



Australian Government

Takeovers Panel

**Reasons for Decision
Montu Group Pty Ltd
[2024] ATP 25**

Catchwords:

declaration – undertakings – selective share buy-back – effect on control – acquisition of substantial interest – disclosure – financial information – independent board committee – compulsory acquisition – proprietary company with more than 50 members – CSF shareholders

Corporations Act 2001 (Cth), sections 257A, 257C, 257D, 602, 602(c), 606, 611 (items 7, 9, 19 and 19A), 648D(1)(b), 657A(2)(a)(i), 657A(3)(b), 664A, 664C, 667A, 667C, 738H(2), Part 2J.1 and Part 6A.2

Corporations Regulations 2001 (Cth), regulation 6.2.01A

First Corporate Law Simplification Act 1995

Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia (2016) 248 FCR 280, Re Hellenic & General Trust [1975] 3 All ER 382 (Ch.Div.)

ASIC Regulatory Guide 110 – Share buy-backs, ASIC Regulatory Guide 111 – Content of Expert Reports

Flinders Mines Limited 02 & 03 [2019] ATP 2, Lantern Hotel Group [2014] ATP 6, Village Roadshow Limited 03 [2004] ATP 22, Village Roadshow Limited 02 [2004] ATP 12, InvestorInfo Limited [2004] ATP 06

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

INTRODUCTION

- The Panel, Bruce Cowley, Katrina Efthim and Diana Nicholson (sitting President), made a declaration of unacceptable circumstances in relation to the affairs of Montu Group Pty Ltd. The application concerned a proposed selective buy-back of Montu shares held by shareholders other than majority shareholder MG Invest, that could have (in the form originally announced) allowed MG Invest to compulsorily acquire all outstanding shares. The Panel considered that shareholders had not received sufficient information to assess properly the merits of the Buy-back. Also, the Panel considered it unacceptable that MG Invest, as the only shareholder benefitting from the Buy-back’s effect on control, could approve it regardless of the votes of other shareholders. In lieu of orders, the Panel accepted undertakings that Montu provide additional information to shareholders and that MG Invest not initiate compulsory acquisition under Part 6A.2¹ within 12 months.
- In these reasons, the following definitions apply.

Additional Disclosure has the meaning given in paragraph 9

¹ Unless otherwise indicated, all statutory references are to the *Corporations Act 2001* (Cth), and all terms used in Chapters 2J, 6 and 6A have the meaning given in the relevant Chapter (as modified by ASIC)

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

Advisory Resolution	the proposed resolution referred to in paragraph 71(b)
Applicants	Shawki Shahin and Wayne Irvine
Board Committee	has the meaning given in paragraph 9(a)
Buy-back	the selective buy-back proposed for approval at the Meeting
CSF	crowd-sourced funding
Explanatory Statement	the explanatory statement for the Meeting
IER	Independent Expert's Report
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
MG Invest Undertaking	has the meaning given in paragraph 77(b)
Montu	Montu Group Pty Ltd ACN 634 198 360
Notice of Meeting	Montu's notice of general meeting dated 2 August 2024
Proposed Montu Undertakings	has the meaning given in paragraph 71
RSM	RSM Australia Pty Ltd
RSM Summary	the summary of RSM's independent valuation report provided in the Additional Disclosure
VRC	majority shareholder of Village Roadshow Limited (VRL) in <i>VRL 02</i> and <i>VRL 03</i>
VRL 02	<i>Village Roadshow Limited 02</i> [2004] ATP 12
VRL 03	<i>Village Roadshow Limited 03</i> [2004] ATP 22

FACTS

3. Montu is an Australian registered limited proprietary company with more than 50 shareholders, including approximately 2,350 CSF shareholders².
4. Montu has 119,466,601 ordinary shares on issue, of which 100,000,000 (83.7%) are held by MG Invest, a body corporate incorporated in Hong Kong. The remaining shares (approximately 16.3%) are held by CSF shareholders. No shareholder apart

² Meaning a shareholder holding one or more securities of the company issued pursuant to a CSF offer by Montu

Takeovers Panel

Reasons - Montu Group Pty Ltd [2024] ATP 25

from MG Invest holds more than 1%. The Applicants are CSF shareholders who collectively control 128,570 Montu shares.

