

14 November 2019

SWE Creditors' Trust
ABN: 51 277 886 068

Creditors of Swala Energy Limited

Circular to Creditors

1 Summary

Creditors will recall that I was appointed Administrator of Swala Energy Limited (**Swala**) on 24 June 2016 (**Appointment**).

At the Second Meeting of Creditors of Swala on 18 October 2016 (**Second Meeting**), creditors considered the Administrator's s439A Report and resolved to approve a Deed of Company Arrangement (**DOCA**) proposal. On 21 October 2016 the DOCA commenced.

On 26 June 2017 the DOCA was completed and the SWE Creditors' Trust (**Trust**) commenced.

This circular provides a summary of:

- the finalisation of the Administration and the DOCA;
- the conduct of the Trust to date and reasons for delays; and
- matters to be resolved in order to pay a final dividend and finalise the Trust.

2 Administration and DOCA of Swala

The DOCA approved by creditors at the Second Meeting was proposed by Trident Capital Limited (**Trident**). The assets and undertakings of Swala were advertised for sale by Expressions of Interest and having considered a number of DOCA proposals, the Trident proposal was recommended by the Administrator as the best offer for creditors to consider.

Trident was unable to complete the DOCA in accordance with its terms by 28 February 2017. Consideration was given to abandoning the Trident proposal, but the costs involved in starting the process again outweighed the costs and inconvenience of providing Trident an extension to complete.

There was significant additional work required in dealing with Trident's delays and in reviewing multiple versions of the Annual General Meeting material required to enable the recapitalisation of Swala and in turn the effectuation of the DOCA. Eventually the DOCA was completed on 26 June 2017 and the Trust was settled.

After completion of the DOCA, work continued with Trident and with Symbol Mining Ltd, the recapitalised and renamed Swala. This necessary work included resolving legacy creditor claims and providing financial and other information to satisfy ASIC, ASX and other statutory authorities. All tasks in relation to the Administration and DOCA of Swala have been completed.

Upon settlement of the Trust, all remaining assets of Swala and all creditor claims transferred from Swala to the Trust.

3 Dealings with Swala Oil and Gas (Tanzania) Plc

The remaining assets of Swala transferred to the Trust included:

- a loan owing by Swala Oil and Gas (Tanzania) Plc (**SOGTL**), which at Appointment was US\$4.6m; and
- a majority shareholding in SOGTL (58.5% at Appointment).

David Mestres Ridge (**Mestres Ridge**) (former director of Swala) is the managing director of SOGTL and has been our primary contact at SOGTL. Mestres Ridge made it clear throughout the Administration that he would not support a DOCA proposal and he also objected to the transfer to the Trust of the loan owing by SOGTL.

Prior to completion of the DOCA we contacted a range of parties, including existing investors in Swala and SOGTL and Swala's joint venture partners in Africa, offering both the SOGTL loan and SOGTL shares for sale. There was some initial interest, but no firm offers were received.

Ultimately we were able to negotiate a deal with Mestres Ridge which was contemplated in the provisions of the Trust deed and a series of agreements were executed in June 2017 to deal with the loan owing by SOGTL and the shareholding in SOGTL (the **SOGTL Agreements**).

Under the SOGTL Agreements, SOGTL agreed to pay the Trust A\$1.0m in full and final settlement of the loan, which was due within 90 days of completion of the DOCA (being 24 September 2017). There was also a provision to enable SOGTL to make a "top up" payment if required to ensure that the admitted claims of creditors and Trust costs were paid in full. It was clear that the SOGTL shares could not be distributed until admitted claims and Trust costs were paid in full.

However, given the Trust received A\$1.0m from SOGTL on 13 February 2018, SOGTL did not comply with its payment obligation under the SOGTL Agreements. Accordingly, the SOGTL loan remains owing to the Trust (less the A\$1.0m payment). We have recently issued a notice to SOGTL advising that as at 31 October 2019, the loan balance outstanding was US\$4.4m (equates to A\$6.3m) and the Trust will be seeking repayment.

Under the SOGTL Agreements, Swala's shares in SOGTL were to be transferred to Silverlight Holdings Pty Ltd (**Silverlight**), an entity controlled by an associate of Mestres Ridge. According to Mestres Ridge, the shares were to be held by Silverlight for the benefit of all of the former Swala shareholders.

