



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP21/43

Monday, 6 December 2021

PM Capital Asian Opportunities Fund Limited 01 – Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 15 October 2021 by WAM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Limited (ASX: **PAF**) (see TP21/27).

Background

The following facts are in summary form (see the declaration for more background).

PAF and PM Capital Global Opportunities Fund Limited (ASX: **PGF**) are both listed investment companies managed by PM Capital Limited (**PMC**), an entity wholly-owned by Mr Moore on trust through associated entities (**Moore Group**) for himself and his family and PMC employees.

On 6 September 2021, PGF approached PAF with a proposal to acquire PAF under a scheme of arrangement that was subsequently announced on 15 September 2021 (**Proposed Merger**).

When PGF made the approach and PAF agreed to engage on 6 September 2021, the same three individuals comprised the board of each company. The CEO of PMC was the executive director of both companies and neither had any employees.

Governance Protocols adopted by the PGF and PAF boards provided, among other things, for the engagement of a consultant who was appointed as a director of PAF (only) on 15 September 2021, shortly before a Scheme Implementation Deed (**SID**) was executed and the Proposed Merger was announced. The SID contained a break fee (**Break Fee**) of less than 1% which was mutual and had been reduced by PAF from \$600,000 to \$500,000 after discussion with its legal advisers.

The Governance Protocols also provided for PGF to give a Direction, which PGF gave under its investment management agreement (**IMA**) with PMC, the intended effect of which was to remove any control of PMC over the voting or disposal of securities held by PGF in PAF and therefore divide the previously disclosed voting power of PGF, PMC and Moore Group in PAF of 27.48%, and separate the interests

of PGF from those of PMC/Moore Group. On 15 September 2021, new substantial holding notices were given by PGF, disclosing voting power of 19.96%, and by PMC/Moore Group, disclosing voting power of 8.51%. Neither notice attached the Direction or the IMA (which had been summarised in PGF's prospectus but not disclosed).

Moore Group subsequently acquired further PAF shares taking its voting power in PAF, as specified by Moore Group, to 13.09% with the voting power of PGF, PMC and Moore Group being 33.05% when aggregated.

On 28 September 2021, WAM announced a takeover bid for PAF offering 1 WAM share for every 1.99 PAF shares and stated an intention to increase this to 1 WAM share for every 1.975 PAF shares if the Break Fee is removed.

Declaration

The Panel considered, among other things, that

1. Although PGF had properly recognised the need for Governance Protocols, it had not implemented them soon enough.
2. The unusually extensive overlap in the boards and management of PGF, PAF and PMC and delayed implementation of Governance Protocols was unacceptable and had given rise to association.
3. The Direction was not effective to divide the voting power of PGF and PMC/Moore Group or end the association between them.
4. While the Panel makes no comment on the merits of the Proposed Merger, which are a matter for PAF's shareholders, the inadequate disclosure of association and relationships, and the manner in which the Proposed Merger was proposed, negotiated and agreed by PGF and PAF, given the circumstances, were inconsistent with s602(a) and (b).
5. Given its terms, the Break Fee, of itself, did not give rise to unacceptable circumstances.
6. Substantial holding notices given by PGF, PMC and the Moore Group contravened s671B.
7. The acquisition of approximately 3.19% of PAF shares by Moore Group (**Excess Shares**) between 28 September 2021 and 12 October 2021, being the percentage shareholding acquired in excess of the amount permitted by the 3% creep rule, resulted in contraventions of s606(1).
8. The Panel considered that the circumstances were unacceptable:
 - (a) having regard to the effect that the Panel is satisfied they have had, are having, will have or are likely to have on:

- (i) the control, or potential control, of PAF or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in PAF
- (b) having regard to the purposes of Chapter 6 set out in section 602
- (c) because they constituted or are likely to constitute a contravention of a provision of Chapter 6 or Chapter 6C.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Orders

The Panel has made orders that:

1. require PGF, PMC and Moore Group to give a corrected substantial holder notice, accompanied by a copy of the IMA (redacted to no greater extent than that provided to the Panel)
2. prevent Moore Group and their associates voting, acquiring or disposing of the Excess Shares and
3. if the Proposed Merger does not become effective (by 21 January or such later date as the Court or the Panel approves), vest the Excess Shares in ASIC for sale.

