



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Pact Group Holdings Ltd  
[2024] ATP 4**

**Catchwords:**

*Decline to conduct proceedings – off-market takeover – bidder’s statement – communication outside formal documents – disclosure – misleading statements – coercive conduct – delisting – undertaking – corrective disclosure – withdrawal rights*

*Corporations Act 2001 (Cth), sections 602(a), 670A*

*Australian Securities and Investments Commission Regulations 2001 (Cth), regulation 20*

*Takeovers Panel Guidance Note 5: Specific Remedies – Information Deficiencies, Takeovers Panel Guidance Note 18: Takeover Documents*

*ASIC Regulatory Guide 9: Takeover Bids, ASIC Regulatory Guide 25: Takeovers – False and misleading statements*

*ASX Guidance Note 33: Removal of Entities from the ASX Official List*

*Realm Resources Limited [2018] ATP 13, Sedgman Limited [2016] ATP 2, Australian Industrial REIT [2015] ATP 10, Alesco Corporation Limited 01 & 02 [2012] ATP 14, Foster's Group Limited [2011] ATP 1, Programmed Maintenance Services Limited 02 [2008] ATP 9, Consolidated Minerals Limited 01 [2007] ATP 20, Nexus Energy Limited [2006] ATP 17, Universal Resources Limited [2005] ATP 6*

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	NO	NO	NO	NO	YES

**INTRODUCTION**

1. The Panel, Elizabeth Hallett (sitting President), Bruce McLennan and Kate Towey, declined to conduct proceedings on an application by certain Pact shareholders in relation to an off-market takeover bid for Pact. The application concerned disclosures by the bidder regarding its intention to delist Pact which the applicants submitted were potentially misleading and coercive. The Panel was concerned about the disclosures and accepted undertakings from the bidder requiring further disclosure in a supplementary bidder’s statement and withdrawal rights for Pact shareholders who may have been affected. As a result of the undertakings, the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

2. In these reasons, the following definitions apply.

**Applicants** Manipur Nominees Pty. Ltd., Shriar Consolidated Pty Ltd, Stanningfield Proprietary Limited and Gandur Superannuation No. 3 Pty Ltd

**Bennamon** Bennamon Industries Pty Ltd, a wholly owned subsidiary of Kin Group

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

<b>Bid</b>	the off-market unconditional takeover offer by Bennamon for Pact to purchase all of the shares in Pact for \$0.68 per share
<b>Bidder's Statement</b>	the replacement bidder's statement dated 25 September 2023
<b>Eligible Shareholders</b>	has the meaning given in paragraph 57(c)
<b>Email</b>	has the meaning given in paragraph 6
<b>Further Disclosure</b>	has the meaning given in paragraph 57(b)
<b>Kin Group</b>	Kin Group Pty Ltd
<b>Ninth SBS</b>	the ninth supplementary bidder's statement dated 1 March 2024
<b>Pact</b>	Pact Group Holdings Ltd
<b>Proposed Further Communication</b>	has the meaning given in paragraph 20
<b>Target's Statement</b>	the target's statement dated 13 October 2023
<b>Tenth SBS</b>	the tenth supplementary bidder's statement dated 18 March 2024
<b>Withdrawal Offer</b>	has the meaning given in paragraph 57(c)

## FACTS

3. Pact is an ASX listed company (ASX code: PGH). As at 15 March 2024, the Applicants together held voting power in approximately 6.15% of Pact.
4. On 13 September 2023, Kin Group announced its intention to make the Bid. On 25 September 2023, Bennamon lodged its Bidder's Statement. As at that date, Kin Group held voting power of 50.004% in Pact. On 13 October 2023, Pact lodged its Target's Statement.
5. On 1 March 2024, Bennamon lodged the Ninth SBS which contained, among other things, the following statements:

*“Kin Group's intention to delist Pact:*

  - *Kin Group intends to delist Pact as soon as possible*
  - *Pact has obtained the necessary consent from its lenders to delist the Company*
  - *delisting is expected to be subject to a Pact shareholder vote by special resolution and*
  - *Kin Group's shareholding will allow it to pass a resolution to delist the Company subject to ASX guidance.*

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

*Minority shareholders should be aware that following delisting:*

- *Pact will not be subject to the disclosure, reporting and corporate governance requirements of the ASX Listing Rules and*
- *Pact's shares will no longer be traded on the ASX and will only be traded through off-market private transactions."*

