



## Australian Government

### Takeovers Panel

# Reasons for Decision Pact Group Holdings Ltd 02 & 03 [2025] ATP 13

#### Catchwords:

*Decline to conduct proceedings – delisting – jurisdiction*

*Corporations Act 2001 (Cth), sections 602, 657A, 657C(3)*

*Australian Securities and Investments Commission Regulations 2001 (Cth), regulation 16*

*Takeovers Panel Procedural Rules 2020, rules 16(2), 16(3) and 20*

*Takeovers Panel Procedural Guidelines 2020, 4.5 and 4.6(c)*

*Guidance Note 1: Unacceptable Circumstances*

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

*Vmoto Limited 02R [2025] ATP 9, Pact Group Holdings Ltd [2024] ATP 4, Flinders Mines Limited 02 and 03 [2019] ATP 2*

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

## INTRODUCTION

- The Panel, Timothy Longstaff, Rory Moriarty (sitting President) and Erin Tinker, declined to conduct proceedings on two applications by shareholders of Pact Group Holdings Ltd in relation to the affairs of Pact. The applications, heard together, concerned the proposed delisting of Pact. The Panel was not satisfied that the circumstances had or were likely to have an effect on the control, or potential control of Pact or the acquisition, or proposed acquisition, by a person of a substantial interest in Pact or were otherwise inconsistent with the purposes of section 602.<sup>1</sup> Therefore, the Panel was not satisfied that these matters fell within its jurisdiction. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
- In these reasons, the following definitions apply.

<b>Bennamon</b>	Bennamon Industries Pty Ltd, a wholly owned subsidiary of Kin Group Pty Ltd
<b>Bennamon Share Acquisitions</b>	has the meaning given in paragraph 16
<b>Bid</b>	has the meaning given in paragraph 4
<b>Business Update</b>	has the meaning given in paragraph 14

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

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<b>EGM</b>	has the meaning given in paragraph 13
<b>Kin Group</b>	Bennamon Industries Pty Ltd, Salvage Pty Ltd and Kin Group Pty Ltd
<b>Manipur</b>	Manipur Nominees Pty. Ltd., Shriar Consolidated Pty Ltd, Stanningfield Proprietary Limited and Gandur Superannuation No. 3 Pty Ltd
<b>Mr Machet</b>	has the meaning given in paragraph 17
<b>Pact</b>	Pact Group Holdings Ltd
<b>Proposed Delisting</b>	has the meaning given in paragraph 13
<b>Remedies</b>	has the meaning given in paragraph 13

## FACTS

3. Pact is an ASX listed company (ASX code: PGH).
4. On 13 September 2023, Kin Group Pty Ltd announced its intention to make an off-market unconditional takeover offer to purchase all of the shares in Pact (**Bid**) for \$0.68 per share. It said that the offer would be made by Bennamon.
5. On 25 September 2023, Bennamon lodged a replacement bidder's statement which stated (among other things) that:
  - (a) *"Kin Group intends to have Pact removed from the official list of ASX as soon as it is able to do so (subject to the level of acceptances, compliance with the requirements of the ASX Listing Rules and legal, tax and any other considerations at the relevant time)."*
  - (b) *"ASX may approve an application for Pact to be removed from the official list of ASX with Pact Shareholder approval. Where such removal is sought later than 12 months after the end of the Offer Period, Bennamon Industries, Kin Group and their Associates would be entitled to vote on the resolution approving the removal."*
  - (c) *"If Pact is removed from the official list of ASX, there may be risks related to remaining as a minority shareholder in Pact. These include significantly reduced liquidity if Pact Shareholders wish to sell their Pact Shares."*
  - (d) *"If Pact is not removed from the official list of ASX, Kin Group may seek to continue to increase its Relevant Interest in Pact under the "3% creep" exception in item 9 of section 611 of the Corporations Act."*
6. On 13 October 2023, Pact released its target's statement, in which the independent directors of Pact unanimously recommended that shareholders reject the Bid.
7. On 11 December 2023, Bennamon increased the offer price under the Bid to \$0.84 per share.
8. Also on 11 December 2023, Pact released a supplementary target's statement, which stated (among other things) that following the price increase under the Bid, Pact's Independent Board Committee unanimously recommended that Pact shareholders accept the revised offer.