In addition, PAF has undertaken to promptly provide the Court with a copy of all public documents issued by the Panel.

The sitting Panel was Paula Dwyer (sitting President), Christian Johnston and Neil Pathak.

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

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Australian Government

Takeovers Panel

ANNEXURE A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

PM CAPITAL ASIAN OPPORTUNITIES FUND LIMITED 01

DEFINITIONS

1. In this Declaration, the following definitions apply.

Break Fee	The break fee in clause 11 of the SID
Direction	The instruction given by PGF to PMC pursuant to Clause 5.17 of the PGF IMA on 14 September 2021 described in paragraph 14
Governance Protocols	The PAF Governance Protocol and the PGF Governance Protocol
IMA	Investment Management Agreement
IMA Extract	The extract from the PGF IMA attached to the notice of change of interests of substantial holder given by PGF to PAF on 1 October 2021
LIC	Listed Investment Company
Moore Group	Mr Paul Moore and all entities, other than PMC and PGF, named as substantial holders in the notice given to PAF by Mr Moore on 7 June 2021
PAF	PM Capital Asian Opportunities Fund Limited
PAF Governance Protocol	The governance protocol adopted by the PAF Board on 6 September 2021
PGF	PM Capital Global Opportunities Fund Limited
PGF Governance Protocol	The governance protocol adopted by the PGF Board on 6 September 2021
PMC	PM Capital Limited
Proposed Transaction	The proposed merger between PGF and PAF considered by the PGF Board on 6 September 2021 and announced on 15 September 2021

SID	The Scheme Implementation Deed between PGF and PAF dated 15 September 2021
WAM	WAM Capital Limited
WAM bid	WAM's takeover bid for PAF made under its bidder's statement dated 14 October 2021

BACKGROUND

2. PAF (ASX: PAF) and PGF (ASX: PGF) are both LICs listed on ASX. Each of PAF and PGF has a separate IMA with PMC providing for PMC to:
 - (a) manage the company's portfolio and investments in accordance with the IMA's terms, without the approval of the directors, and
 - (b) provide administrative support services reasonably required by the company to conduct its business.
3. All shares in PMC are held by an entity wholly-owned by Mr Moore. Approximately 88% are held on trust for Mr Moore and his family and the remainder on trust for PMC employees. All substantial holding notices given by PMC to PAF up to and including its notice given on 7 June 2021 (which disclosed voting power of 27.48% in PAF) listed relevant interests in differing numbers of shares for some entities, but gave the same voting power for all, and did not name any associates.

CIRCUMSTANCES

4. On 6 September 2021, Mr Ben Skilbeck (in his capacity as the executive director of PGF) provided a final discussion paper on the Proposed Transaction, a merger between PGF and PAF, to a meeting of the PGF Board. Mr Skilbeck is also the executive director of PAF and Chief Executive Officer of PMC. The PGF Board had previously asked Mr Skilbeck to apprise the PGF Board of M&A opportunities as and when they were identified. Mr Skilbeck had considered various commercial aspects of a merger of PGF with PAF and presented on the matter to an earlier meeting of the PGF Board, which also discussed legal advice and a draft Governance Protocol.
5. The PGF Board meeting considering the Proposed Transaction on 6 September 2021 was attended by Mr Skilbeck, Mr Brett Spork, Mr Chris Knoblanche (Chairman), and Mr Richard Matthews (as PGF Company Secretary – Mr Matthews was then also Company Secretary of PAF and Chief Operation Officer of PMC). The Minutes indicate that the meeting commenced at 4.03pm and closed at 4.20pm, and record no disclosures under the heading "Disclosure of Interests / Conflicts".¹ The Minutes state:

¹ PGF's Board Minutes again also contained an entry:

"1.3 Confirmation of Quorum

Members confirmed their personal disclosures as per the Agenda."