6. At around 2:00 PM on 12 March 2024, Kin Group sent an email to certain Pact shareholders who had not accepted the Bid with the subject line "KIN GROUP PLANS TO DELIST PACT ..." (**Email**). The Email was not sent to any of the Applicants. The Email contained, among other things, the following statements:

*"Following the Offer conclusion, Kin Group intends to implement steps required to delist the company, subject to ASX guidance:*

- *Kin Group does not require a shareholding of 90% to approve a delisting of Pact Group, and would be eligible to vote its shares on a delisting resolution*
- *Kin Group's vote will be able to pass a shareholder resolution to delist. A delisting in such circumstances can occur irrespective of whether or not there are more than 150 minority shareholders*

*Following delisting, [Pact] will no longer be traded on the ASX and will only be traded through off-market, private transactions ... There is likely to be a very low ability to trade your shares, post delisting*

*... Kin Group suggests all shareholders consider the risks of continuing to hold Pact Group shares, as detailed in its [Ninth SBS], and encourages you to accept the Offer without delay".*

7. As at 15 March 2024, Kin Group had increased its voting power in Pact to 87.18% and the Bid was scheduled to close on 22 March 2024.

## APPLICATION

8. By application dated 15 March 2024, the Applicants sought a declaration of unacceptable circumstances. The Applicants submitted, among other things, that:

- "The Email contained a number of misleading statements (by way of both commission and omission) and/or was confusing"*
- the Email "uses the threat of an imminent delisting to coerce shareholders into disposing of their shares contrary to the purpose set out in section 602(a)<sup>1</sup> ..., ASIC Regulatory Guide 25 and ASX Guidance Note 33"*
- "Prior to the dispatch of the Email, the chance of the Bidder reaching the compulsory acquisition threshold or reducing the number of shareholders below 150 was negligible" and*

---

<sup>1</sup> Unless otherwise specified, all statutory references are to the *Corporations Act 2001 (Cth)* (as modified by ASIC) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

- (d) *“The misleading and/or confusing nature of the Email has ... or may coerce shareholders who would not have otherwise accepted the Bid to accept.”*
9. The Applicants submitted that the material in the Email as extracted above at paragraph 6 included misleading or confusing statements because:
- (a) *“Kin Group is unlikely to take steps to delist Pact ... until the expiration of a 12 month period following the close of the Bid”*
- (b) *“under the current ASX Policy, Kin Group would actually be ineligible to vote its shares on any delisting resolution put within the 12 month period following the close of the Bid” and*
- (c) *“under the current ASX Policy, Kin Group would be ineligible to vote its shares on any delisting resolution put within the 12 month period following the close of the Bid ... ultimately whether or not Kin Group is able to vote on a delisting is a matter for ASX.”*
10. The Applicants recognised the qualifying statement in the Email, namely, *“subject to ASX guidance”* but submitted that this *“does not in any way cure”* the misleading nature of the material in the Email or its coercive effect.
11. The Applicants also submitted that Kin Group’s reference to the Ninth SBS in the Email *“only compounds the misleading or confusing nature of the Email”* as the Applicants contended that the Ninth SBS includes a number of statements (as extracted above at paragraph 5) that were also misleading or confusing (and contended that this amounted to a breach of section 670A).
12. In terms of effect, the Applicants submitted that it is *“difficult to assess the precise impact the Email has had on the level of acceptances to the Bid (as this information is unavailable) ...”*. However, the Applicants submitted, among other things, that:
- (a) *“before the dispatch of the Email, both the level of acceptances and ASX sales had been declining ...”* and
- (b) based on analysis from Comsec data, *“in the three days following the Email (inclusive of the day of dispatch) trading on the ASX has averaged approximately 152,000 shares versus the three days preceding that period where the average was approximately 31,000 – a fivefold increase.”*

#### **Interim orders sought**

13. The Applicants sought interim orders to the effect that, until further order of the Panel, Bennamon be prevented from:
- (a) acquiring any additional interests in Pact shares on-market and
- (b) processing acceptances into the Bid.

#### **Final orders sought**

14. The Applicants sought final orders to the effect that:
- (a) Bennamon be required to offer withdrawal rights to any Pact shareholder who *“accepted into the Bid in the period commencing 12 March 2024 and expiring at the*

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

*time the unacceptable circumstances are rectified in a manner acceptable to the Panel”*  
and

- (b) all Pact shares acquired by Bennamon on-market during this period be vested in ASIC for resale.

