

1Tibra Capital Pty Limited

ACN 120 313 395



Notice of General Meeting

and

Explanatory Memorandum

in relation to a proposed selective Share Buy-Back

on 22 July 2013 at 9:00am

Issued by:

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Annette Golden

Company Secretary

Tibra Capital Pty Limited

Please read the Notice and Explanatory Memorandum in regard to the proposed buy-back carefully.

Notice of General Meeting

Notice is given that a General Meeting of Tibra Capital Pty Limited (**the Company**) will be held at Level 17, Westfield Tower 2, 101 Grafton Street, Bondi Junction, New South Wales 2022, Australia on Monday, 22 **July 2013 at 9:00 am.**

Agenda items

A Buy-Back of shares pursuant to the Amended & Restated Shareholders' Agreement dated 24 July 2012, as amended from time to time, (**the Shareholders' Agreement**) in relation to each of the following:

- a) Michiel Timmermans
- b) Rottengarabaldi Pty Limited ATF for Gara Future Trust
- c) CKJ Trading Pty Limited ATF the Christian King Family Trust
- d) Erik Baanstra

(Each a **Buy-Back Shareholder** and collectively, the **Buy-Back Shareholders**).

To consider, and if thought fit, to pass the following resolution as a **special resolution**:

It is resolved that, for the purposes of S257D of the Corporations Act and for all other purposes, including the terms of the Shareholders' Agreement, the relevant terms of which are summarised in the attached Explanatory Memorandum in relation to the buy-back of the shares of the following shareholders in the amounts disclosed below:

- a) 169,614 ordinary shares owned by Michiel Timmermans
- b) 169,613 ordinary shares owned by Rottengarabaldi Pty Limited ATF for Gara Future Trust
- c) 150,000 ordinary shares owned by CKJ Trading Pty Limited ATF the Christian King Family
- d) 12,000 ordinary shares owned by Erik Baanstra

is approved.

Explanatory Memorandum

Shareholders are referred to the Explanatory Memorandum accompanying and forming part of this Notice of Meeting, which outlines all of the information the Company considers necessary and appropriate for Shareholders in considering these matter

Explanatory Memorandum to Shareholders

This Explanatory Memorandum has been prepared to help Shareholders understand the Special Resolution to be put forward at the forthcoming General Meeting.

Explanatory Memorandum to the Notice of Meeting and Special Resolutions

1. General

1.1 This Explanatory Memorandum contains information relevant to the business referred to in the Notice of Meeting and Members' Resolution which it accompanies, and should be read carefully prior to passing the resolution.

1.2 The Notice of Meeting sets out the resolution required to be considered for the purpose of approving the terms of the proposed buy-back to be completed by the Company (**Buy-Back**) with certain registered holders of the ordinary shares in the issued capital of the Company (**Buy-Back Shareholders**). Details of the Buy-Back Shareholders and the relevant terms of the Buy Back, pursuant to the Amended & Restated Shareholders' Agreement dated 24 July 2012 (the **Shareholders' Agreement**), are set out in paragraph 5 of this Explanatory Memorandum.

2. Corporations Act Requirements

2.1 As the proposed Buy-Back will be a selective buy-back for the purposes of Division 2 of Part 2J.1 of the *Corporations Act 2001* (**Corporations Act**), the Corporations Act requires that the terms of the Buy-Back be approved by members entitled to vote, or that the Buy-Back be conditional on that approval.

2.2 *Section 257D(1) of the Corporations Act requires the terms of the Buy-Back be approved by either:*

- (a) a special resolution passed at a general meeting by members entitled to vote, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or by their associates; or*
- (b) a resolution agreed to, unanimously, by all holders of ordinary shares in the capital of the Company.*

2.3 It is proposed that the terms of the Buy-Back be approved by a special resolution passed at a general meeting of the Company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or by their associates.

3. Voting will be by Company Secretary as Attorney

3.1 It is noted that pursuant to clause 12.5 of the Shareholders' Agreement, each Shareholder and the Company severally and irrevocably appoints the Company Secretary as its agent to:

- (a) Initiate a sale process in respect of the Buy-Back Shares held by the Shareholder in accordance with this Agreement.*
- (b) Accept service of a Notice of Meeting and any accompanying documents, provided that these are also sent to persons with Voting Rights.*
- (c) Convene a Shareholders' meeting on short notice.*

- (d) Complete any buy-back by the Company as contemplated in clause 12 of the Shareholders' Agreement; and
- (e) Without limitation, execute all necessary documents to complete the Transfer on behalf of that Shareholder and warrant that the Shareholder has the capacity to enter into relevant documents to effect the Buy-Back and has good title to all its Shares free from any Encumbrance.

3.2 As a consequence of the above, the Company Secretary is authorised to vote on the resolution proposed in this Notice of Meeting.

3.3 The Company Secretary, as attorney for Shareholders, intends to vote in favour of this resolution, and to consent to the meeting being held on short notice on 22 July 2013 at 9:00 am AEST.