5. Montu has two directors, Mr Christopher Strauch, the founder and Managing Director nominated by MG Invest, and Mr Rhys Staley.
6. On 2 August 2024, Montu convened a general meeting (**Meeting**) to consider a special resolution pursuant to section 257D(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”*.
7. 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 participating in the Buy-back was that the value of Montu shares may increase in future.
8. In response to concerns raised by the Applicants, Montu agreed to provide supplemental information to shareholders and adjourn the Meeting from 26 August 2024 until 17 September 2024.
9. On 29 August 2024 Montu provided supplementary disclosure (**Additional Disclosure**) on how the Buy-back price of \$1.15 was determined. Information disclosed included (among other things) that:
 - (a) Montu had established an “independent board committee” to determine the terms of the Buy-back (**Board Committee**). The composition of the Board Committee was not specified in the Additional Disclosure and its members were not identified.³
 - (b) The Board 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

³ The Committee’s members were Montu Director Rhys Staley, Montu’s Vice President, Finance, and Montu’s General Counsel

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

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

10. The Additional Disclosure did not:

- (a) include the audited financial statements for the financial year ended 30 June 2024, as these had not been finalised or
- (b) 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 then seeks compulsory acquisition of shares it does not own.

11. 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.

12. The RSM Summary:

- (a) was prepared solely for the Board 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 Board 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

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

- (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.

APPLICATION

Declaration sought

- 13. By application dated 6 September 2024, the Applicants sought a declaration of unacceptable circumstances. The Applicants submitted (among other things) that:
 - (a) Montu presented shareholders with the Buy-back, which appeared to be at a substantial undervalue, without disclosing sufficient information for shareholders to make a fully informed assessment of its merits.
 - (b) Montu’s board was recommending the Buy-back but did not appear to be independent from MG Invest.
 - (c) Shareholders should have been provided with information as to who controls MG Invest and an Independent Expert’s Report (**IER**) as to the value of Montu’s securities.
- 14. The Applicants submitted that the effect of the circumstances was that they were unable to make an informed decision whether or not to participate in the Buy-back, and if uninformed shareholders take up the offer, MG Invest would be in a position to move to compulsorily acquire remaining Montu securities.

Interim orders sought

- 15. The Applicants sought interim orders to the effect that:
 - (a) Montu be restrained from holding any general meeting in relation to the Buy-back and
 - (b) further, or in the alternative, Montu be prohibited from accepting or completing any buy-back agreements.
- 16. Montu agreed to further adjourn the Meeting, making interim orders unnecessary.

Final orders sought

- 17. The Applicants sought final orders to the effect that Montu obtain an independent expert’s report in respect of the Buy-back and provide that to shareholders for the purpose of any general meeting in relation to the Buy-back.

Orders not sought

18. The Buy-back closed for acceptance three days after the application was made. The Applicants did not seek interim or final orders requiring extension of the deadline for acceptance of the Buy-back or reopening of the Buy-back following further disclosure.

DISCUSSION

Decision to conduct proceedings

19. The Board Committee made a preliminary submission on behalf of Montu that we should decline to conduct proceedings, including because:
- (a) the Application was “*purely tactical*” and made for the improper purpose of frustrating Montu's proposed Buy-back and “*denying Montu's minority shareholders the opportunity to realise value for their shares*” in the absence of other near-term liquidity options
 - (b) the Applicants’ reasons failed to make out a prima facie case to conduct and
 - (c) indicative results of the Buy-back suggested MG Invest’s voting power would increase only to 88.8%.
20. MG Invest also made a preliminary submission that we should decline to conduct proceedings, including because:
- (a) The Buy-back would not have an effect on control of Montu because MG Invest already had control and an increase to 88.8% would not increase its control in any practical or meaningful way.
 - (b) The Panel has said that an increase in a substantial holding due to a buy-back is not inherently unacceptable⁴ and the effect on MG Invest’s control would be less substantive than in previous Panel matters.⁵
 - (c) MG Invest could not “creep” to the compulsory acquisition threshold within 6 months following completion of the Buy-back.
 - (d) An IER is not required by the Corporations Act buy-back provisions or ASIC policy.
21. Although we were conscious of the fact that the Buy-back provided CSF shareholders with an opportunity to realise value for their shares, our preliminary view was that Montu shareholders had not received adequate information. We also considered the following factors warranted further review:
- (a) the consequences of using a selective buy-back
 - (b) the control effect of a buy-back bringing a majority shareholder nearer to the compulsory acquisition threshold and

⁴ Citing *VRL 02* [2004] ATP 12 and *VRL 03* [2004] ATP 22

⁵ Referring to *VRL 02* [2004] ATP 12 (increase of 48% to 53%) and *VRL 03* [2004] ATP 22 (potential increase of 56% to 70%)

- (c) the significance, if any, of Montu being a proprietary company with CSF shareholders.