#### **Preliminary submissions**

15. In preliminary submissions, Kin Group<sup>2</sup> submitted that the Applicants have *“not been misled and there is no evidence to suggest any Pact shareholders have been misled.”* In support, Kin Group submitted, among other things, that:
  - (a) *“The Bidder's Statement sets out each of the matters relating to the bidder's intentions as required by section 636(1)(c) ... section 10.4(a) of the Bidder's Statement clearly sets out the key conditions which Kin Group must generally satisfy to achieve the delisting of Pact from the ASX, both in the context of a successful takeover bid and where delisting is sought later than 12 months after the end of the offer period.”*
  - (b) Similar disclosure was provided separately by Pact in section 5.6 of the Target's Statement and
  - (c) Pact shareholders *“have been directed to such detailed disclosure in supplementary bidder's statements (including on 3 January 2024) and supplementary target's statements ...”*
16. In relation to effect, Kin Group submitted, among other things, that:
  - (a) *“Since the offer opened on 25 September 2023, over 3,800 shareholders have accepted the bid”*
  - (b) *“Kin Group's share registry has advised Kin Group that between 12 March 2024 ... and 14 March 2024, 52 shareholders owning, in aggregate, 0.02% of Pact have accepted the offer ...”* and
  - (c) *“There is no evidence to suggest any shareholder accepting the offer in the above period did so on the basis of the Email ...”*
17. Kin Group also informed the Panel that it had lodged its Tenth SBS on 18 March 2024. Kin Group submitted that the Tenth SBS *“largely restates the detailed disclosure on delisting in the Bidder's Statement ...”*

#### **Additional submissions**

18. On 19 March 2024, the Applicants made additional submissions. The Applicants submitted that, following the date of its application, they had become aware of additional *“unregulated”* communications (in the form of emails and text messages) by Kin Group to Pact shareholders outside of the formal disclosure documents. They also submitted that the Tenth SBS did not alleviate the concerns raised in their application and that a further short email should be sent to all recipients of the Email to:

---

<sup>2</sup> In the proceedings, Kin Group and Bennamon provided joint submissions. All references to submissions by Kin Group should be read as submissions of Kin Group and Bennamon

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

- (a) actively correct the impression of imminent delisting that the Applicants submit was conveyed by the Email and
  - (b) clarify the circumstances in which Pact may be delisted in the event that Kin Group does not reach the 90% level.
19. On 21 March 2024, in response to the Applicant's out of process submissions, Kin Group submitted that it is *"well recognised that bidders may communicate with target shareholders during a takeover bid through oral and written communications. Indeed, such communications can assist shareholders by ensuring that they do not miss an opportunity to participate in the benefits of a bid."* Kin Group also submitted that the communications referred to by the Applicants, as well as the Email, direct Pact shareholders to the website for the Bid and that shareholders are unable to access or complete the online acceptance form until they have downloaded, and acknowledged that they have read, the Bidder's Statement.
20. Further, in response to the Applicants request that a short email be sent to all recipients of the Email, Kin Group stated that, if it would resolve the matter, it is open to considering dispatch of a further short form email (**Proposed Further Communication**), which attaches the Tenth SBS, to all Pact shareholders who received the Email, stating that:
- "We refer to prior communications on Kin's intention to delist Pact and the conditions for delisting. We encourage you to read the attached tenth supplementary bidder's statement in full which details Kin's intention and the conditions for delisting. The attached tenth supplementary bidder's statement supersedes prior communications on delisting."*
21. We agreed to receive the out of process submissions given that the Applicant's additional submissions related to new information regarding the issues at hand.

## DISCUSSION

### Interim orders request

22. The substantive Acting President considered interim orders on an urgent basis. To assist, the Executive asked Kin Group to confirm whether Bennamon or any of its associates had acquired any shares in Pact on-market since 1 March 2024. Kin Group said: *"the actual number acquired since the 1 March 2024 supplementary bidders statement is about 74,000."*
23. ASIC also made submissions cautioning that the *"proposed interim orders would likely prejudice express statutory rights held by the bidder in s611 item 2, as well as intervene in the contractual arrangements between the bidder and accepting shareholders, which are generally safeguarded by s607"* and that *"a person could seek interim orders, as a tactic, preventing a bidder from making acquisitions in the period it takes for the Panel to determine whether a bidder has made a misleading statement or omission ..."*
24. On considering Kin Group's response and ASIC's submissions on interim orders, the Acting President declined to make an interim order preventing Kin Group from acquiring any further Pact shares on-market but did make interim orders (**Annexure**

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

A) to the effect that Bennamon must not take any steps, and must ensure that no steps are taken by any person, to process any acceptances received from Pact shareholders in relation to the Bid. In order to avoid any unfair prejudice to a Pact shareholder who wished to have their acceptance processed, the interim orders also provided that upon request by a Pact shareholder to process their acceptance, the Panel may waive the restriction on processing in respect of that shareholder's acceptance.<sup>3</sup>

25. The Acting President considered that the interim orders struck an appropriate balance, since they paused the processing of acceptances (which would simplify any withdrawal rights if later ordered) without entirely preventing the receipt of further acceptances by the bidder.