The Board Minutes of the earlier meeting on 26 August 2021 contained entries in the same terms and also recorded no disclosures

- *noted that the Governance Protocol had been initially drafted by JWS, and then a second opinion (review and confirmation) had been undertaken by Bakers.*

...

*It was **RESOLVED** unanimously that:*

...

- *The company adopt Governance Protocol – whilst noting the amendment that B.Skilbeck be appointed as a co-Company Secretary for PGF (and then go on immediate leave of absence);*

6. The PGF Governance Protocol states:

1 **Overview**

1.1 **Background**

*The board of [PGF] is in the early stages of exploring the possibility of a potential merger of PGF and [PAF] by a scheme of arrangement ...in which PGF will acquire all of the shares in PAF (**Proposed Transaction**).*

PGF currently intends to provide a proposal to PAF concerning the Proposed Transaction. ...

Due to the overlapping governance and management arrangements applying to PGF and PAF ... the implementation of the Proposed Transaction has the potential to give rise to conflicts of interest for the directors of PGF and PAF as well as other difficulties.

In order to manage these potential conflicts and difficulties, the board of PGF ...has adopted this Governance Protocol ...

...

7. The PGF Governance Protocol also noted, among other things, that as at the date of the protocol:

- (a) Each of PGF and PAF had a “common board representation”, comprising Mr Skilbeck (Executive Director), Mr Knoblanche (Chairman of PGF and Chairman of the Audit Committee of PAF), and Mr Spork (Chairman of PAF and Chairman of the Audit Committee of PGF), and Mr Matthews was the Company Secretary of both PGF and PAF and the Alternate Director for Mr Skilbeck for each of PGF and PAF.
- (b) PGF and PAF had no employees and they had separately entered into an IMA with PMC. PMC was responsible for the implementation of the investment strategy of each of PGF and PAF, and for the day-to-day administration of each company’s affairs. Also:

- (i) the board of PMC was comprised of Mr Moore, Mr Skilbeck and one other director;
 - (ii) Mr Moore (through entities that he controlled) controlled 89% of the shares in PMC;
 - (iii) Mr Moore was also the portfolio manager for PGF (appointed by PMC);
 - (iv) PGF held approximately 19% of the shares in PAF;
 - (v) Mr Moore (through entities that he controlled) controlled approximately 8% of the shares in PAF;
 - (vi) PGF and Mr Moore jointly controlled approximately 27% of the shares in PAF as a consequence of the IMA (which was the subject of a substantial shareholding joint disclosed interest); and
 - (vii) Mr Moore (through entities that he controlled) controlled approximately 19% of the shares in PGF.
8. The PGF Governance Protocol indicated that its purpose included ensuring that:
- (a) *the PGF Board is able to make all decisions concerning the Proposed Transaction independently of*
 - (i) *[PMC]*
 - (ii) *Paul Moore; and*
 - (iii) *PAF;*

...
 - (d) *to the extent practicable, the entities controlled by Paul Moore that hold shares in PAF are not associates of PGF in relation to PAF in the context of the Proposed Transaction.*
9. In order to achieve that purpose the PGF Governance Protocol provided, among other things, for (subject to the relevant Board Committee making sensible adjustments as circumstances may require):
- (a) Mr Spork and Mr Knoblanche to be the PGF Board Committee for the purposes of the Proposed Transaction, and
 - (i) Mr Spork to take leave of absence from the PAF Board on PGF providing a proposal to PAF, and resign on announcement of the Proposed Transaction provided PAF had appointed another director.
 - (ii) Mr Knoblanche not to be involved as a director of PAF in decision making concerning the Proposed Transaction on PGF providing a proposal to PAF or as soon as reasonably practicable thereafter, and to take leave of absence from the PAF Board.