22. We decided to conduct proceedings on these and related issues.

Adequacy of disclosure

23. After the initial Explanatory Statement for the Meeting was released, the Applicants requested that Montu provide further information including:
- (a) full year financial statements (audited, if available) including all notes for FY24, and current cash
 - (b) full valuation report from RSM and all the supporting documentation used
 - (c) profit & loss statement for the previous two years
 - (d) month on month revenues since inception to June 2024
 - (e) projected revenues for the next 12 months
 - (f) strategic plans for the next FY and the two after that and
 - (g) details of the overseas entities.
24. Montu instead provided the Additional Disclosure (see paragraph 9), which the Applicants submitted was insufficient to allow shareholders to make an informed decision whether to accept the Buy-back. The Applicants submitted that Montu should provide an IER that complies with *ASIC Regulatory Guide 111 Content of Expert Reports*, since such a report would have been required under section 640 had the transaction been structured as a takeover bid.
25. ASIC submitted that there was no express statutory obligation requiring Montu to obtain an IER, but the overall circumstances of the Buy-back, and particularly the potential for MG Invest to compulsorily acquire shares, suggested that an IER would be desirable and beneficial to shareholders in deciding whether to accept the Buy-back.
26. MG Invest and Montu submitted that an IER should not be required given the Panel had not required an IER in previous Panel matters involving buy-backs.⁶
27. We are satisfied that there is further disclosure Montu could have made and should have provided in the Additional Disclosure to enable shareholders to make an informed decision whether to accept the Buy-back. However, provided that disclosure is made, we do not consider an IER is necessary in the circumstances of this matter having regard to the expense and delay an IER would likely involve. We note that an IER is not expressly required in these circumstances (assuming there is otherwise proper disclosure) either by law or ASIC policy.⁷

⁶ Citing *VRL 03* [2004] ATP 22 at [25]-[27] and *Flinders Mines Limited 02 & 03* [2019] ATP 2

⁷ Although the circumstances of a buy-back may make an IER desirable: see eg *ASIC Regulatory Guide 110 Share buy-backs* at Table 2

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

28. We do not think this view should restrict future decisions and should be regarded as fact specific.
29. We will not describe the further disclosure we required in detail here. The terms of the undertaking we accepted from Montu (Annexure B) indicate what we ultimately considered necessary in the circumstances.

Establishment and disclosure regarding Board Committee

30. In response to the Applicants' concerns regarding the initial Explanatory Statement, Montu indicated in the Additional Disclosure that an "independent board committee" had been established to determine the terms of the Buy-back. However, the composition of the Board Committee was not specified, and its members were not identified. The application assumed the ultimate decision to undertake the Buy-back was made by a "conflicted board" and the Applicants submitted that it was potentially misleading to describe the valuation process as "independent" without providing further information on how the conflicts of the board were appropriately managed. Montu, in its preliminary submissions, denied that and identified the members of the Board Committee, including Montu director Mr Rhys Staley.
31. The Applicants submitted that there was insufficient information before us to accept that Mr Staley is independent.
32. Montu submitted that Mr Staley is independent from, and has no association with, MG Invest (which Montu described as the investment vehicle of Christopher Strauch, Montu's other director) or Mr Strauch, other than by virtue of being a director of Montu.
33. We do not consider it necessary to determine whether Mr Staley, or the Board Committee is, or is not, "independent". Our focus is on ensuring that Montu shareholders receive information regarding the Buy-back that an independent board committee could be expected to provide. In our view, such information includes the composition of the Board Committee.
34. In our experience, the reason for establishing an independent board committee is usually not only to ensure that the committee is free of conflicts and able to consider properly the best interests of the company, but also to give all shareholders confidence that is the case. The latter will not be possible unless shareholders are told that the committee has been established, and given reason to believe it is independent. Failure to do so may, of itself, encourage suspicion the committee or the board is not confident the claim to independence will survive scrutiny.
35. In our view, Montu should have made it clear to shareholders at the outset 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. To do that, Montu needed to disclose and demonstrate that a suitably independent board committee had been established.