#### Communication in and outside formal takeover documents

26. The Panel's Guidance Note 18: Takeover Documents (**GN18**) outlines the Panel's policy on how it expects bidders and targets to communicate with shareholders during a takeover bid in formal takeover documents such as, in the present case, the Bidder's Statement, the Target's Statement, the Ninth SBS and the Tenth SBS.
27. GN18 also outlines the Panel's policy in relation to communications made outside of these formal takeover documents, such as the Email in the present case. Paragraphs 41 and 42 of GN18 state (footnotes omitted):

*"41. The Panel takes the view that the same standard of care and the same standard of disclosure should be applied to any takeover document sent to offeree shareholders as is applied to the formal bidder's statement or target's statement. Accurate, reliable information and properly reasoned views will best assist offeree shareholders and promote an efficient, competitive and informed market.*

*42. From the time it is apparent to a bidder that it is likely to make a takeover (or becomes apparent to a target that a takeover is imminent), a heightened state of alert regarding all the bidder's (target's) public announcements that might influence offeree shareholders should exist."*

28. Similarly, the Panel's Guidance Note 5: Specific Remedies (**GN5**) states at paragraph 17: "... The Panel seeks to ensure that disclosure standards similar to those for a disclosure document or PDS under the Corporations Act are applied to" documents such as, relevant to the present case, bidder's statements, target's statements and letters to shareholders relating to a bid. The Panel has endorsed these principles in a number of cases.<sup>4</sup>
29. In its submissions, ASIC referred to ASIC Regulatory Guide 25: Takeovers – False and Misleading Statements (**RG25**) which states at 63-65 that "... information communicated by ad hoc or piecemeal correspondence risks misleading or confusing

---

<sup>3</sup> No such requests were received from Pact shareholders over the time the interim orders were active

<sup>4</sup> See *Universal Resources Limited* [2005] ATP 6 at [16], *Consolidated Minerals Limited 01* [2007] ATP 20 at [75], *Programmed Maintenance Services Limited 02* [2008] ATP 9 at [20], *Foster's Group Limited* [2011] ATP 15 at [24]-[25], *Alesco Corporation Limited 01 and 02* [2012] ATP 14 at [31]-[32] and *Australian Industrial REIT* [2015] ATP 10 at [23]

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

shareholders” and at 67-70, cautions against “statements which are confusing, inadequately explained or where one or more of the reasonably possible meanings is misleading.” In accord with RG25, ASIC submitted that its approach “to communications with shareholders outside of formal takeover documents has generally been to require that such communications uphold the same Chapter 6 principles required of formal takeover documents.”

30. We consider that failure to adhere to the above guidance may, in some cases, give rise to unacceptable circumstances, especially where the relevant communications have the potential to coerce shareholders into accepting a bid as the Applicants in the present case allege.
31. The Panel has considered, and we agree, that statements regarding a bidder’s intention to delist are material to target shareholders.<sup>5</sup> We also consider that statements in relation to a bidder intending to delist the target may, depending on the facts, also have the capacity to coerce target shareholders.<sup>6</sup>

#### **ASX guidance on delisting**

32. ASX Guidance Note 33: Removal of Entities from the ASX Official List (GN33) provides at section 2.7 that a relevant delisting may occur:
  - (a) via a special majority shareholder vote to approve it, in which case, “all shareholders will be permitted to vote”, or
  - (b) “where the entity has been the subject of a takeover bid in the preceding 12 months and in ASX’s opinion, the bidder and its associates have attained effective control of the entity” – where the conditions in section 2.10 of GN33:
    - (i) are not satisfied, “ASX will require the removal to be approved by the entity’s security holders and will also impose a voting exclusion on the bidder and its associates” or
    - (ii) are satisfied, ASX may agree to the request for delisting without the approval of shareholders, but will usually require the following conditions to be satisfied:
      - (A) the entity send a communication to all shareholders other than the bidder advising them of the nominated time and date of the delisting and that any intended on-market sales must occur by that time and
      - (B) the delisting not take place any earlier than 3 months after the communication has been sent to shareholders, so they have at least this period to sell on-market.
33. The conditions in section 2.10 of GN33 apply where the entity requesting delisting has been the subject of a successful takeover bid and require that:<sup>7</sup>