- (b) Mr Skilbeck to:
- (i) remain as Executive Director of PAF for the duration of the Proposed Transaction and, on PGF providing a proposal to PAF or as soon as reasonably practicable thereafter having regard to the need for PAF to put in place steps to adopt the proposal, not be involved as a director of PGF in decision making concerning the Proposed Transaction, and take leave of absence from the PGF Board;
 - (ii) *“continue in his executive PGF role without exercising director powers”*;
 - (iii) be appointed as an additional PAF Company Secretary on announcement of the Proposed Transaction or as soon as reasonably practicable thereafter.
- (c) Mr Andrew McGill to be appointed as a consultant to PAF and, subject to recommendations of the PAF nominations committee and resolution of the PAF Board, be *“appointed a director of PAF shortly prior to entering into the Proposed Transaction”*, and Mr McGill and Mr Skilbeck to be the PAF Board Committee for the purposes of the Proposed Transaction.
- (d) Mr Matthews to continue to act as PGF Company Secretary and, on announcement of the Proposed Transaction or as soon as reasonably practicable thereafter having regard to the need for PAF to put in place steps to adopt the proposal, not be involved as a PAF Company Secretary for the duration of the Proposed Transaction in matters concerning the Proposed Transaction.
- (e) At entry into a Scheme Implementation Agreement and the announcement of the Proposed Transaction, PGF to:
- remove the PAF shares held in its portfolio from the [IMA] by giving notice to [PMC]. The effect of this will be that neither [PMC] nor Mr Moore will control the buy/sell or voting decisions relating to PGF’s shareholding in PAF. A change of substantial shareholding in relation to Mr Moore and PGF in relation to PAF.*

10. Also on 6 September 2021, PAF received a letter by email from Mr Knoblanche, as Chairman of PGF, to Mr Spork, PAF Chairman, proposing the Proposed Transaction and attaching governance protocols *“likely to be appropriate should discussions advance”* for both PGF (as above) and PAF for consideration, and stating that *“PGF’s intent is that any scheme implementation agreement would contain customary and usual lock-up arrangements”*. This proposal was considered at a PAF Board meeting attended by Mr Skilbeck, Mr Spork (Chairman), Mr Knoblanche, and Mr Matthews (as Company Secretary). The Minutes indicate that the meeting commenced at 5.07pm (47 minutes after the close of PGF’s Board meeting) and closed at 5.21pm, and record no disclosures under the

heading “Disclosure of Interests / Conflicts”.² The Minutes state, among otherthings, that:

B.Skilbeck provided an outline of the proposed transaction. He concluded that it would appear that a transaction could be in the interests of shareholders and deserves appropriate consideration.

...

Members considered that on face value, the proposal could be in the interests of the shareholders and of the Company, and as such the Company should enter into discussions with PGF.

After noting discussion, the Minutes state:

*It was **RESOLVED** that:*

- *The Confidentiality Agreement with PGF be approved, and that Company officers be authorised to sign and return to PGF;*
- *Company officers be authorised to appoint Baker McKenzie as Counsel subject to Baker McKenzie not having conflict which would preclude them from acting for the Company;*
- *The Governance Protocol (as provided by PGF) be adopted, subject to counsel confirming its appropriateness;*
- *The Board considered that Mr McGill has the requisite skills, qualifications and character to be appointed as a consultant to, and/or director of, the Company;*
- *McGill be appointed as consultant, with intention to appoint him as a director should it become appropriate;*
- *Any director be authorised to formalise the appointment of Mr McGill as a director (as appropriate).*
- *Company officers be authorised to sign the consulting agreement with Mr McGill;*
- *Company officers be authorised to approach independent experts.*
- *Subject to B.Skilbeck consenting to the appointment, B.Skilbeck be appointed as co-Company Secretary.*

² PAF’s Board Minutes again also contained an entry:

“1.3 Confirmation of Quorum

Members confirmed their personal disclosures as per the Agenda.”

