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Advice on director candidate nomination

Background

At the 2019 AWI annual general meeting, candidates for appointment to the Board will be considered by shareholders.

Under AWI's Constitution, a person (other than a retiring director) will only be eligible for election to the office of director if (among other things):

- the person is nominated by a written nomination signed by in excess of 99 eligible shareholders; and
- the nomination and consent are received by AWI not less than 60 days nor more than 78 days before the meeting (**nomination deadline**).

We understand that Charles Olsson has submitted 137 signatures by the nomination deadline supporting his candidacy as a director. Of the 137 signatures, we understand that only 97 signatures were able to be verified by Link Market Services as shareholders able to nominate a director candidate.

We have been asked to advise on the validity of Mr Olsson's nomination in light of the above.

Analysis

As noted above, under rule 13.3(d) of AWI's Constitution, a person (other than a retiring director) will only be eligible for election to the office of Director at a general meeting if, among other things, the person is nominated by means of a written nomination signed by in excess of 99 eligible shareholders.

The Board of AWI has adopted *Rules and Procedures Governing the Election of Directors (Rules and Procedures)* under 13.3(f) of the Constitution. The Rules and Procedures provide that:

- a Nomination Form must include the nominating shareholder's full name and address as they appear in the register of shareholders;
 - in the event of inconsistencies between the name and address of the shareholder nominating the candidate and the register of shareholders, the Company Secretary will endeavour to resolve the inconsistency;
 - Nomination Forms completed by candidates and accompanied by all required information must be received by AWI by the nomination deadline;
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- as soon as practicable after a Nomination Form and all other required information is received by the Company Secretary, the Company Secretary will notify the candidate as to whether the nomination has been properly made;
- the Board may take such action and give such directions as the Board considers necessary in order to ensure that no irregularities occur in or in connection with an election or to remedy any inconsistency or inadequacy that arise in the application of the Rules and Procedures; and
- if any doubt or dispute arises as to the validity of the nomination, any vote or any election, the decision of the Board will be final and binding on all interested parties.

We understand the Company Secretary contacted Mr Olsson a number of times prior to the nomination deadline and confirmed that AWI has not been able to verify all of the signatories on the Nomination Form, and that Mr Olsson needs to provide additional information about those signatories, or otherwise provide additional shareholder signatures supporting his nomination.

Accordingly, so long as reasonable steps have been taken to endeavour to resolve the inconsistencies between the name and address of the shareholders nominating the candidate and the register of shareholders, in our view, it is open to the Board to form the view that Mr Olsson has not submitted a valid nomination in accordance with the Rules and Procedures and AWI Constitution. If Mr Olsson does not have the requisite shareholder support required by the Constitution, Mr Olsson is not eligible for election to the office of director.

Given the circumstances, AWI may wish to allow Mr Olsson some additional time to provide evidence to AWI that the currently unverified signatures are valid. If Mr Olsson still cannot address AWI's concerns after a reasonable period (e.g. a week) has elapsed, AWI could then reject his nomination.

The Rules and Procedures make it clear that if any doubt or dispute arises as to the validity of a nomination, the decision of the Board will be final.

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29 October 2019

Dear Jim

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Further advice on director candidate nomination process

We refer to our advice dated 26 September 2019 and your instructions for a further advice on the procedures adopted by AWI in relation to Mr Charles Olsson's director candidate nomination for the 2019 AWI annual general meeting, and a confirmation regarding the adequacy of the process that was followed.

We have reviewed the correspondence relating to Mr Olsson's nomination that you sent us on 21 October 2019.

The correspondence provides evidence that you:

- updated Mr Olsson on his progress in obtaining 100 shareholder signatures by forwarding Link Market Service's shareholder verification outcomes to him or his authorised representative on no less than:
 - seven occasions before the date of the nomination deadline (and on each occasion, a 'Holding not found' list was included to assist Mr Olsson to identify which individuals had nominated him but had not yet been found on the shareholder register); and
 - five occasions on the date of the nomination deadline;
- communicated the nomination deadline to Mr Olsson on no less than four occasions before that date, and at least twice on that date. In particular, the correspondence provides evidence that you:
 - specifically warned Mr Olsson to avoid submitting a nomination form at the 'last minute' at least twice; and
 - specifically explained that it was 'for the candidate to put forward properly identified shareholders for validation'; and
- assisted Mr Olsson with various other aspects of his nomination process, including reminding him on multiple occasions to submit a background check and the materials requested by the Board Nomination Committee.

AWI's *Rules and Procedures Governing the Election of Directors* contain a requirement that 'In the event of inconsistencies between the name and address of the shareholder nominating the candidate and the register of shareholders, the Company Secretary will endeavour to resolve the inconsistency'. Based on the above, our opinion is that this requirement was clearly complied with in relation to Mr Olsson's nomination.

We understand that Mr Olsson has threatened to make a complaint to ASIC regarding the director nomination process. If he were to do so, it is likely that ASIC would follow up with questions to you as the Company Secretary, and potentially the Chairman, regarding the



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process that was followed. However, again, we are of the view that AWI would be in a position to adequately explain to ASIC that it has adopted a reasonable process and has dealt with Mr Olsson in a demonstrably fair way.

Yours sincerely

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