---

<sup>5</sup> See *Sedgman Limited* [2016] ATP 2 at [47]

<sup>6</sup> See *Realm Resources Limited* [2018] ATP 13 at [44]-[52]. The Panel in *Realm Resources* said at [50]: “Whether a takeover bid and related conduct by the bidder are coercive will depend on the specific facts”

<sup>7</sup> References to the bidder in this paragraph include a reference to its related bodies corporate



## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

- (a) the bidder owns or controls at least 75% of the entity's ordinary securities but have not met the conditions to proceed to compulsory acquisition
  - (b) excluding the bidder, the number of holders of ordinary securities having holdings with a value of at least \$500 is fewer than 150
  - (c) the bidder foreshadowed in its bidder's statement that it intended, if it secured control of the entity, to cause the entity to apply for delisting
  - (d) the bid remained open for at least two weeks following the bidder having attained the 75% level and
  - (e) the entity has applied for delisting no later than one month after the close of the bid.
34. ASIC pointed out in its submissions: "GN 33 at section 2.7 explains that the purpose of the ASX imposing such voting exclusions is to 'prevent a bidder from unfairly using the threat of an imminent delisting to coerce security holders into accepting a takeover bid.'"
35. It is clear from the above discussion, in the context of the present facts, including the assertions made in the Bidder's Statement, that GN33 is highly relevant to the circumstances of the Bid. In the present circumstances, we consider it unlikely that Kin Group will be able to affect an imminent delisting of Pact after the Bid concludes, given the conditions in section 2.10 of GN33.
36. Therefore, a bidder who makes it clear that they intend to delist the company, runs the risk of misleading and potentially being found to have coerced shareholders if its communication to shareholders fails to accurately convey the guidance on delisting in GN33 that apply to the circumstances of the bid.
37. We agree with ASIC's submission that this risk may be heightened in the context of electronic communications outside of formal takeover documents. ASIC submitted:<sup>8</sup>
- "... an email or text message may attract the risk of unbalanced or incomplete disclosure. A party that elects to issue such communications, rather than through an appropriately detailed supplementary statement, does so undertaking the risk that information deficiencies may arise ... ASIC considers that parties should be considerably more careful in assessing the content of such communications ... bidders and targets can avoid the inherent risks of such statements by lodging and dispatching supplementary statements ..."*
38. As we decided to accept undertakings from Bennamon (see paragraph 57 of these reasons), we did not make any findings as to whether or not the Email or the Ninth SBS included material that was misleading or coercive as submitted by the Applicants.
39. However, on reading the Ninth SBS, and in particular, the Email, we were concerned that certain aspects of GN33 as they apply to the Bid may not have been accurately reflected in those communications, and as such, we had concerns about the overall

---

<sup>8</sup> See RG25 at 63-65 as noted at paragraph 29 of these reasons

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

impression conveyed to Pact shareholders about when and how Kin Group may arrange to delist Pact following the takeover.

40. While we may have accepted that section 10.4(a) of the Bidder's Statement and section 5.6 of the Target's Statement accurately reflected the relevant guidance on delisting, we note that the lodging of these documents pre-date the Ninth SBS and the Email by several months.<sup>9</sup> While we may have considered the Tenth SBS to provide appropriate information about the applicable guidance on delisting, it was not lodged until after the Panel received the application.
41. As noted above at paragraph 16, Kin Group had submitted that only a small number of Pact shareholders had accepted the Bid in the few days following the dispatch of the Email. We note the similarities between Kin Group's submission and the bidder's submission in *Realm Resources Limited* [2018] ATP 13 at [51] that it "*had obtained only a small number of acceptances (approximately 1%) in the almost three month period the Offer had been open. Therefore [the bidder] submitted if Realm shareholders were feeling coerced into accepting the Offer, the Offer would have been substantially more successful than it had been.*"
42. However, the Panel in *Realm Resources* said at [48]: "*We consider that the question of whether the circumstances surrounding the Offer are coercive depends primarily on the effect of those circumstances ...*" The Panel in *Realm Resources* also said at [52]: "*ASIC submitted that the Panel should consider the likely effect of the coercive actions in this case, not only the actual effect. We agree, noting that shareholders usually wait until the closing phase of a bid to make a decision.*"
43. We concur with the Panel in *Realm Resources* that we should consider the likely effect of the circumstances. We also reflected on *Realm Resources* at [52] when considering that the Ninth SBS and the Email were dispatched late in the period of the Bid, which was, at that stage, scheduled to conclude on 22 March 2024, and when Kin Group's voting power in Pact was close to 90%.
44. We had concerns regarding the disclosure in the Ninth SBS and the Email. We considered, however, that any potentially misleading or coercive effects of the Ninth SBS or the Email could be rectified with further corrective disclosure and appropriate withdrawal rights provided through acceptable undertakings.
45. In order for Bennamon to provide withdrawal rights to Pact shareholders who had accepted the Bid, relief would be required from ASIC in the form of an instrument made under section 655A(1) that provides an exemption to section 654A(1), among other things. In submissions, ASIC confirmed that it would be willing to consider a relevant application for relief. Accordingly, we sought submissions on whether further corrective disclosure and the offer of relevant withdrawal rights could be achieved through acceptable undertakings.