11. On 7 September 2021, Mr McGill accepted appointment by PAF as a consultant to the Board. He was not appointed to the PAF Board until 15 September 2021 shortly before the Scheme Implementation Deed (**SID**) was entered into.
12. On 9 September 2021, PAF's legal advisers sent a draft of the SID to PAF which included a break fee of \$600,000.
13. On 10 September 2021, after discussion with its legal advisers, PAF reduced the break fee in the SID from \$600,000 to \$500,000 and sent the updated SID to PGF. The SID was agreed after minor subsequent changes unrelated to the Break Fee.
14. On 14 September 2021, PGF, in a letter signed by Mr Matthews as Company Secretary, instructed PMC pursuant to Clause 5.17 of the PGF IMA:
 - that it must not acquire or dispose of any securities held by PGF in PAF; and
 - that it must not hold or exercise any rights of voting the shares on any resolutions put to a meeting of shareholders by PAF; and
 - to do all things necessary to facilitate moving PGF's shares in PAF out of custody to be registered in the name of PGF (issuer sponsored) (**Direction**).
15. On 15 September 2021, PGF gave a notice of change of interests of substantial holder to PAF stating its voting power as 19.96% and making no reference to PMC, the Moore Group, or the Direction PGF gave to PMC on 14 September 2021 (which was not attached). No associates or changes in association were disclosed.
16. On 15 September 2021, PMC and the Moore Group gave a notice of change of interests of substantial holder to PAF stating its voting power had decreased from 27.48% to 8.51% and indicating in an Annexure that PGF's relevant interest had changed and the nature of the change was "*Revocation of control of shares*". No associates or changes in association were disclosed. The Direction PGF gave to PMC on 14 September 2021 was not otherwise mentioned or attached.
17. Also on 15 September 2021, PGF and PAF entered into the SID to merge the entities and announced this to ASX.
18. On 28 September 2021, WAM announced its intention to make the WAM bid, subject to a number of conditions, including a condition that the scheme of arrangement to effect the Proposed Transaction does not progress. The WAM bid offered 1 WAM share for every 1.99 PAF shares and WAM stated an intention to increase this to 1 WAM share for every 1.975 PAF shares if the Break Fee is removed.
19. On 29 September 2021, PMC and the Moore Group gave a notice of change of interests of substantial holder to PAF stating its voting power had increased from 8.51% to 9.90%. No associates or changes in association were disclosed.
20. On 1 October 2021, PGF gave a revised notice of change of interests of substantial holder to PAF which referred to and attached the Direction it had

given to PMC on 14 September 2021. The Notice also attached the IMA Extract (which included Clause 5.17) and a summary of the PGF IMA taken from PGF's prospectus. No associates or changes in association were disclosed. The IMA Extract did not include all provisions that may be relevant in determining whether the Direction was effective to achieve its intended purpose (as described in the PGF Governance Protocol).

21. On 13 October 2021, PMC and the Moore Group gave a notice of change of interests of substantial holder to PAF stating its voting power had increased from 9.90% to 13.09%.
22. The Panel considers that:
 - (a) The Proposed Transaction put by PGF to PAF on 6 September 2021 was a control transaction in which the interests of PGF shareholders and PAF shareholders would inevitably be in competition. PGF and PAF were LICs that for more than seven years had had the same manager, PMC. PGF properly recognised the need for Governance Protocols, but had not implemented them at the time when the Proposed Transaction was developed by PGF, PGF decided to put the Proposed Transaction to PAF, and PAF decided to engage with PGF (without disclosing the approach). When those decisions were taken:
 - (i) the CEO and COO of PMC were executive director and company secretary, respectively, of both PGF and PAF
 - (ii) the same three individuals, including the CEO of PMC, comprised the boards of PGF and PAF and
 - (iii) draft governance protocols, prepared by PGF for each of PGF and PAF, had expressly recognized that "implementation" of the Proposed Transaction "had the potential to give rise to conflicts of interest".

Despite that, the Governance Protocols were only put in place after PGF decided to approach PAF and PAF decided to engage with PGF in discussions concerning a control transaction. PAF's decision was not made by any directors independent of PGF.