Control effect of Buy-back

36. We asked parties and ASIC whether an increase in MG Invest's voting power from 83.7% to approximately 88.8% would have an effect on control of Montu or result in the acquisition of a substantial interest.
37. Montu submitted that this increase would have "no practical effect on control of Montu" since MG Invest "effectively has absolute control" already. Montu also referred to the Panel's previous description of 20% to 50% as "the most sensitive range"⁸ and the Panel's recognition in VRL 02⁹ that the mere fact that a shareholder's voting power increases as a result of a buy-back does not of itself mean that there are unacceptable circumstances. MG Invest made similar submissions.
38. ASIC submitted that such an increase would pose a real possibility that MG Invest may compulsorily acquire remaining shares and would both have or be likely to have an effect on control of Montu and an effect on the acquisition of a substantial interest in Montu. ASIC submitted also that the inadequate disclosure in respect of the Buy-back may be unacceptable having regard to the purposes of section 602. The Applicants made submissions to similar effect.
39. We agree with ASIC's submissions. In VRL 02 the Panel spoke of control in Chapter 6 as a "graduated concept" and observed:

*This accords with common sense and experience, not least that bidders are prepared to pay more to obtain greater levels of control, e.g. for sufficient shares to force through special resolutions or initiate compulsory acquisition.*¹⁰ (emphasis added)

40. Montu noted a comment by ASIC that MG Invest's potential increase in voting power was "only material" because of the potential for compulsory acquisition and submitted that it should not be considered material given compulsory acquisition would not be possible for at least 6 months after the Buy-back. However, even drawing nearer to a key threshold may be material and have or be likely to have an effect on control or potential control by making it quicker or easier to reach that threshold. As the Panel said in VRL 02:

*...if someone has [control as defined in s50AA], then circumstances may have an effect on that control either by adding to or diminishing the extent of the control (or facilitating or impeding the controller reaching levels of influence that will add to or diminish that control) - this is the situation we are dealing with here and we are considering whether this either adds to [major shareholder VRC's] control in the way set out above or by making it easier for [major shareholder] to obtain other aspects of control which will cement its ability to dominate [the company's] decision-making (such as to be able practically, and then formally, to ensure passage of a special resolution and further on to trigger compulsory acquisition rights to obtain all elements of control).*¹¹ (emphasis added)

⁸ VRL 03 [2004] ATP 22 footnote 9

⁹ [2004] ATP 12 at [73]

¹⁰ [2004] ATP 12 at [37] (emphasis added)

¹¹ [2004] ATP 12 at [39] (emphasis added)

41. MG Invest submitted that “proximity” is not enough to be an effect on control. We doubt that is necessarily true in widely-held companies and note also that the Panel has power to declare circumstances unacceptable based on their effect or likely effect on “potential control”.¹²
42. Montu submitted also that the fact that MG Invest’s potential increase (5.1%) was much smaller than that in *VRL 03* (14%) and that Montu’s second largest shareholder had only 0.84% further demonstrated that the increase would have no practical effect. In our experience, however, reaching the threshold enabling compulsory acquisition of all outstanding shareholders is generally a very material increase in control.

The Panel’s role in relation to buy-backs

43. Some of Montu’s submissions appeared to assume a more limited role for the Panel in relation to buy-backs than that described in *VRL 02* and *VRL 03*. In *VRL 02* the Panel traced the relevant legislative history to illuminate the Panel’s role in relation to buy-backs and noted that there was a clear legislative intention that the Panel be available to deal with buy-backs with unreasonable effects on control of companies and that that policy had not been abandoned. In view of this intention, the Panel considered that it had jurisdiction to consider the effect of control of VRL from the buy-back.¹³
44. *VRL 02* concerned an on-market buy-back within the 10/12 limit, but in our view the Panel’s conclusions regarding its jurisdiction, and Parliament’s intention that the Panel be able to declare unreasonable effects of buy-backs on control to be unacceptable, are also applicable to other forms of buy-back.

Use of selective buy-back

45. We asked parties and ASIC whether it would be unacceptable for MG Invest to vote in favour of the Buy-back at the General Meeting.
46. Montu submitted that there is no reasonable basis for imposing a voting restriction on MG Invest. Montu noted that it is the very essence of a buy-back that the voting power of shareholders who do not participate will be concentrated and such concentration occurs on a proportionally equivalent basis. Montu submitted that restricting MG Invest from voting would only put the fate of the Buy-back into the hands of other disinterested shareholders who stand to benefit from the same proportionate increase in voting power. MG Invest made similar submissions.
47. The Applicants submitted that it would be unacceptable for MG Invest to vote in favour of the Buy-back because MG Invest benefits from the Buy-back and has far more information about Montu’s financial position and performance than other shareholders. The Applicants submitted that the section 257D approval is effectively a “rubber stamp” in this case because the “non-interested” shareholder stands to benefit most. The Applicants referred to the Panel’s comments in *VRL 03* regarding a

¹² See section 657A(2)(a)(i)

¹³ [2004] ATP 12 at [41]-[47]

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

buy-back¹⁴ that had the potential to increase majority shareholder VRC's voting power from 56% to 70%:¹⁵

Although the voting power of other shareholders who do not participate in the Buy-Back will be concentrated by the Buy-Back in the same proportion as that of VRC, the effects of such concentration on a controlling interest, on the one hand, and on a minority interest, on the other hand, are qualitatively different. This difference makes it appropriate for VRC to be treated differently from any other shareholder in voting on the Buy-Back Resolution.