---

<sup>9</sup> Though we note, as Pact submitted, the independent board committee referred shareholders to the target's statement on several subsequent occasions including on 6 February 2024

## Takeovers Panel

Reasons – Pact Group Holdings Ltd  
[2024] ATP 4

### Undertakings

46. In response to Kin Group's offer to provide the Proposed Further Communication and in the interests of resolving the issues in an efficient manner:
- (a) we asked Kin Group if it would be prepared to give undertakings to the effect that:
    - (i) Kin Group would provide the Proposed Further Communication to all Pact shareholders (not only those shareholders who received the Email) and
    - (ii) along with the Proposed Further Communication, Kin Group would provide an offer of withdrawal rights for two weeks to all Pact shareholders who had accepted the Bid over the period from 1 March 2024 until the date that Kin Group sends the Proposed Further Communication (noting the requirement for ASIC to provide relief to do so), and
  - (b) we asked all other parties to what extent the issues would be resolved if Kin Group was prepared to provide such undertakings.
47. In response, Kin Group submitted, among other things, that:
- (a) it does not accept that the Email or the Ninth SBS was misleading or unclear
  - (b) Pact shareholders for whom Kin Group has email addresses were emailed the Tenth SBS, and *"by 21 March 2024, all remaining Pact shareholders were sent a hard copy of the [Tenth SBS] which again details the conditions for delisting" and*
  - (c) *"Since the offer was opened, no Pact shareholder who has accepted the offer has contacted Kin Group or any of its representatives to withdraw their acceptance of the offer due to misunderstanding any disclosures."*
48. As to this last point, we appreciate the Applicants' submission that since there has been no corrective disclosure, Pact shareholders may not be aware that they have been misled, which may also be an explanation as to why no Pact shareholder had requested to withdraw their acceptance. Relevantly, ASIC submitted: *"a number of persons identifying themselves as shareholders of Pact Group in online forums have raised criticisms or concerns that the Email was misleading or coercive."*
49. In any case, in the interests of resolving the matter, Kin Group did proffer draft undertakings to the Panel in a form similar to that requested by the Panel, save that Kin Group proposed to send the Proposed Further Communication with the Tenth SBS only to Pact shareholders who had accepted the Bid in the period from 1 March 2024 to 21 March 2024 (and not to all Pact shareholders). This was on the basis that the Tenth SBS had already been sent to shareholders and that in any case, the only shareholders for whom the Proposed Further Communication would be relevant are those who would be eligible for withdrawal rights. Pact agreed with this aspect of Kin Group's submission.
50. The Applicants submitted that, in principle, undertakings of the kind requested by the Panel would resolve the issues in the present matter. However, as the Applicants submitted that the Tenth SBS was not sufficient to correct the impressions conveyed

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

by the Email and the Ninth SBS, they submitted that any further disclosure should be sent to all Pact shareholders and the relevant period for withdrawal rights should extend from 1 March 2024 until the time of the sending of the further disclosure. The Applicants reasoned that Pact shareholders who received the Email and the Ninth SBS might still act on the basis of the Email after 21 March 2024.