- (b) PAF's Board Meeting on 6 September 2021 was little more than a formality. The Minutes of the PGF and PAF Board Meetings indicate that, within an hour of PGF sending its proposal to PAF, the PAF Board had (in a meeting lasting 14 minutes):
 - (i) accepted the Confidentiality Agreement and Governance Protocols that PGF had prepared,
 - (ii) approved the independent director PGF had proposed PAF should appoint (after having received a recommendation from PAF's Nominations & Corporate Governance Committee for his appointment), and

- (iii) agreed to engage in discussions concerning a control transaction with PGF.
- (c) During the time when the SID for the Proposed Transaction, including the Break Fee, was negotiated by PGF and PAF, until shortly before the SID was executed:
 - (i) only one PAF director (Mr Skilbeck) was available to negotiate on behalf of PAF (albeit assisted by a consultant proposed to be appointed as a director) and
 - (ii) that PAF director was the CEO of PMC (and the only person other than Mr Matthews “over the wall” at PMC) and the person who (as PGF executive director) had developed the Proposed Transaction and put it to the PGF Board.
- (d) Given the circumstances in paragraphs (a), (b) and (c), it was not consistent with s602(a) for PGF and PAF, being companies with common directors and the same manager and therefore with an acute risk of actual and/or perceived conflicts, to consider and make such significant decisions, in such a manner, by the same individuals comprising each board.
- (e) The Governance Protocols:
 - (i) provided for
 - (A) material changes to the composition of PAF’s Board in general and with respect to PAF’s negotiation of a control transaction proposed by PGF and
 - (B) the separation of the substantial holding of PMC and the Moore Group in PAF from that of PGF by means of the Direction and
 - (ii) were only likely to achieve their stated purposes if
 - (A) adopted by both PGF and PAF and
 - (B) PMC’s CEO and COO accepted the changes in their roles that the protocols contemplated.
- (f) By 6 September 2021:
 - (i) there was an agreement, arrangement or understanding between PGF, PAF and PMC to progress one or more of:
 - (A) the adoption and implementation of the Governance Protocols by PAF and PGF, and PMC permitting Mr Skilbeck and Mr Matthews to act as the Governance Protocols required
 - (B) separation of the substantial holding of the Moore Group and PMC in PAF from that of PGF by means of the Direction and
 - (C) the Proposed Transaction or

- (ii) PGF, PAF and PMC, were acting in concert with the common purpose of advancing one or more of paragraphs 22(f)(i)(A), 22(f)(i)(B) or 22(f)(i)(C).
- (g) The actions of PMC, Mr Skilbeck and Mr Matthews referred to in paragraph 22(f) were not merely because of one or more of the matters in s16.³
- (h) Given the purposes of Chapters 6 and 6C, and the circumstances above, the state of mind of Mr Skilbeck in relation to PAF should be attributed to PMC, for the purposes of sections 12, 606 and 671B, in determining whether circumstances are unacceptable.
- (i) The Direction was not effective to achieve all its purposes as stated in the Governance Protocols (even if as a practical matter only PGF can vote its shares in PAF) given the breadth of the absolute discretion to manage PGF's portfolio conferred on PMC under the PGF IMA.
- (j) Further, and in the alternative, the Direction was not effective to end the associations referred to in paragraph 22(f), because:
 - (i) giving the Direction was an aim of the relevant agreement or common purpose referred to in paragraph 22(f) and
 - (ii) the Governance Protocols and Direction appear to be part of a broader relevant agreement or common purpose of advancing the Proposed Transaction, which has not yet been completed,
 and having regard to the relationships between PGF, PAF and PMC over several years, common management, and common directors, it is unlikely that the Direction could terminate such associations at the precise time at which PGF and PAF agree binding terms for the Proposed Transaction.
- (k) Further, and in the alternative, it was inconsistent with s602(a) and (b) for PGF, PMC, Mr Skilbeck, Mr Matthews and the Moore Group to treat the Direction as effective to divide the voting power PGF, PMC and the Moore Group had previously disclosed in their substantial holder notices, given:
 - (i) the notices of PGF, PMC and the Moore Group for over 7 years encouraged the market to conclude that they shared the same voting power because they were associates by failing to explain how the substantial holding and voting power of PGF and PMC could otherwise differ from their disclosed relevant interests in PAF shares
 - (ii) the structural and contractual links between PGF, PMC and the Moore Group, prior collaborative conduct, common investments, common knowledge of relevant facts and a shared goal or purpose
 - (iii) the Direction was not disclosed to the market until 1 October 2021

³ All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant chapter (as modified by ASIC)

- (iv) PGF, PMC and the Moore Group have not provided sufficient information for the market to determine whether, or how, the Direction would be effective to divide their substantial holding.