3.4 While a Shareholder may attend the meeting convened on short notice on 22 July 2013 at 9:00 am AEST, as the Company Secretary will be voting as attorney for the Shareholders under the Shareholders' Agreement, any member attending in person or by proxy will not be able to vote on the resolution. Any vote which is attempted to be cast by a member, other than the Company Secretary acting as attorney, will be disregarded and of no effect.

3.5 Members are not required to attend the meeting or to vote on the resolution, and are not required to complete a proxy form.

4. Background

4.1 The Company proposes to implement a selective buy-back of a total of 927,270 fully paid ordinary shares in the Company (**Buy-Back Shares**) on the terms set out in the Shareholders' Agreement between the Company and each Buy-Back Shareholder (outlined in further detail below).

4.2 As at the date of the Notice of Meeting that this Explanatory Memorandum accompanies, there are 59,387,900 fully paid ordinary shares on issue in the Company.

4.3 The purchase price for each share bought back pursuant to the Buy-Back will be AUD 1.85.

5. Summary of the terms of the Buy-Back

5.1 The Shareholders' Agreement outlines the material terms of a Buy-Back by the Company and these terms are summarised as follows:

(a) If the Company is required or chooses to Buy Back Sale Shares under clause 10 or clause 11 then all parties must, after service of the relevant notice, take all reasonable steps in their respective powers, subject to clause 12.1 and the Company's obligations under the Corporations Act, to:

(i) comply with the requirements of the Corporations Act to authorise the implementation of a buy-back, including convening a general meeting of the Company on short notice for the purpose of considering and passing a resolution to authorise the buy-back, except that this clause will not require any party to take any action, or procure to occur any matter, that is not permitted by law;

- (ii) ensure all necessary filings are made with ASIC;*
- (iii) seek and obtain any necessary third party consents; and*
- (iv) complete the Buy Back by the Company of the Buy Back Shares on a Net Asset Value basis, in accordance with the requirements of the Corporations Act and the relevant provisions of the Shareholders' Agreement.*

5.3 Proposed Buy-Back and Shares to be bought back:

- a) The Buy-Back Shareholder, **Michiel Timmermans**, will sell 169,614 fully paid ordinary shares in the capital of the Company, and the Company will Buy Back those shares from **Michiel Timmermans**, with effect on or around three business days after the terms of the Buy-Back between the Company and **Michiel Timmermans** are approved by Special Resolution in accordance with section 257D of the Corporations Act. The purchase price agreed to be paid by the Company to the Buy Back Shareholder for the Buy-Back Shares is AUD 313,785.90, being AUD 1.85 for each ordinary share bought back, which amount has been determined in the manner set out in paragraph 6; and the purchase price for Buy- Back Shares will be satisfied by the Company remitting the full purchase price into the account as notified to the Company by the Buy- Back Shareholder; and
- b) The Buy-Back Shareholder, **Rottengarabaldi Pty Limited ATF for Gara Future Trust**, will sell 169,613 fully paid ordinary shares in the capital of the Company, and the Company will Buy Back those shares from **Rottengarabaldi Pty Limited ATF for Gara Future Trust**, with effect on or around three business days after the terms of the Buy-Back between the Company and **Rottengarabaldi Pty Limited Ltd** are approved by Special Resolution in accordance with section 257D of the Corporations Act. The purchase price agreed to be paid by the Company to the Buy Back Shareholder for the Buy-Back Shares is AUD 313,784.05, being AUD 1.85 for each ordinary share bought back, which amount has been determined in the manner set out in paragraph 6; and the purchase price for Buy- Back Shares will be satisfied by the Company remitting the full purchase price into the account as notified to the Company by the Buy- Back Shareholder; and
- c) The Buy-Back Shareholder, **CKJ Trading Pty Limited ATF the Christian King Family Trust**, will sell 150,000 fully paid ordinary shares in the capital of the Company, and the Company will Buy Back those shares from **CKJ Trading Pty Limited ATF the Christian King Family Trust**, with effect on or around three business days after the terms of the Buy-Back between the Company and **CKJ Trading Pty Limited ATF the Christian King Family Trust** are approved by Special Resolution in accordance with section 257D of the Corporations Act. The purchase price agreed to be paid by the Company to the Buy Back Shareholder for the Buy-Back Shares is AUD 277,500.00, being AUD 1.85 for each ordinary share bought back, which amount has been determined in the manner set out in paragraph 6; and the purchase price for Buy- Back Shares will be satisfied by the Company remitting the full purchase price into the account as notified to the Company by the Buy- Back Shareholder;
- d) The Buy-Back Shareholder, **Erik Baanstra**, will sell 12,000 fully paid ordinary shares in the capital of the Company, and the Company will Buy Back those shares from **Erik Baanstra**, with effect on or around three business days after the terms of the Buy-Back between the Company and **Erik Baanstra** are approved by Special Resolution in accordance with section 257D of the Corporations Act. The purchase price agreed to be paid by the Company to the Buy Back Shareholder for the Buy-Back Shares is AUD 22,200.00, being AUD 1.85 for each ordinary share bought back, which amount has been determined in the manner set out in paragraph 6; and the purchase price for Buy- Back Shares will be satisfied by the Company

remitting the full purchase price into the account as notified to the Company by the Buy-Back Shareholder; and

6. Determination of the Purchase Price

6.1 The purchase price to be paid by the Company to the Buy-Back Shareholder for the Buy-Back Shares has been determined in accordance with Shareholders' Agreement, specifically Clause 12.1 (d) which requires the Company to complete the Buy-Back on a Net Asset Value basis. In accordance with the Shareholders Agreement, Net Asset Value, or NAV, is defined as follows:

"Net Asset Value- net asset value of the Group, determined by the Group Accountant in accordance with Accounting Standards including, for the avoidance of doubt, contributed capital, retained profits and all other reserves and any other reasonable adjustments."