51. In terms of the content of the Proposed Further Communication, the Applicants submitted that it should be supplemented with:
  - (a) *“an acknowledgement that the [Proposed] Further Communication is intended to correct or at least clarify the [Ninth SBS] or the Email”* and
  - (b) *“a brief summary of the circumstances in which Pact Group may be delisted and the timing of those events, in particular to properly correct what was conveyed by the Email”* and Ninth SBS. As an example, the Applicants referred to the form of words proffered in their preliminary submissions of 19 March 2024 or the form of words used in section 5.6 of the Target’s Statement.
52. Pact agreed that disclosure of the kind found in section 5.6 of the Target’s Statement should be included in the Proposed Further Communication. We agree with the Applicants and Pact on this point.
53. ASIC submitted that, on balance *“Kin Group would be acting appropriately if it agreed to suitable undertakings to put an end to the proceedings.”* However, ASIC also suggested that the Panel may consider whether such undertakings should include:
  - (a) An undertaking that Kin Group will *“dispatch a supplementary bidder’s statement to all shareholders explaining the purpose and effect of the undertakings, including the process required to exercise any withdrawal rights”* and
  - (b) an undertaking that *“places restrictions on Kin Group’s use of communications to Pact ... shareholders relating to the bid, but outside of Chapter 6 statements, without the prior consent of the Panel.”*
54. We did not think it was necessary to request an undertaking that would restrict Kin Group from communicating with Pact shareholders outside of formal takeover documents.
55. Being aware that our request for undertakings required Kin Group to apply for ASIC relief to permit Bennamon to provide withdrawal rights and that ASIC would have its own considerations in relation to the request for relief, we were open as to the form of communication provided it was in writing and sent to all Pact shareholders. Kin Group agreed to provide the further disclosure in the form of a supplementary bidder’s statement.
56. This approach is in accord with ASIC Regulatory Guide 9 (RG9) which states at paragraph 350 that *“... if material developments occur in the course of a bid, the appropriate method for disseminating that information is through a formal supplementary statement. This promotes the orderly flow of information and underlines the status of the information as an official release issued in a regulated environment.”*

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

57. On 2 April 2024, the Panel accepted undertakings from Kin Group (**Annexure B**) to the effect that:
- (a) within two business days of the undertakings, Bennamon will lodge an application with ASIC for relief in relation to withdrawal rights
  - (b) within three business days of ASIC granting such relief, Bennamon will send a supplementary bidder's statement to all Pact shareholders that contains disclosure in relation to Bennamon's intention to delist Pact and conditions for delisting in a form that the Panel does not object to (**Further Disclosure**) and
  - (c) Bennamon will send a letter or email offering withdrawal rights (in a form that the Panel does not object to) (**Withdrawal Offer**) to Pact shareholders who accepted the Bid within the period from 1 March 2024 to the date that is two business days following dispatch of the Further Disclosure (**Eligible Shareholders**).
58. We requested that the relevant period for the Withdrawal Offer be extended by an additional two business days following dispatch of the Further Disclosure to account for the inherent delay in the postal system, as we knew that some Pact shareholders would be sent the correspondence by post.
59. On 4 April 2024, ASIC made ASIC Instrument 24-0249 that granted Kin Group relief to offer Pact shareholders the right to withdraw their acceptances of the Bid. In the instrument, ASIC required that the Further Disclosure include an explanation of the purpose and effect of the relief.
60. Accounting for the above, on 5 April 2024, Kin Group provided drafts of Further Disclosure in the form of a supplementary bidder's statement and a Withdrawal Offer in the form of a letter, both of which the Panel did not object to. Among other things, the Withdrawal Offer included:
- (a) an accompanying election form to assist shareholders to exercise their withdrawal rights
  - (b) the option for shareholders to pay by electronic funds transfer (EFT) as well as by cheque (Kin Group did this by providing the option for shareholders to call the offer information line to pay by EFT) and
  - (c) the option for shareholders to respond via email as well as post.

## DECISION

61. The Panel considers that the Further Disclosure, as drafted by Bennamon pursuant to its undertakings, sufficiently corrects the effect, or likely effect, of any potential misleading or coercive statements made in the Ninth SBS or the Email. The Panel considers that the Withdrawal Offer (for which ASIC had granted relief) provides sufficient remedy for any Pact shareholder who may have been impacted by the Ninth SBS or the Email, since the Withdrawal Offer is made to any Pact Shareholder who accepted the Bid over the period from 1 March 2024 to two business days after the Further Disclosure is sent.

## Takeovers Panel

### Reasons – Pact Group Holdings Ltd [2024] ATP 4

62. For the reasons given above, we do not consider that there is any reasonable prospect that we would make a declaration of unacceptable circumstances. Accordingly, we decided not to conduct proceedings in relation to the application under regulation 20 of the *Australian Securities and Investments Commission Regulations 2001* (Cth).

#### Orders

63. Given that we have decided not to conduct proceedings, we do not (and do not need to) consider whether to make any interim or final orders.