23. The Panel makes no comment on the merits of the Proposed Transaction, which are a matter for PAF's shareholders. Regardless of its merits, the Panel considers that the inadequate disclosure of association and relationships, and the manner in which the Proposed Transaction has been proposed, negotiated and agreed by PGF and PAF, given the circumstances above, were inconsistent with s602(a) and (b).

Contravention of s671B

24. The notices given by PMC and the Moore Group to PAF of change of interests of substantial holder between 15 September 2021 and 15 October 2021 do not give all the information referred to in s671B(3).
25. The notices given by PGF, PMC and the Moore Group to PAF of change of interests of substantial holder between 15 September 2021 and 15 October 2021:
- (a) do not give the names of their associates who have relevant interests in PAF shares together with the details required by s671B(3) and
 - (b) are not accompanied by copies of documents (and/or any statement under s671B(4)(b)) as required by s671B(4).

Contravention of s606(1)

26. The voting power of PGF, PMC and the Moore Group in PAF was approximately 26.8582% on 28 March 2021 and increased above 29.8582% (the level permitted by item 9 of s611) six months later on 28 September 2021. The shares acquired by members of the Moore Group between 28 September 2021 and 12 October 2021, amounting to approximately 3.1891%, increased their voting power from a starting point that is above 20% and below 90% and were acquired in contravention of s606(1). No exception in s611 applied.

EFFECT

27. It appears to the Panel that:
- (a) the acquisition of control over voting shares in PAF has not taken place in an efficient, competitive and informed market and
 - (b) the holders of shares in PAF were not given enough information to enable them to assess the merits of the Proposed Transaction when announced and how it may be affected by the Direction.

CONCLUSION

28. 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 on:
 - (i) the control, or potential control, of PAF or

- (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in PAF
 - (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 6 or of Chapter 6C of the Act.
29. 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

30. The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of PAF.

Tania Mattei
General Counsel
with authority of Paula Dwyer
President of the sitting Panel
Dated 3 December 2021



Australian Government

Takeovers Panel

ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

PM CAPITAL ASIAN OPPORTUNITIES FUND LIMITED 01

The Panel made a declaration of unacceptable circumstances on 3 December 2021.

THE PANEL ORDERS

Substantial holding notices

1. Within 2 business days after the date of these orders, the Associated Parties must disclose, in the form of a substantial holder notice accompanied by a copy of the IMA (redacted to no greater extent than that provided to the Panel) and all documents required by s671B(4)⁴, as approved by the Panel:
 - (a) that the Associated Parties have continued to be associates in relation to PAF since 14 September 2021
 - (b) the name of each associate who has a relevant interest in voting shares in PAF
 - (c) the nature of their association
 - (d) details of any relevant agreement through which they have a relevant interest in shares in PAF and
 - (e) all transactions undertaken during the period covered by the disclosure.

Restriction on voting, acquisition and disposal of Excess Shares

2. None of the Vendors or their associates may, directly or indirectly, acquire any of the Excess Shares.
3. The Vendors and their associates must not otherwise dispose of, transfer, charge or vote any Excess Shares.
4. None of the Vendors or their associates may:
 - (a) take into account any relevant interest or voting power that any of them had, or have had, in the Excess Shares when calculating the voting power

⁴ All statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapter 6 or 6C have the meaning given in the relevant chapter (as modified by ASIC)

referred to in Item 9(b) of s611 of a person six months before an acquisition exempted under Item 9 of s611 or

- (b) rely on Item 9 of s611 earlier than six months after these orders come into effect.