48. ASIC submitted that the Panel's jurisdiction is wide and plainly covers the effect of the Buy-back but also suggested that the Panel may wish:
- (a) to take care in finding unacceptable express rights and powers arising under Part 2J.1 where it appears open to focus on disclosure and control effects of the Buy-back within its core jurisdiction
 - (b) not to find it unacceptable for MG Invest to vote in favour of the Buy-back if that would deprive shareholders of the opportunity to take part in the Buy-back and
 - (c) to have regard to the overall circumstances of the disclosure and structure of the Buy-back in deciding whether such a finding is necessary.¹⁶
49. We agree with ASIC that determining whether voting to approve a buy-back may be unacceptable requires careful attention to the circumstances and the structure of the buy-back in question. That approach is also supported by *VRL 03* where the Panel observed that it is "likely that future Panels will look at the individual circumstances of each buy-back on a case-by-case basis".¹⁷
50. We also agree with ASIC that disclosure and control effects of buy-backs and the purposes in section 602 should be our focus.
51. In *VRL 03* the Panel considered whether it would be unacceptable for VRL's majority shareholder VRC to vote on an ordinary resolution to approve¹⁸ its on-market buy-back of up to approximately 20% of VRL shares. Despite the difference in the form of buy-back and approval, the discussion in the reasons for decision warrants reference and we note the following (in summary).
52. In *VRL 03*, the Panel was of the view that the potential effect on VRC's voting power was different from its potential effect on the voting power of any other VRL

¹⁴ The Applicants noted that *VRL 03* concerned an on-market buy-back exceeding the 10/12 limit

¹⁵ [2004] ATP 22 at [34]

¹⁶ ASIC referred to *Lantern Hotel Group* [2014] ATP 6, which raised the issue of whether a shareholder with 30.2% should be able to vote on a selective buy-back that would increase its voting power to 40.3%, allegedly without paying a control premium. The Panel suggested that permitting the shareholder to vote may conflict with the approach in *VRL 03* [2004] ATP 22 but considered it premature to determine that question as it was unclear whether the buy-back would proceed due to court proceedings: *Lantern Hotel Group* [2014] ATP 6 at [28]-[29]

¹⁷ [2004] ATP 22 at [12]

¹⁸ As required under section 257C

shareholder (as VRC was the only shareholder whose control of VRL may be consolidated by the buy-back), and that it was appropriate for VRC to be treated differently from other shareholders in relation to voting on the buy-back. The Panel considered that it would be unacceptable for both VRC to vote in favour of the buy-back resolution and for VRC's voting power to be increased in consequence of the buy-back, but (all other things being equal) it would not be unacceptable for either to occur without the other. The Panel did not consider that VRC should be prevented from voting against the buy-back resolution as this would not tend to bring about a change in control of VRL. The Panel noted that voting exclusions should be applied to buy-backs on a case-by-case basis with the policy being intended to prevent a shareholder who already has a substantial measure of control from consolidating control. The Panel rejected a submission from VRL that it was not open to the Panel to find that the buy-back, if it complied with section 257A, would lead to unacceptable circumstances, noting that this was inconsistent with the legislative intention of item 19 of section 611 (which preserves the Panel's jurisdiction) and that unacceptable circumstances can result from inappropriate reliance on the exceptions in section 611.¹⁹

53. In this matter, to an even greater extent than *VRL 03*, MG Invest is the only shareholder whose control will be consolidated as a result of the Buy-back.
54. We consider that, for broadly similar reasons to those given in *VRL 03*, it would be unacceptable for MG Invest to vote in favour of the Buy-back in circumstances where it alone, as Montu's controlling shareholder, receives a material benefit from the resulting consolidation of its control.
55. One difference from *VRL 03* is that here section 257D(1)(a) already applies a voting exclusion, preventing those whose shares are proposed to be bought back voting in favour of the required special resolution. The legislative intention appears to be to give all shareholders some say on whether the price and terms offered unduly favour some shareholders over others:²⁰ those whose shares are to be bought back can decline to accept if the price is too low; others can vote against the special resolution if they think the price transfers too much value from their shares.
56. Montu pointed to the fact that section 257D(1) clearly identifies who is precluded from voting on a selective buy-back transaction and submitted that we should not "*seek to overturn the clear legislative position on voting in a selective buy-back*". Montu submitted that:

...the question before the Panel is one of adequacy of disclosure relating to the Buy-back. It is not whether an unlawful veto right should be afforded to minority shareholders in

¹⁹ *VRL 03* [2004] ATP 22 at [34]-[44], [47], [52]-[54]

²⁰ Paragraph 5.6 of the Explanatory Memorandum for the First Corporate Law Simplification Bill comments that: "A buy-back made as a part of a scheme which allows equal access to all ordinary shareholders ... is subject to less stringent rules than a buy-back that favours some shareholders over others (called 'selective' buy-backs")

conflict with the Corporations Act and despite the Buy-back not being a control transaction.

57. In our view, however, to the extent that the legislature intended the voting exclusion in section 257D(1) to address control effects, as opposed to fairness between shareholders of the buy-back's terms, it cannot have been intended to be exhaustive or operate to the exclusion of the Panel's role in addressing unacceptable control effects of buy-backs. As explained in *VRL 03*,²¹ such a "broad-brush voting exclusion" would not be effective to promote the purposes in section 602. We do not think it necessary here to elaborate on when it may be unacceptable for major or substantial shareholders to vote on selective buy-backs that materially consolidate their control. There may be many selective buy-backs where there is no significant effect on control of a Chapter 6 entity or where any control effect is shared between non-participating shareholders in a manner that a resolution under section 257D can appropriately resolve. Here, however, the Buy-back was likely to have a significant control effect, materially beneficial to MG Invest alone, in circumstances where section 257D ensured that MG Invest could approve the Buy-back regardless of the votes of all shareholders adversely affected.

Application of Chapter 6 to Montu

58. It was common ground that Montu was not an "eligible CSF Company" within the exception to section 606 in item 19A of section 611.²² Montu would have initially had the benefit of that exception, but its growth resulted in it exceeding the relevant thresholds²³ and needing to comply with Chapter 6. Montu accepted that, but submitted that it could rely on the exception in item 19 of section 611 for acquisitions resulting from a buy-back authorised by section 257A.
59. We asked the parties and ASIC whether Montu's status as a proprietary limited company with CSF shareholders was relevant to the Panel's consideration of whether it was in the public interest to make a declaration.
60. The Applicants submitted that, given Montu's size and number of shareholders, it should not be subject to standards any lower than that of a widely held public company. The Applicants also submitted that the lack of protections that would be available to Montu shareholders if it were a public company meant that "a high degree of enhanced disclosure" should be required to satisfy the purposes of Chapter 6 in section 602.
61. Montu submitted that, apart from item 19A of section 611, Chapter 6 does not distinguish between proprietary and public companies and accordingly Montu's status as a proprietary company with CSF shareholders should have no bearing on our consideration of the public interest. MG Invest, on the other hand, submitted that these were factors we should consider (among others).

²¹ See [2004] ATP 22 at [34]-[44], [47], [52]-[54]

²² See section 738H and *Corporations Regulations 2001* regulation 6.2.01A

²³ See section 738H(2)

62. ASIC submitted that:

The Panel may have regard to any matters it considers relevant when considering a declaration under s657A(3)(b). Parliament considered it desirable to alleviate certain regulatory compliance by proprietary companies that have CSF shareholders under s611 item 19A, until the company ceases to be eligible to make CSF offers and becomes subject to Chapter 6. Since Montu Group appears to no longer satisfy the assets and turnover test in s738H(2), it is subject to, and its approximately 2,350 shareholders are entitled to the protections of, Chapter 6. In light of the express statutory threshold, the Panel should have no hesitation in exercising its jurisdiction over Montu Group.

63. We had regard to the challenges Montu's small shareholders face in selling their shares, and the desirability of them receiving an opportunity to do so. That would be common for CSF shareholders, but also securityholders in other unlisted entities. We were doubtful that Montu's specific status made a difference in the circumstances of this matter, but did not find that necessary to decide. We were satisfied that the circumstances discussed above were unacceptable, and making a declaration to that effect would not be against the public interest, regardless of the status of Montu as a proprietary company with CSF shareholders.

DECISION

Declaration

64. We sought submissions from the parties and ASIC on a draft declaration and a revised draft on 1 October 2024 and 14 October 2024, respectively, and made minor changes in response to comments. We also indicated that we wished to explore whether, if we made a declaration, any unacceptable circumstances could be more efficiently addressed by Montu giving undertakings in lieu of orders.