**Elizabeth Hallett**

**President of the sitting Panel**

**Decision dated 5 April 2024**

**Reasons given to parties 6 May 2024**

**Reasons published 9 May 2024**

## Takeovers Panel

Reasons – Pact Group Holdings Ltd  
[2024] ATP 4

### Advisers

Party	Advisers
Applicants	Mills Oakley
Kin Group and Bennamon	Ashurst Australia
Pact	Herbert Smith Freehills



**Australian Government**

**Takeovers Panel**

**Annexure A**

**CORPORATIONS ACT  
SECTION 657E  
INTERIM ORDERS**

**PACT GROUP HOLDINGS LIMITED**

Manipur Nominees Pty. Ltd., Shriar Consolidated Pty Ltd, Stanningfield Proprietary Limited and Gandur Superannuation No. 3 Pty Ltd made an application to the Panel dated 15 March 2024 in relation to the affairs of Pact Group.

The Acting President ORDERS:

1. Subject to Order 2, Bennamon must not take any steps, and must ensure that no steps are taken by any person, to process any acceptances received from Pact Group shareholders in relation to the Bennamon Offer.
2. Upon request by a Pact Group shareholder to process their acceptance, the Acting President or, once appointed, the Panel, may waive Order 1 in respect of that shareholder's acceptance.
3. In these interim orders the following terms have their corresponding meaning:

<b>Bennamon</b>	Bennamon Industries Pty Ltd
<b>Bennamon Offer</b>	Bennamon's off-market takeover bid for Pact Group set out in its bidder's statement dated 25 September 2023
<b>Pact Group</b>	Pact Group Holdings Limited

4. These interim orders have effect until the earliest of:
  - (i) further order of the Acting President or, once appointed, the Panel
  - (ii) the determination of the proceedings and
  - (iii) 2 months from the date of these interim orders.

**Tania Mattei**  
**General Counsel**  
**with authority of Richard Hunt**  
**Acting President**  
**Dated 18 March 2024**





**Australian Government**

**Takeovers Panel**

**Annexure B**

**AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A  
UNDERTAKING**

Pursuant to section 201A of the ASIC Act, Bennamon undertakes that:

1. it will lodge the Relief Application as soon as practicable and in any event no later than 2 business days following the date of this undertaking; and

subject to (and within 3 business days following) ASIC granting an exemption from, or modification of, Chapter 6 of the Corporations Act pursuant to the Relief Application by Bennamon, Bennamon will:

2. send a supplementary bidder's statement (by email or mail) to all Pact shareholders that contains disclosure in relation to Bennamon's intention to delist Pact and conditions for delisting in a form that the Takeovers Panel does not object to (**Further Communication**); and
3. send a letter or email to all Eligible Shareholders in a form which the Takeovers Panel does not object to that informs Eligible Shareholders of their right to withdraw their acceptance by:
  - (a) giving notice in writing of their withdrawal to the offer share registry; and
  - (b) if they have been paid for their acceptance, by returning the cash consideration, before 5 pm on the date which is two weeks after the date of the letter or email.

In these undertakings the following terms have the corresponding meaning:

**ASIC** means the Australian Securities & Investments Commission.

**ASIC Act** means the *Australian Securities & Investments Commission Act 2001* (Cth).

**Bennamon** means Bennamon Industries Pty Ltd (ACN 666 620 677).

**Eligible Shareholders** means Pact shareholders who accepted the Offer on any day during the period commencing on 1 March 2024 and ending on the date on which the Further Communication has been dispatched to all such shareholders.

**Offer** means Bennamon's off-market takeover offer for the bid securities contained in the replacement bidder's statement lodged by Bennamon with ASIC on 25 September 2023.

**Pact** means Pact Group Holdings Limited (ACN 145 989 644).

**Panel Application** means the application to the Takeovers Panel made by Manipur Nominees Pty. Ltd. (ACN 005 731 975), Shriar Consolidated Pty Ltd (ACN 167 329 179), Stanningfield Proprietary Limited (ACN 006 967 433) and Gandur Superannuation No. 3 Pty Ltd (ACN 601 230 184) in relation to the affairs of Pact dated 15 March 2024.

**Relief Application** means the application made by Bennamon to ASIC under section 655A of the Corporations Act, pursuant to which Bennamon seeks an exemption from compliance with certain provisions of Chapter 6 of the Corporations Act in respect of the withdrawal rights.

---

**Signed by Nick Perkins, Director  
Bennamon Industries Pty Ltd  
Dated 2 April 2024**