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9. On 5 April 2024, in compliance with undertakings given to the Panel, Bennamon released its eleventh supplementary bidder's statement providing further disclosure to clarify the key conditions required to be satisfied for Pact to be removed from the ASX if Kin Group did not reach the compulsory acquisition level of 90% of Pact shares.<sup>2</sup>
10. On 30 April 2024, Bennamon released its thirteenth supplementary bidder's statement, declaring that the Bid would close on 7 June 2024 and would not be extended and stating that *"even if Bennamon does not reach the compulsory acquisition level of 90% of Pact Shares, Pact may seek the approval of the ASX and Pact Shareholders to delist. Kin Group expects that, consistent with ASX guidance, it would be permitted to vote on any resolution to delist Pact proposed more than 12 months after the Closing Date. Therefore, from that time (8 June 2025 or later), Kin Group would be able to pass any resolution to delist Pact without the support of other shareholders."* (original emphasis)
11. On 31 May 2024, Bennamon released its fourteenth and last supplementary bidder's statement in relation to the Bid, stating (among other things) that as at that date Bennamon held a controlling stake in Pact of over 87.6% and that all minority shareholders should *"consider Bennamon's intentions as a controlling shareholder, as provided in its Bidder's Statement, as amended and supplemented (copies located on the Offer website and the ASX)"*.
12. On 7 June 2024, the Bid closed.
13. On 29 April 2025, Pact announced its intention to delist from the ASX (**Proposed Delisting**) subject to obtaining the required shareholder approval by way of a special resolution to be put forward at an extraordinary general meeting to be held on 12 June 2025 (**EGM**). The announcement also stated (among other things) that:
  - (a) the delisting was expected to be effective on 16 July 2025
  - (b) ASX had given in-principle advice that it would agree to Pact's delisting
  - (c) the Pact board considered the Proposed Delisting to be in the best interests of shareholders in light of the very concentrated nature of Pact's register, the low level of trading of Pact shares on ASX, the cost of maintaining an ASX listing relative to the benefits associated with such ASX listing and the burden associated with compliance with the regulatory regime applying to listed companies and
  - (d) remedies were available to shareholders:
    - (i) in Court, should a shareholder consider that the Proposed Delisting was contrary to the interests of the shareholders of the company as a whole, or oppressive to, unfairly prejudicial to, or unfairly discriminatory against a shareholder or shareholders and

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<sup>2</sup> See *Pact Group Holdings Ltd* [2024] ATP 4. Bennamon was also required to provide withdrawal rights to a small number of Pact shareholders who had accepted the Bid.

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- (ii) with the Panel, should a shareholder consider that the Proposed Delisting involved unacceptable circumstances (**Remedies**).
- 14. Also on 29 April 2025, Pact released an announcement in which it provided a business update (**Business Update**) in relation to (among other things):
  - (a) its provisional Q3 FY25 trading, concluding with a statement that “[e]arly signals of Q4 demand are soft...”
  - (b) debt refinancing, noting that it had commenced a refinance of its debt facilities and
  - (c) the strategic review of its business portfolio, noting that Pact had appointed an advisor to consider the potential divestment of one of its businesses.
- 15. On 5 May 2025, Pact announced that ASX had approved the Proposed Delisting.
- 16. On 6 May 2025, one of the directors of Pact, also a director of Bennamon, disclosed in an Appendix 3Y that Bennamon had acquired 309,963 Pact shares between 30 April 2025 and 6 May 2025 via on-market trades and off-market transfers (**Bennamon Share Acquisitions**).

