

## **Summary of expert opinion of Prof. Dr. Peter Nobel**

The expert opinion analyses the corporate law question whether and to what extent, in view of the restricted transferability provisions of Sika AG which contain for the non-listed registered shares of the company a transfer and voting right restriction of 5% of the registered shares, Schenker-Winkler Holding AG is currently entitled to request the convocation of an extraordinary general meeting of shareholders.

Based on the corporate documents, the purpose of the percentage clause in the articles of incorporation of Sika AG is to protect the economic independence of the company.

The disclosure notification of December 11, 2014 states that since the signing of the sale and purchase agreement of December 5, 2014 Schenker-Winkler Holding AG exercises control over Sika AG as a matter of fact jointly with Saint-Gobain ("arrangement in the context of the sale agreement [...], which may implicate exercising influence over the company"). The request of Schenker-Winkler Holding AG of December 9, 2014 to convene an extraordinary general meeting of shareholders is aimed at the removal of independent members of the board of directors.

As a deciding influence over Sika AG is granted to Saint-Gobain already today, the coordinated exercise of voting rights by Schenker-Winkler Holding AG and Saint-Gobain is a breach of the restricted transferability provisions. This constitutes a circumvention pursuant to the jurisprudence of the Federal Supreme Court and therefore the board of directors is obliged, to the extent required by the corporate interest, to limit the voting rights of Schenker-Winkler Holding AG to 5% of the registered shares as provided for in the articles of incorporation. Further the expert opinion postulates that in view of the singular circumstances an economic viewpoint is to be applied to the restricted transferability provision of Sika AG and the indirect purchase of shares of Sika AG by Saint-Gobain is also captured thereby.

The convocation right is closely linked to the voting right. Insofar as the board of directors limits the voting rights of a shareholder in order to enforce the restricted transferability provisions, the convocation right is also affected. If the voting rights of Schenker-Winkler Holding AG are to be limited to 5% of the registered shares, Schenker-Winkler Holding AG only reaches – taking into account the bearer shares held by Schenker-Winkler Holding AG – share nominal value with voting power of 2.5% of the total share capital which falls short of the threshold of 10% required for the convocation of a general meeting.

Under these circumstances, Schenker-Winkler Holding AG is not entitled to request the convocation of a general meeting of shareholders.