



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/60

Thursday, 24 October 2024

Montu Group Pty Ltd - Declaration of Unacceptable Circumstances and Undertakings

The Panel has made a declaration of unacceptable circumstances (Annexure A) and accepted undertakings in lieu of orders (Annexure B) in relation to an application dated 6 September 2024 by Wayne Irvine and Shawki Shahin in relation to the affairs of Montu Group Pty Ltd (**Montu**) (see [TP24/050](#)).

Background

Montu is an Australian registered limited proprietary company with approximately 2,350 crowd-sourced funding (**CSF**) shareholders. Approximately 83.7% of Montu's shares are held by MG Invest Limited (**MG Invest**). No other shareholder holds more than 1%.

On 2 August 2024, Montu convened a general meeting (**Meeting**) to consider a special resolution to approve a selective share buy-back of ordinary shares of shareholders, other than MG Invest, at a price of \$1.15 per share (**Buy-back**).

The Explanatory Statement for the Meeting (**Explanatory Statement**) indicated that MG Invest's voting power in Montu would increase to 93.2% if all Buy-back offers were accepted, allowing MG Invest to seek to compulsorily acquire the remaining shares. The shareholder approval requirements for a selective Buy-back had the effect that MG Invest could approve the Buy-back, regardless of the votes of other shareholders. The only financial information provided to shareholders in the Explanatory Statement was a link to Montu's most recent audited financial statements for the year ending 30 June 2023, and an unaudited consolidated balance sheet and pro forma balance sheet as at 31 May 2024. No reference was made to the potential future growth of Montu and that a risk of participating in the Buy-back was that participating shareholders would not benefit from any increase in the value of Montu shares in the future.

In response to concerns raised by CSF shareholders, Montu agreed to provide supplementary disclosure (**Additional Disclosure**) and adjourn the Meeting. The Additional Disclosure disclosed (among other things) that:

- Montu had established an "independent board committee" to determine the terms of the Buy-back (**Committee**), although the composition of the Committee was not specified

- the Committee had engaged a professional services firm (**Independent Valuer**) to undertake an independent valuation of Montu shares that was used to determine the Buy-back price, a summary of which (**Independent Valuer Summary**) was included in the Additional Disclosure
- Montu would scale back accepted offers to ensure that in no circumstances would MG Invest hold more than 89.9% of Montu shares (being below the 90% compulsory acquisition threshold).
- Noting that the Additional Disclosure constituted new material information, Montu provided shareholders who had already accepted the Buy-back the ability to withdraw their acceptance by 9 September 2024.

However, the Additional Disclosure did not indicate that:

- Buy-back acceptances received by Montu would potentially enable MG Invest to increase to 90% after at least six months¹ and compulsorily acquire all outstanding Montu shares
- no discount for lack of control or marketability would be applied in determining fair value by the expert's report required under the compulsory acquisition provisions if MG Invest acquires over 90% (unlike the Independent Valuer Summary).

Declaration

The Panel considered that (among other things):

- Montu did not provide enough information to allow shareholders to properly assess the merits of accepting the Buy-back offers or to demonstrate the Buy-back and price offered sought to ensure fairness between Montu's shareholders.
- Montu should have made clear to shareholders (i) the steps taken to ensure that the decision to undertake the Buy-back had been made by a board committee in a position to consider properly the effects on all shareholders and (ii) the composition of the Committee.
- The form of the Buy-back and associated shareholder approval requirements had the effect that MG Invest, the only shareholder benefitting from the Buy-back's effect on control, could approve the Buy-back regardless of the votes of other shareholders.

The Panel considered that the circumstances were unacceptable having regard to (among other things) the effect they are having on the control, or potential control, of Montu.

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).

¹ At which point its 'creep' capacity under Item 9 of section 611 would be restored

Undertakings

The Panel has accepted undertakings from Montu and MG Invest in lieu of orders. The undertakings (in summary):

- restrict MG Invest from initiating compulsory acquisition of Montu shares under Part 6A.2 for a 12-month period
- require Montu to:
 - provide the Independent Valuer with additional financial information concerning Montu and instruct the Independent Valuer to provide an updated independent valuation report to Montu and a summary report for Montu shareholders that takes into account the additional information
 - prepare and issue a new explanatory statement that includes additional disclosure (including the summary report from the Independent Valuer, certain financial statements, an outlook statement and a balanced risk assessment) to allow Montu shareholders to make an informed decision in relation to the Buy-back
 - postpone or further adjourn the Meeting for 3 weeks following provision of the new explanatory statement
 - provide a 2 week withdrawal right to shareholders who have accepted the Buy-back offers.