## APPLICATIONS

### Pact Group Holdings Ltd 02

- 17. By application dated 8 May 2025, Mr Jeremy Machet and Scrap Invest Pty Ltd (together, **Mr Machet**) sought a declaration of unacceptable circumstances. Mr Machet submitted (among other things) that:
  - (a) the low liquidity of Pact shares and the short window to sell prior to the suspension from quotation on 14 July 2025 pressured shareholders to sell at depressed prices or hold illiquid unlisted shares
  - (b) the Notice of Meeting<sup>3</sup> “*may lack balanced information*” and would allow Kin Group to vote for the Proposed Delisting while also being in a beneficial position to acquire additional shares and
  - (c) Pact continued to frame the company’s position negatively while downplaying positive developments and that this selective disclosure may mislead shareholders about Pact’s fair value and prospects, influencing their decision on the Proposed Delisting.
- 18. Mr Machet submitted that these circumstances were unacceptable because they affected the control of Pact by facilitating the major shareholder’s consolidation of ownership in a way that contravened the purposes of Chapter 6 and they undermined an efficient, competitive, and informed market.

### Interim orders sought

- 19. Mr Machet sought interim orders to stay the delisting process until the Panel made a determination on the application.

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<sup>3</sup> The Notice of Meeting was yet to be issued at the time of the application

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#### Final orders sought

20. Mr Machet sought final orders including that:
- (a) Kin Group be restrained from voting on the Proposed Delisting at the EGM
  - (b) Pact provide certain disclosures in the Notice of Meeting
  - (c) the timetable for suspension of trading be extended by at least 60 days (if the delisting resolution was approved)
  - (d) an independent third party be appointed to oversee the delisting process and
  - (e) post delisting, Pact be required to offer a facility to allow shareholders to sell their shares to Pact at an independently assessed fair value.

#### Pact Group Holdings Ltd 03

21. On 12 May 2025, Pact released a notice of meeting in relation to the EGM (**Notice of Meeting**). The Notice of Meeting provided (among other things):
- (a) that Kin Group held 88% of Pact shares, that it would be permitted to vote on the resolution and that it intended to vote in favour of the resolution
  - (b) the reasons for seeking removal from the ASX list
  - (c) the advantages of the Proposed Delisting
  - (d) the disadvantages of the Proposed Delisting
  - (e) remedies available to shareholders, in the same form as the Remedies and
  - (f) that the Pact board unanimously recommended that shareholders vote in favour of the Proposed Delisting.
22. By application dated 12 May 2025, Mr Jeremy Raper sought a declaration of unacceptable circumstances. Mr Raper submitted (among other things) that:
- (a) the reasons disclosed for the Proposed Delisting were false and misleading
  - (b) the Board was not acting in the best interests of shareholders in endorsing the Proposed Delisting and
  - (c) the Proposed Delisting had a substantial coercive effect upon minority shareholders.
23. Mr Raper submitted that the circumstances were contrary to the principles underpinning Chapter 6.

#### Interim orders sought

24. Mr Raper sought interim orders to:
- (a) stay the occurrence of the EGM until the Panel made a determination on the application and
  - (b) restrain Bennamon and its related parties from acquiring further Pact shares.

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#### Final orders sought

25. Mr Raper sought final orders preventing Kin Group from voting its shares at the EGM.

#### DISCUSSION

26. We have considered all the material, but address specifically only that part of the material we consider necessary to explain our reasoning.
27. In support of his application, Mr Machet submitted that:
- (a) First, the low liquidity of Pact shares and the short window to sell before the trading suspension on 14 July 2025, created a coercive environment that pressured minority shareholders to sell at depressed prices, unfairly benefiting Bennamon while prejudicing shareholders like the applicant.
  - (b) Second, disclosure in relation to the Proposed Delisting lacked balanced information with a focus on benefits and no adequate disclosure of the risks for minority shareholders, noting that *“Bennamon’s 88% voting power renders the EGM a formality, denying minority shareholders a fair opportunity to influence the outcome and protect their interests”*.
  - (c) Third, in the Business Update released on the day the Proposed Delisting was announced, Pact negatively framed the company’s Q4 trading while downplaying positive developments such as the debt refinancing and potential divestment of one of its businesses, which as a result could mislead shareholders and influence their decision on the Proposed Delisting.
  - (d) Fourth, the lack of a transparent mechanism for price discovery post-delisting would prevent minority shareholders from achieving fair value for their investment, including in a scenario where Kin Group was to launch a bid post delisting.
  - (e) Fifth, Bennamon took advantage, with the Bennamon Share Acquisitions, of Pact’s depressed share price after the announcement of the Proposed Delisting, therefore *“consolidating control while prejudicing minorities.”*
  - (f) Sixth, Pact overstated the costs savings associated with the Proposed Delisting given it would still incur significant costs as an unlisted disclosing entity and, in any event, the costs of maintaining an ASX listing for a company of Pact’s size are immaterial.
28. Mr Raper submitted that the reasons listed by Pact when announcing the Proposed Delisting were all false and misleading and that the independent directors were not, and had not been, acting impartially and in the best interests of shareholders. Mr Raper described the Proposed Delisting as coercive, referring to ASX Guidance Note 33 which provides that an unacceptable reason for an entity to seek delisting is *“to deny minority security holders a market for their securities in order to coerce them into accepting a current or planned offer from a controlling security holder to buy their securities*