65. The Applicants submitted that the Panel should make a declaration of unacceptable circumstances regardless of whether the undertakings were given, as the Applicants had sought further disclosure on several occasions, including before making the application. The Applicants submitted that Montu had been uncooperative, which Montu rejected. The Applicants also submitted that there was public interest in a declaration being made given minority shareholders in CSF companies generally have only small investments.

66. Montu strongly objected to the draft declaration, submitting that it was unnecessary and serves no purpose. We do not agree. In our view, Montu did not respond adequately to the Applicants' requests for further disclosure. Furthermore, we consider that our declaration may assist the market in understanding our approach to control issues raised by selective buy-backs generally and also our approach to companies with CSF shareholders.

67. We consider that:

(a) Montu should have made clear to shareholders:

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

- (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 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.
68. It appears to us that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that we are 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.
69. Accordingly, we made the declaration set out in Annexure A and consider that it is not against the public interest to do so. We had regard to the matters in section 657A(3).

Undertakings

70. After making the declaration, we accepted undertakings from Montu (Annexure B) and MG Invest (Annexure C). The undertakings are to the effect that:
- (a) Montu will:
 - (i) provide RSM with additional financial information concerning Montu and instruct RSM to provide an updated independent valuation report to Montu and a summary report for Montu shareholders that takes into account the additional information
 - (ii) prepare and issue a new explanatory statement that includes additional disclosure (including the summary report from RSM, certain financial statements, an outlook statement, a balanced risk assessment and an explanation that if MG Invest were to proceed to compulsory acquisition no discount for lack of control or marketability would be applied in

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

determining fair value by the expert's report²⁴ in contrast to the RSM Summary) to allow Montu shareholders who had accepted the Buy-back offer to make an informed decision whether to withdraw their acceptance

- (iii) postpone or further adjourn the Meeting for at least 3 weeks following provision of the new explanatory statement
- (iv) provide a 2 week withdrawal right to shareholders who accepted the Buy-back offers.

- (b) MG Invest will not, without the Panel's prior consent, initiate compulsory acquisition of shares (of any class) in Montu under section 664A within 12 months after the cancellation of shares under the Buy-back.

71. When first seeking submissions on the draft declaration, we asked whether any unacceptable circumstances could be addressed by Montu giving undertakings (**Proposed Montu Undertakings**):

- (a) Similar to those in Paragraphs 1 to 4 of Annexure B and also
- (b) To the effect that Montu would:
 - (i) give notice of an advisory ordinary resolution (**Advisory Resolution**) to be put with the support of Montu's Board to the effect that shareholders support the Buy-back and
 - (ii) withdraw the resolution to approve the Buy-back (and confirm the Buy-back would not proceed) unless the Advisory Resolution was passed with no votes cast in favour by MG Invest.

72. We proposed this because we considered that an undertaking may be more likely to address our concerns while also permitting shareholders who had accepted the Buy-back, and still wished to proceed after receiving further disclosure, to do so. The Proposed Montu Undertakings would not have given shareholders who had not accepted the Buy-back an opportunity to change their minds. However, as noted above,²⁵ the application did not seek orders requiring that and no party or shareholder appeared to be pressing for it.

73. The Applicants indicated that their preference was for orders, which they submitted should also extend to other matters not addressed by the proposed undertakings, including disclosure regarding overseas entities connected with Montu. Montu confirmed that it does not have any overseas subsidiaries that are active and trading. Accordingly, we do not consider the latter a matter for us.

74. Montu indicated that, if it proceeded with the current Buy-back, it was willing to provide further disclosure to shareholders to address our key concerns. Montu submitted that we should accept the Proposed Montu Undertakings with Montu's proposed amendments in lieu of making orders.²⁶ However, Montu made

²⁴ Required under sections 664C, 667A and 667C

²⁵ See paragraph 18

²⁶ MG Invest made similar submissions

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

amendments that (among other things) removed the Advisory Resolution. Montu submitted that the proposed Advisory Resolution was an “*unlawful device to circumvent the clear voting rights and restrictions set out in the Corporations Act*” that, if supported by the Board, “*could well expose Montu Group to undue risk for potential claims, including class actions, from other shareholders*”.