The Panel considers that the undertakings sufficiently address the circumstances and that it is not presently necessary to make any orders, although reserves the right to do so (including as to costs) pending the satisfaction of the undertakings.

The sitting Panel is Bruce Cowley, Katrina Efthim and Diana Nicholson (sitting President).

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**

MONTU GROUP PTY LTD

CIRCUMSTANCES

1. Montu Group Pty Ltd ACN 634 198 360 (**Montu**) is an Australian registered limited proprietary company with more than 50 shareholders, including approximately 2,350 CSF shareholders.
2. Montu has 119,466,601 ordinary shares on issue, of which 100,000,000 (83.7%) are held by MG Invest Limited (**MG Invest**), a body corporate incorporated in Hong Kong. The remaining shares (approximately 16.3%) are held by CSF shareholders. No shareholder apart from MG Invest holds more than 1%.
3. Montu has two directors, Christopher Strauch, the founder and Managing Director nominated by MG Invest, and Rhys Staley.
4. On 2 August 2024, Montu convened a general meeting (**Meeting**) to consider a special resolution pursuant to section 257D(1)¹ to approve a selective share buy-back of up to 12,173,913 ordinary shares from all shareholders, other than MG Invest, at a price of \$1.15 per share (**Buy-back**). The notice of meeting stated (in bold type) that “as [MG Invest] is the only shareholder of the Company that is not able to participate in the Buy Back, only [MG Invest] will be eligible to vote as to whether to approve the Buy Back”.
5. The Explanatory Statement for the Meeting (**Explanatory Statement**) indicated that MG Invest’s voting power in Montu would increase to 93.2% if all Buy-back offers were accepted, allowing MG Invest to seek to compulsorily acquire the remaining shares. The only financial information provided to shareholders in the Explanatory Statement was a link to Montu’s most recent audited financial statements for the year ending 30 June 2023, and an unaudited consolidated balance sheet and pro forma balance sheet as at 31 May 2024. No reference was made to the potential future growth of Montu and that a risk of

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

participating in the Buy-back was that the value of Montu shares may increase in future.

6. In response to concerns raised by two CSF shareholders, Montu agreed to provide supplemental information to shareholders and adjourn the Meeting from 26 August 2024 until 17 September 2024.
7. On 29 August 2024 Montu provided supplementary disclosure (**Additional Disclosure**) on how the Buy-back price of \$1.15 was determined. Information disclosed included:
 - (a) Montu had established an “independent board committee” to determine the terms of the Buy-back (**Committee**). The composition of the Committee was not specified in the Additional Disclosure and its members were not identified.²
 - (b) The Committee engaged professional services firm RSM Australia Pty Ltd (**RSM**) to undertake an independent valuation of Montu shares that was used to determine the Buy-back price. A summary of RSM’s independent valuation report (**RSM Summary**) was provided in the Additional Disclosure.
 - (c) Information provided to RSM included Montu’s unaudited accounts for the 11 months to 31 May 2024, and a statement that Montu expects that its full year results will be materially consistent with the annualized revenue and EBITDA set out in the summary valuation. The RSM Summary indicated that the valuation was also based on unspecified information provided by Montu’s management.
 - (d) Montu would scale back accepted offers to ensure that in no circumstances would MG Invest hold more than 89.9% of Montu shares, and accordingly MG Invest would no longer have the right to compulsorily acquire the remaining shares.
 - (e) Clarification that as a result of limiting the interests of MG Invest, the maximum Buy-back consideration will reduce from \$14 million to approximately \$9.5 million, together with a copy of an unaudited consolidated balance sheet and consolidated pro forma balance sheet as at 30 June 2024.
 - (f) Clarification that the last date for shareholders to accept the Buy-back was 9 September 2024 and accordingly shareholders that had not accepted by then would not be eligible to participate in the Buy-back and would therefore be eligible to vote on the resolution to approve the Buy-back. In

² The Committee’s members were Montu Director Rhys Staley, Montu’s Vice President, Finance, and Montu’s General Counsel.

addition, eligible shareholders who had accepted the Buy-back would only be able to vote AGAINST the resolution.

