



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP22/04

Wednesday, 12 January 2022

## **PM Capital Asian Opportunities Fund Limited 03R & 04R – Decision**

The review Panel has affirmed the decision of the initial Panel to make a declaration of unacceptable circumstances in PM Capital Asian Opportunities Fund Limited 01 and varied the initial Panel's orders (see Annexure A).

On 7 December 2021, the Panel received separate applications from each of Paul Moore (and his associated entities) and PM Capital Limited seeking a review of the initial Panel's decision in PM Capital Asian Opportunities Fund Limited 01 (see [TP 21/45](#)).

The review Panel decided to vary the initial Panel's orders to allow Roaring Lion Pty Ltd as trustee for the Roaring Lion Super Fund and Horizon Investments Australia Pty Ltd <Hawkins Trust> to accept WAM's takeover bid for PM Capital Asian Opportunities in relation to the Excess Shares that they hold on or before 18 February 2022.

As a result of the review Panel's decision, the President's interim orders (see [TP21/44](#)) cease to have effect.

The sitting Panel was Alex Cartel (sitting President), Rebecca Maslen-Stannage and John Sheahan QC. The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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**ANNEXURE A**  
**CORPORATIONS ACT**  
**SECTION 657EA AND 657D**  
**ORDERS**

**PM CAPITAL ASIAN OPPORTUNITIES FUND LIMITED 03R & 04R**

The Panel in *PM Capital Asian Opportunities Fund Limited 01* made a declaration of unacceptable circumstances and final orders on 3 December 2021.

**THE PANEL ORDERS**

The final orders made on 3 December 2021 are varied by:

- (a) Staying Orders 6, 7, 8 and 9 until 22 February 2022 and reversing any previous vesting of Excess Shares.
- (b) Amending orders 3 and 12 so that the varied orders read as follows:

*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)<sup>1</sup>, 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.

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<sup>1</sup> 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)

3. The Vendors and their associates may accept the WAM bid on or before 18 February 2022 in respect of Excess Shares, but 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 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.

<b>Appointed Seller</b>	an investment bank or stock broker
<b>Associated Parties</b>	PGF, PMC, Mr Paul Moore, Roaring Lion, Hawkins, Horizon Investments Australia Pty Ltd and Horizon Investments Australia Pty Ltd <George Hawkins Pty Ltd>

<b>ASIC</b>	Australian Securities and Investments Commission, as agent of the Commonwealth
<b>Consideration Securities</b>	securities received as consideration for Excess Shares
<b>Court</b>	has the meaning given in the Explanatory Memorandum
<b>Excess Shares</b>	207,800 PAF shares held by Roaring Lion and 1,617,358 PAF shares held by or for Hawkins, in each case, <i>less</i> the number of PAF shares disposed of in accordance with Order 3
<b>Explanatory Memorandum</b>	PAF's explanatory memorandum dated 4 November 2021
<b>Hawkins</b>	Horizon Investments Australia Pty Ltd <Hawkins Trust>
<b>IMA</b>	the Management Agreement made in 2013 between PGF and PMC
<b>on market</b>	in the ordinary course of trading on Australian Securities Exchange and not by crossing or special crossing
<b>PAF</b>	PM Capital Asian Opportunities Fund Limited
<b>PAF shares</b>	ordinary shares in the issued capital of PAF
<b>PGF</b>	PM Capital Global Opportunities Fund Limited
<b>PMC</b>	PM Capital Limited
<b>respective portions</b>	the respective percentage of Excess Shares held by each of Roaring Lion and Hawkins immediately prior to 22 February 2022
<b>Roaring Lion</b>	Roaring Lion Pty Ltd as trustee for the Roaring Lion Super Fund
<b>Scheme and Scheme Meeting</b>	have the meanings given in the Explanatory Memorandum
<b>the Vendors</b>	Roaring Lion and Hawkins
<b>WAM bid</b>	WAM's takeover bid for PAF made under its bidder's statement dated 14 October 2021

**Tania Mattei**  
**General Counsel**  
**with authority of Alex Cartel**  
**President of the sitting Panel**  
**Dated 12 January 2022**