75. We do not agree. An advisory resolution does not have legal effect,²⁷ but in our view that does not make it “unlawful”. However, in any event we considered that we could address Montu’s concerns by making orders regarding the proposed Advisory Resolution.
76. In our view, orders requiring approval of the Advisory Resolution for the Buy-back to proceed would have had a similar effect to the voting exclusion principle applied in *VRL 03*,²⁸ and would be consistent with the legislative intention described in *VRL 02*²⁹ for the Panel to address buy-backs having unreasonable effects on control.³⁰
77. We then sought submissions in relation to possible final orders broadly to the effect of the (unamended) Proposed Montu Undertakings. However, we also asked whether:
 - (a) instead of requiring an Advisory Resolution, we should order that MG Invest must not seek to compulsorily acquire shares in Montu under section 664A within 12 months after the cancellation of shares under the Buy-back
 - (b) MG Invest would be willing to give an undertaking to the effect of paragraph 77(a) (**MG Invest Undertaking**) in lieu of the proposed orders and
 - (c) Montu would be willing to give an undertaking in lieu of the proposed orders relating to Montu.
78. The Applicants submitted that the Advisory Resolution would be a more appropriate mechanism to protect the rights of shareholders affected by the unacceptable circumstances than a 12 month prohibition on compulsory acquisition.
79. MG Invest indicated that, although it did not agree that there was an effect on control, it was willing to provide an undertaking restricting compulsory acquisition under section 664A within 12 months in order to maximise the opportunity for minority shareholders wishing to sell their shares and allow the Buy-back to proceed as promptly as possible.
80. We consider that the MG Invest Undertaking (Annexure C) sufficiently addresses the unacceptable control effects of the Buy-back identified in our declaration as it ensures that the Buy-back will not enable MG Invest to seek compulsory acquisition under section 664A any sooner than would be permitted under the exception in item 9 of section 611 (the “creep” exception). It also has the advantage of increasing the

²⁷ See: *Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* (2016) 248 FCR 280

²⁸ See [2004] ATP 22 at [34]-[44], [47], [52]-[54]

²⁹ See [2004] ATP 12 at [41]-[47]

³⁰ See paragraphs 54 to 57

likelihood that shareholders who still wish to accept the Buy-back (after receiving further disclosure) will be able to do so as promptly as possible.

81. The MG Invest Undertaking permits MG Invest to vote in favour of the Buy-back and allow it to proceed, but only in circumstances where the benefit MG Invest obtains from its consolidation of control is largely (and sufficiently, in our view) addressed. It is true that MG Invest will get closer to the compulsory acquisition threshold. But it most likely could have done so in any case through the creep exception, and the MG Invest Undertaking ensures that the Buy-back does not enable MG Invest to proceed more quickly to compulsory acquisition. In our view, that achieves an appropriate balance of the interests of shareholders who wish to accept the Buy-back and those who do not want their shares to be compulsorily acquired. It should not be assumed, however, that others will be permitted to use selective buy-backs in this way in future, even if they are willing to give a similar undertaking.
82. Montu also agreed to give an undertaking in terms acceptable to us (Annexure B). We were disappointed that Montu did not recognise the short-comings of the Buy-back and offer an appropriate undertaking sooner. We agreed to accept undertakings, despite that, as we consider that the undertakings offered by Montu and MG Invest, once performed, are likely to address the unacceptable circumstances more promptly and effectively than would orders.
83. Accordingly, we accepted the undertakings offered by Montu and MG Invest (Annexures B and C). We advised parties that we did not presently consider it necessary to make any orders, but reserved the right to do so (including as to costs) pending performance of the undertakings to our satisfaction.

Costs

84. When seeking final comments on the declaration and draft undertakings, we indicated we were currently minded not to make costs orders against Montu, but invited submissions from all parties as to whether we should do so. The only submission we received was Montu's submission that we should not make cost orders against it. Accordingly, we did not make any cost orders.

Diana Nicholson

President of the sitting Panel

Decision dated 23 October 2024

Reasons given to parties 12 December 2024

Reasons published 20 December 2024

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

Advisers

Party	Advisers
Shawki Shahin and Wayne Irvine	Cowell Clarke Commercial Lawyers
Montu Group Pty Ltd	MinterEllison
MG Invest Limited	Hamilton Locke



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

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)

Takeovers Panel

Reasons - Montu Group Pty Ltd [2024] ATP 25

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 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

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

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

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:

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

Takeovers Panel

Reasons - Montu Group Pty Ltd
[2024] ATP 25

- (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 and risks 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.
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

Takeovers Panel

Reasons - Montu Group Pty Ltd [2024] ATP 25

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

Takeovers Panel

Reasons - Montu Group Pty Ltd [2024] ATP 25

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.

- (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

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)

Takeovers Panel

**Reasons - Montu Group Pty Ltd
[2024] ATP 25**

**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 Government

Takeovers Panel

Annexure C

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)