- (g) The Additional Disclosure did not:
 - (i) include the audited financial statements for the financial year ended 30 June 2024, as these had not been finalised or
 - (ii) disclose that, in contrast to the RSM Summary, no discount for lack of control or marketability would be applied in determining fair value by the expert's report required under sections 664C, 667A and 667C if MG Invest acquires over 90% (through a combination of acceptances of the Buy-back offers and acquisitions in reliance on item 9 of section 611) and proceeds to compulsory acquisition.
- (h) The Additional Disclosure constituted new material information and accordingly shareholders who had already accepted the Buy-back could withdraw their acceptance by no later than 5pm on 9 September 2024.

8. The RSM Summary:

- (a) was prepared solely for the Committee to enable it to provide the RSM Summary to Montu shareholders "on a non-reliance basis"
- (b) stated that RSM had not made any recommendations to the Committee of the price at which the Buy-back was set and RSM was not making any recommendations as to whether shareholders should accept the Buy-back
- (c) indicated that RSM was not provided with medium to long term financial forecasts for the business
- (d) indicated that RSM had applied "the appropriate minority interest discounts" in assessing the market value per share on a minority interest basis to be \$1.15 to \$1.25, but did not include details of:
 - (i) the rationale used to determine the EBITDA multiple that was applied or
 - (ii) how the discounts for lack of control and marketability were determined and
- (e) did not clearly indicate what information had been provided by management of Montu to RMS.

EFFECT

9. The Buy-back acceptances received by Montu would increase MG Invest's voting power to 88.8% and potentially enable MG Invest to increase to 90% six

months later³ and compulsorily acquire all outstanding Montu shares. MG Invest is the only shareholder receiving that benefit from the Buy-back. Other remaining shareholders face increased risk that their shares may be compulsorily acquired.

10. The use of a selective buy-back meant that the only shareholder benefitting from its effect on control could pass the resolution to approve the Buy-back, regardless of the votes of all other shareholders.
11. The Panel considers that, in these circumstances:
 - (a) Montu should have made clear to shareholders:
 - (i) the steps taken to ensure that the decision to undertake the Buy-back had been made by a board committee in a position to consider properly the effects on all shareholders and
 - (ii) the composition of the board committee
 - (b) Montu did not provide enough information to demonstrate the Buy-back and price offered sought to ensure fairness between Montu's shareholders
 - (c) Montu did not provide enough information to allow shareholders to properly assess the merits of accepting the Buy-back offers and
 - (d) the form of the Buy-back and associated shareholder approval requirements had the effect that the only shareholder benefitting from its effect on control could approve the Buy-back regardless of the votes of other shareholders.

CONCLUSION

12. 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 Montu or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Montu and/or
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602.

³ At which point its 'creep' capacity under Item 9 of section 611 would be restored

13. 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

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

Tania Mattei
General Counsel
with authority of Diana Nicholson
President of the sitting Panel
Dated 23 October 2024



Australian Government

Takeovers Panel

ANNEXURE B

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

MONTU GROUP PTY LTD

Montu undertakes to the Panel that:

1. Within 10 business days of this undertaking, Montu must:
 - (a) Provide RSM with:
 - (i) Montu's latest FY25 forecast
 - (ii) any business plan provided to Montu's Board or confirmation that it has none and
 - (iii) any of the information described in paragraph 2 not previously provided to RSM.
 - (b) Instruct RSM to provide an updated independent valuation report that takes into account the further information referred to in paragraph 1(a).
 - (c) Instruct RSM to provide an updated summary of the updated independent valuation report to be provided to Montu shareholders that:
 - (i) Specifies clearly what information has been provided (including by management) to RSM, and what information RSM would have expected to receive but did not receive (if any) (including an explanation of why it was not received), in relation to their valuation.
 - (ii) Explains:
 - (A) the rationale used to determine the EBITDA multiple
 - (B) how the discounts for lack of control and marketability were determined
 - (C) that the valuation does not and is not required to comply with ASIC Regulatory Guide 111: Content of expert reports.
2. Within 20 business days of receiving from RSM the documents referred to in paragraphs 1(b) and 1(c) and subject to Montu's Board not resolving to withdraw the special resolution to approve the Buy-back and not proceeding

with the Buy-back, Montu must prepare and issue a new explanatory statement to its shareholders in relation to the Buy-back in a form acceptable to the Panel which includes each of the following:

- (a) The updated RSM summary referred to in paragraph 1(c).
- (b) Consolidated profit & loss statement disclosing audited revenue, gross profit, key operating expense line items, EBITDA, EBIT, PBT, NPAT, Year-on-Year Revenue Growth (%), Gross Profit Margin (%) and EBITDA Margin (%) for each of FY21, FY22, FY23 and the same financial information for FY24 based on (if audited financial statements are not available for FY24) unaudited management accounts with associated explanatory notes and commentary.
- (c) An unaudited or audited consolidated balance sheet and pro forma balance sheet showing the impact of Buy-back acceptances received (assuming no withdrawals) in respect of Montu as at 30 June 2024 with associated explanatory notes and commentary.
- (d) An outlook statement for FY25 describing the views of management or Montu's Board as to:
 - (i) the anticipated growth in market size of the medicinal cannabis industry in the jurisdictions where Montu operates in general terms
 - (ii) any high level potential impact of regulatory developments and regulatory risk, noting the proceedings commenced against Montu by the Therapeutic Goods Administration in FY24
 - (iii) the anticipated trajectory of revenue growth for Montu for FY25
 - (iv) any potential impact on EBITDA margins for FY25 from those achieved in FY24
 - (v) an assessment of revenue for the first 3 months of FY25 and
 - (vi) Montu's commitment to continue to invest in its people and platforms.
- (e) A balanced risk assessment which refers to the potential future growth of Montu and that a risk of participating in the Buy-back is that the value of Montu shares may increase in future.
- (f) Disclosure that no discount for lack of control or marketability would be applied in determining fair value by the expert's report required under sections 664C¹, 667A and 667C if MG Invest were to acquire over 90% (through a combination of acceptances of the Buy-back offers and acquisitions in reliance on item 9 of section 611) and proceed to compulsory acquisition and an explanation of the contrast with the RSM Summary if the RSM Summary does in fact apply such a discount.

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- (g) A statement that the new explanatory statement contains disclosure that was required by the Panel referencing the declaration of unacceptable circumstances made by the Panel and the undertakings of Montu and MG Invest Limited accepted by the Panel to address those circumstances, together with a link to the Panel’s decision media release.
3. Montu must provide shareholders who have accepted the Buy-back offers a right to withdraw their acceptance for a period of 2 weeks following receipt of the disclosure referred to in paragraph 2.
 4. Montu must postpone or further adjourn the general meeting in relation to the Buy-back to be resumed or held on a date no earlier than 3 weeks following receipt of the disclosure referred to in paragraph 2.
 5. Montu agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

Definitions

6. In this undertaking the following terms apply.

Buy-back	the buy-back proposed for approval at the Meeting
Meeting	the general meeting of Montu convened by the Notice of Meeting and any adjournment or postponement of that meeting
Montu	Montu Group Pty Ltd ACN 634 198 360
Notice of Meeting	Montu’s notice of general meeting dated 2 August 2024
RSM	RSM Australia Pty Ltd

**Signed by Rhys Staley of Montu Group Pty Ltd
with the authority, and on behalf, of
Montu Group Pty Ltd
Dated 22 October 2024**

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

MONTU GROUP PTY LTD

MG Invest undertakes to the Panel that it will not, without the prior consent of the Panel, initiate compulsory acquisition of shares (of any class) in Montu under section 664A¹ within 12 months after the cancellation of shares under the Buy-back. For the avoidance of doubt, this undertaking ceases to apply if the Buy-back is not approved at the Meeting or does not complete for any other reason.

In this undertaking the following terms have these meanings:

Buy-back	the selective share buy-back proposed for approval at the Meeting
Meeting	the general meeting of Montu convened by the Notice of Meeting and any adjournment or postponement of that meeting
MG Invest	MG Invest Limited (a company incorporated in Hong Kong)
Montu	Montu Group Pty Ltd (ACN 634 198 360)
Notice of Meeting	Montu's notice of general meeting dated 2 August 2024

Executed by Raphael Strauch of **MG Invest Limited**
by authority of its directors

Dated: 22 October 2024

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