel, Rand submitted that its directors *“do not in fact have a relevant interest in Rand’s shares in Tribune as disclosed in Rand’s tracing notice response”*.

Resource Capital Limited

16. On 23 December 2010, Rand entered into an Option and Access Agreement with Resource Capital Limited and Iron Resources Limited. Pursuant to the Option and Access Agreement, Resource Capital Limited granted Rand the option to acquire all the issued shares in Iron Resources Limited. If Rand exercised the option, a share purchase agreement (attached to the Option and Access Agreement) would have full force and effect, which involved (among other things) Rand paying Resource Capital Limited a deposit of 8,000,000 Tribune shares (approximately 16% of the Tribune shares on issue).
17. In a submission to the Panel, Rand submitted that Resource Capital Limited had a relevant interest in 8,000,000 Tribune shares by virtue of Resource Capital Limited being a party to the Option and Access Agreement. Resource Capital Limited has not lodged a substantial holder notice disclosing its interest in Tribune. Rand has informed the Panel that it wishes to terminate the Option and Access Agreement.
18. The Option and Access Agreement was signed by Mr Billis as a director of Resource Capital Limited and Iron Resources Limited and by Ms Phanatchakorn Wichaikul as "Secretary/Director" of Resource Capital Limited and Iron Resources Limited. Resource Capital Limited's response dated 26 June 2018 to a beneficial ownership notice issued by ASIC under s672A(1) of the Act discloses that Mr Billis is a director of Resource Capital Limited.
19. In Tribune's application to ASIC dated 24 December 2010 (referred to in paragraph 14), Tribune stated that Rand had informed it that:
 - (a) Mr Billis was one of the two directors of Iron Resources Limited and
 - (b) The directors of Resource Capital Limited were Mr Billis and Ms Phanatchakorn Wichaikul.

Association between Mr Billis and Ms Phanatchakorn Wichaikul

20. The Panel considers that Mr Billis and Ms Phanatchakorn Wichaikul both now and since at least 20 May 2010:
 - (a) have a relevant agreement for the purpose of controlling or influencing the composition of the board of Tribune or the conduct of Tribune's affairs and are associated with each other under section 12(2)(b) or
 - (b) acted in concert in relation to the affairs of Tribune and are associated with each other under section 12(2)(c).
21. The factors that support the inference that Mr Billis and Ms Phanatchakorn Wichaikul are associates include:
 - (a) their relationship as husband and wife

- (b) Mr Billis being the sole director of SGL, Trans Global and Lake Grace Exploration Pty Ltd and Ms Phanatchakorn Wichaikul being the sole shareholder of those companies
- (c) the involvement of Mr Billis and Ms Phanatchakorn Wichaikul in Resource Capital Limited and Iron Resources Limited (see paragraph 18) and
- (d) The uncommercial nature of the sale of Mr Billis's interest in Trans Global on 20 May 2010 for US\$100.

Conclusion

- 22. The market has not been informed, and continues not to be informed, of persons who have a relevant interest in shares held by the three largest shareholders of Tribune.
- 23. Tracing notice responses by SGL, Sierra Gold Pty Ltd, Trans Global and Rand contain material that, in the submissions made by those parties to the Panel, were and are false.
- 24. If the material provided to the Panel in the submissions by Tribune, SGL, Sierra Gold Pty Ltd, Trans Global and Rand is accurate, there have been numerous contraventions of the substantial holder provisions in relation to Tribune shares, including by:
 - (a) Mr Billis, at least in relation to Tribune shares held by himself (0.03%), Ms Phanatchakorn Wichaikul (0.45%), SGL (16.04%), Trans Global (16.91%), Rand (26.32%)³, Nimby WA Pty Ltd (0.3%), Lake Grace Exploration Pty Ltd (0.37%) and Northwest Capital Pty Ltd (0.07%) - meaning that he has voting power of 60.49% in Tribune
 - (b) Tribune, in relation to having an interest in its own shares by operation of s608(3)(a) and (b) of the Act as a result of Tribune controlling Rand and Tribune holding voting power in over 20% in Rand and
 - (c) Ms Phanatchakorn Wichaikul as a result of her association with Mr Billis.

EFFECT

- 25. It appears to the Panel that:
 - (a) the acquisition of control over voting shares in Tribune and Rand has not taken, and continues not to take, place in an efficient, competitive and informed market

³ as a result of his relevant interest in Tribune and the operation of s608(3)(a) and (b) of the Act

- (b) the holders of Tribune and Rand shares and the market in general has not known, and continues not to know, the identity of persons who acquired a substantial interest in Tribune and Rand and
- (c) the above effects in relation to Tribune are magnified by Rand being prohibited from voting its 26.32% interest in Tribune by virtue of s259D(3) of the Act.

CONCLUSION

26. 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, are having, will have or are likely to have:
 - (i) on the control, or potential control, of Tribune
 - (ii) on the acquisition, or proposed acquisition, by a person of a substantial interest in Tribune or
 - (iii) as a consequence of (i) and (ii), on the control or potential control of Rand
- (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act
- (c) in the further alternative, because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6C of the Act or gave or give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6C of the Act.

27. 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 Tribune.

Bruce Dyer
Counsel
with authority of Christian Johnston
President of the sitting Panel
Dated 14 September 2018