The agreement to transfer the shareholding to Silverlight is consistent with the provisions of the DOCA and Trust deed, such that **the SOGTL shares could only be transferred to Silverlight after all creditors and Trust costs are paid in full.**

In December 2018, we were notified by former Swala shareholders that SOGTL had "cancelled" the shares in SOGTL previously beneficially held by Swala and issued new shares in SOGTL to former Swala shareholders. SOGTL did not advise the Trust of this action. SOGTL and Mestres Ridge have since declined numerous requests to explain the basis for cancelling the Trust's shares in SOGTL. Further, SOGTL has failed to advise Swala shareholders the basis of allocation of SOGTL shares and we are concerned that some former Swala shareholders may have been excluded from the issue.

SOGTL also has a potential claim against the Trust for \$284,505, although it has not lodged a proof of debt. This represents the balance of Mestres Ridge's employee entitlements claim, which was purportedly purchased by SOGTL in April 2018. If the SOGTL claim was to be admitted, total Trust creditors would exceed cash available for distribution (meaning the admitted claims of creditors could not be paid in full).

4 Resolution of dispute with Swala Oil and Gas (Tanzania) Plc and Mestres Ridge

We have been in regular dialogue with SOGTL asserting that SOGTL's actions represent breaches of the SOGTL Agreements and we have also discussed this directly with Mestres Ridge.

Notwithstanding our contentions, we have engaged in lengthy without prejudice and confidential discussions with SOGTL and its legal representatives with a view to settling matters with SOGTL. Although those communications were confidential and without prejudice in nature and cannot therefore be disclosed, I note that our endeavours to settle matters between the parties also addressed the position of Otto Energy Limited (**Otto**).

Otto previously lodged a proof of debt against Swala for A\$1.3m. The claim relates to a joint venture dispute in Tanzania between Otto and SOGTL which was settled via mediation in May 2017. Otto's claim against Swala is for related causes of action filed in the Federal Court prior to Administration. Otto has not withdrawn its claim against the Trust while it has pursued SOGTL for payment of its debt since mediation. As SOGTL has recently paid most of this debt, Otto may (if agreement can be reached with SOGTL, Mestres Ridge, Swala and the Trustee) agree to accept a small payment to settle the matter.

In his letter to creditors dated 1 November 2019, Mestres Ridge has suggested the Trustee's past remuneration and recovery of costs should be subject to an independent review. As Trustee I take issue with the accuracy of a number of statements in Mestres Ridge's letter.

Creditors should be aware that my remuneration has been fully disclosed and approved in accordance with professional standards since Appointment (including as Trustee). My remuneration has been subject to approval by creditors (at the Second Meeting) or by the Committee of Creditors established at the Second Meeting.

Since June 2017 all of the Trustee's remuneration and costs incurred have been (and continue to be) attributable to dealing with SOGTL and Mestres Ridge. In particular:

- 1. The settlement between SOGTL and Otto being completed in accordance with the terms agreed between the two parties (in late 2017).**
- 2. SOGTL and Mestres Ridge failing to perform their obligations in accordance with the terms of the SOGTL Agreements (executed in June 2017).**

If SOGTL and Mestres Ridge had fulfilled their obligations the final dividend would have been paid by now.

5 Dividend prospects

Priority creditors (employee entitlements) were paid in full in by March 2018.

Excluding claims from SOGTL and Otto, remaining creditor claims are circa \$300,000 (subject to final adjudication).

At this stage we have sufficient funds to pay creditors in full, excluding SOGTL and Otto. However, this may change if we incur further costs in relation to SOGTL and/or Mestres Ridge.

Attached is a copy of the advertised Notice of Intention to Declare Dividend.

Creditors who have previously submitted a proof of debt do not need to resubmit. Creditors will be contacted if further information or clarification is required. Should you have any queries in relation to your claim, please contact Richard Abraham on +61 448 543 669 or at rabraham@hqadvisory.com.

Should you have any queries please contact me on +61 419 441 458 or at jthackray@hqadvisory.com.

SWE Creditors' Trust



James Thackray
Trustee

Attachment:

Notice of Intention to Declare Dividend

Notice of Intention to Declare Dividend

Corporations Act 2001
Subregulation 5.6.65

SWE Creditors' Trust ABN: 51 277 886 068
Creditors of Swala Energy Limited

**NOTICE OF INTENTION TO DECLARE
DIVIDEND**

Take notice that I intend to declare a dividend from the
SWE Creditors' Trust on **10 December 2019**.

Creditors of **Swala Energy Limited** whose debts or claims
previously transferred to the **SWE Creditors' Trust** are required
on or before **9 December 2019** to formally prove their debts or
claims. If they do not, they may be excluded from the benefit of
the dividend.

Form of proof may be obtained from www.hqadvisory.com.

James Thackray

Trustee

15 November 2019

For further details please contact:
Richard Abraham, Director
e: rabraham@hqadvisory.com