6.2 The Company will apply the NAV as at 31 December 2012.

7. Funding of the Purchase Price

7.1 The purchase price to be paid by the Company to the Buy-Back Shareholders for the Buy-Back Shares will be funded from existing cash of the Company.

8. Reasons for the Share Buy-Back

8.1 The Buy-Back is required under the terms of the Shareholders Agreement.

9. Interests of any Directors who may participate in the Share Buy-Back

9.1 The Buy-Back Shareholders are not a Director or officer of the Company.

9.2 The following Directors declare that they are interested in the Buy-Back:

- a) Christian King as the Group Employee Shareholder (as this terms is defined in the Shareholders' Agreement) of the **Christian King Family Trust**, and
- b) Kinsey Cotton as the Group Employee Shareholder of the **Gara Future Trust**.

10. Advantages and Disadvantages of the Share Buy-Back

10.1 The principal advantages to the Company are compliance with the terms of the Shareholders' Agreement.

10.2 The percentage of each of the Buy-Back shares of the working capital of the Company, as determined by the Group Accountant in accordance with the Shareholders' Agreement is as follows:

- a) Michiel Timmermans, being .34% of Working Capital
- b) Rottengarabaldi Pty Limited ATF for Gara Future Trust, being .34% of Working Capital
- c) CKJ Trading Pty Limited ATF the Christian King Family Trust, being .30% of Working Capital
- d) Erik Baanstra being .02% of Working Capital
- e) Additional buy-back tranche pursuant to a standing shareholder approval in relation to Buy-Back agreement entered into between Bhandari Holdings Pty Limited ATF the Bhandari Family Trust and the Company dated 6 August 2012, being 3% of Working Capital.

Collectively, the above amounts represent 4% of the current Working Capital, which is below the prescribed maximum of 5% biannually of the Company's working capital limit under Clause 12.2(a) of the Shareholders' Agreement.

10.3 On this basis, the directors believe it will not materially prejudice the Company's ability to pay its creditors, nor to conduct its day to day operations as a going concern.

10.4 The disadvantages of the purchase of the shares are the use of the Company's funds to pay the purchase price for the Buy-Back Shares and the cost to the Company of effecting the purchase of the Buy-Back Shares, principally any tax, accounting and legal costs associated with preparing these materials and ASIC lodgements. The Company has utilised in-house resources to the fullest extent in this regard.

11. Effect on control of the Company

11.1 Implementation of the purchase of the shares held by the Buy-Back Shareholders will not have any material effect on the control of the Company, as they only amount overall to 3.38% of the overall voting weight.

12. Effect of Buy-Back on Buy-Back Shares

12.1 All rights attached to the shares held by the Buy-Back Shareholders will be suspended upon the passing of the Special Resolution outlined in the Notice of Meeting.

12.2 Immediately after registration of the transfer to the Company of the Buy-Back Shareholders' shares, the Buy-Back shares will be cancelled as required by the Corporations Act.

13. Financial Statement and Effect of the Proposed Buy-Back on the Company's Financial Position

13.1 Please see the attached Pro Forma Financial Statements of the Company.

13.2 The Directors have considered the financial position of the Company (including the present and future liabilities and contingent liabilities of the Company) and consider that:

- (a) There will be no material adverse effect on the Company's state of affairs if the Buy-Back is approved;
- (b) The Buy-Back will not prejudice the Company's ability to pay its creditors, and
- (c) The Company is and will remain solvent after the Buy-Back is completed.

13.3 The Directors also consider that the approval of the proposed Buy-Back will not materially adversely affect the day to day operations of the Company.

13.4 The impact on franking credits to the Company is expected not to be significant.

13.5 Tax Implications – the proposed Buy-Back should not give rise to an Australian capital gains tax liability for the Company. It is noted that the buy-back may have Australian capital gains tax and other Australian income tax implications for the Buy-Back Shareholders, but they will need to consult with their own advisers in this regard.

14. Directors' Recommendation and Other Relevant Information

14.1 All of the Directors recommend that the resolution referred to in the Notice of Meeting and Explanatory Memorandum is approved by or on behalf of the Shareholders.

14.2 There is no other information material to the making of a decision by Shareholders whether or not to vote in favour of the proposed Buy-Back (being information known to any of the Directors' of the Company), which the Company has not previously disclosed to its Shareholders.

Dated 02 July 2013

A handwritten signature in black ink, appearing to read 'A. Golden', with a long horizontal flourish extending to the right.

Annette Golden

Company Secretary

Tibra Capital Pty Limited