Vesting of shares for sale if Scheme does not become effective

5. Orders 6, 7, 8 and 9 take effect three business days after the first to occur of:
 - (a) the close of the Scheme Meeting, if the resolution to be considered is not passed in accordance with s411(4)(a)(ii)(B)
 - (b) 21 January 2022, or such later date as the Court or the Panel approves
 - (c) PAF announcing that the Scheme will not proceed or
 - (d) the Court declining to approve the Scheme under s411(4)(b) and (6).All other orders take effect immediately.
6. The Excess Shares are vested in the Commonwealth on trust for the Vendors.
7. ASIC must:
 - (a) sell the Excess Shares in accordance with these orders
 - (b) account to the Vendors for their respective portions of the proceeds of sale, net of the costs, fees and expenses of the sale and any costs, fees and expenses incurred by ASIC and the Commonwealth (if any).
8. ASIC must:
 - (a) retain an Appointed Seller to conduct the sale and
 - (b) instruct the Appointed Seller:
 - (i) to use the most appropriate sale method to secure the best available sale price or consideration for the Excess Shares that is reasonably available at that time in the context of complying with these orders, including the stipulated timeframe for the sale and the requirement that none of the Vendors or their associates may acquire, directly or indirectly, any of the Excess Shares
 - (ii) to provide to ASIC a statutory declaration that, having made proper inquiries, the Appointed Seller is not aware of any interest, past, present, or prospective which could conflict with the proper performance of the Appointed Seller's functions in relation to the disposal of the Excess Shares
 - (iii) to obtain from any prospective purchaser of Excess Shares, a statutory declaration that the prospective purchaser is not associated with any of the Vendors or their associates, unless:
 - (A) the Appointed Seller sells Excess Shares on market or
 - (B) the Appointed Seller accepts the Excess Shares into a takeover bid for PAF or

- (C) the Excess Shares are transferred under a scheme of arrangement or court order,
 - (iv) to dispose of all of the Excess Shares within 6 months from the date of its engagement, and
 - (v) if the Excess Shares are accepted into a takeover bid for PAF, to inform the Vendors in writing and
 - (c) if the Excess Shares are accepted into a takeover bid for PAF and a Vendor requests ASIC in writing to sell any of its Consideration Securities, instruct the Appointed Seller to use the most appropriate sale method to secure the best available sale price for that Vendor's Consideration Securities that is reasonably available at that time in the context of complying with these orders, including any stipulated timeframe for the sale.
9. PAF, PMC and the Vendors must do all things necessary to give effect to these orders, including:
 - (a) doing whatever is necessary to ensure that the Commonwealth is registered with title to the Excess Shares in the form approved by ASIC and
 - (b) until the Commonwealth is registered, complying with any request by ASIC in relation to the Excess Shares.
 10. Nothing in these orders obliges ASIC or the Commonwealth to invest, or ensure interest accrues on, any money held in trust under these orders or exercise any rights (including voting rights) attaching to, or arising as a result of holding, the Excess Shares.
 11. The parties to these proceedings and ASIC have the liberty to apply for further orders in relation to these orders.

Interpretation

12. In these orders the following terms apply.

Appointed Seller	an investment bank or stock broker
Associated Parties	PGF, PMC, Mr Paul Moore, Roaring Lion, Hawkins, Horizon Investments Australia Pty Ltd and Horizon Investments Australia Pty Ltd <George Hawkins Pty Ltd>
ASIC	Australian Securities and Investments Commission, as agent of the Commonwealth
Consideration Securities	securities received as consideration for Excess Shares
Court	has the meaning given in the Explanatory Memorandum
Excess Shares	207,800 PAF shares held by Roaring Lion and 1,617,358 PAF shares held by or for Hawkins

Explanatory Memorandum	PAF's explanatory memorandum dated 4 November 2021
Hawkins	Horizon Investments Australia Pty Ltd <Hawkins Trust>
IMA	the Management Agreement made in 2013 between PGF and PMC
on market	in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing
PAF	PM Capital Asian Opportunities Fund Limited
PAF shares	ordinary shares in the issued capital of PAF
PGF	PM Capital Global Opportunities Fund Limited
PMC	PM Capital Limited
respective portions	as to Roaring Lion, 11.38532%, and as to Hawkins, 88.61468%
Roaring Lion	Roaring Lion Pty Ltd as trustee for the Roaring Lion Super Fund
Scheme and Scheme Meeting	have the meanings given in the Explanatory Memorandum
the Vendors	Roaring Lion and Hawkins

Tania Mattei
General Counsel
with authority of Paula Dwyer
President of the sitting Panel
Dated 3 December 2021