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*at an undervalue*".<sup>4</sup> Mr Raper also submitted that the difficulties and cost associated with holding shares in an unlisted entity would influence minority shareholders to sell before the Proposed Delisting, permanently impairing minority value.

29. Mr Raper made the Pact Group Holdings Ltd 03 application days after the Pact Group Holdings Ltd 02 application was made. Given the overlap in the subject matter and the Panel's aim of resolving disputes consistently and in a timely manner, we made a direction that the applications be heard together.<sup>5</sup>
30. An important factor in deciding whether to conduct is, naturally, whether the Panel has jurisdiction.<sup>6</sup> At the outset, we had concerns as to whether the applications related to circumstances within our jurisdiction.
31. The Panel has considered delisting and unacceptable circumstances in the previous Panel decision of *Flinders Mines Limited 02 & 03*. The Panel stated in that matter:  
*The decision of a company's board to seek to de-list involves the exercise of business or commercial judgement, and may be subject to (among other things) requirements of the applicable listing rules, the discretions and policy of the relevant listing authority, director's duties and minority shareholders remedies. It is not the Panel's role, in the ordinary course, to opine on such judgements or enforce requirements for which other regulators or the courts have primary responsibility. However, the overlap of such requirements does not prevent the Panel exercising its jurisdiction in relation to matters that do fall within its jurisdiction and role. In our view, where de-listing has or is likely to have an effect on control or the acquisition of a substantial interest in a listed company, and appears inconsistent with the purposes in section 602, it is appropriate for us to consider whether it gives rise to unacceptable circumstances...*<sup>7</sup>
32. In the circumstances of that matter involving a proposed delisting and buy-back, the Panel considered that the effects of the proposal were likely to result in the acquisition of a substantial interest in the company (by the company itself and a substantial shareholder) in a manner that was inconsistent with the purposes in section 602.
33. We decided to ask preliminary questions of the parties.<sup>8</sup>
34. We asked whether the issues raised in the applications were a matter for the Panel given its limited and clearly defined jurisdiction, having regard to section 657A(2), ASX's primary responsibility in the administration of the listing rules (including in respect of delistings) and the remedies available to minority shareholders under the *Corporations Act 2001* (Cth) with respect to oppressive actions or in the event of any buy out of minority shareholders through compulsory acquisition that may eventuate.

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<sup>4</sup> ASX Listing Rules Guidance Note 33: Removal of Entities from the ASX Official List at [2.1]

<sup>5</sup> Under regulation 16 of the *Australian Securities and Investments Commission Regulations 2001* (Cth)

<sup>6</sup> See Takeovers Panel Procedural Guidelines 2020 at [4.6]

<sup>7</sup> [2019] ATP 2 at [20]

<sup>8</sup> See Takeovers Panel Procedural Guidelines 2020 at [4.6(c)]

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35. We also asked whether the Proposed Delisting denied minority shareholders a market for their securities in order to coerce them into accepting an offer from the controlling shareholder to buy their securities at an undervalue, referring to ASX Guidance Note 33.<sup>9</sup>
36. After considering the submissions from the parties, we were still not satisfied that the circumstances set out in the applications were within our jurisdiction, for the reasons we address below.

#### **No effect on control or acquisition of a substantial interest**

37. The Panel does not have a general oversight role over listed entities.
38. Section 657A empowers the Panel to make a declaration of unacceptable circumstances. The first ground for a declaration under section 657A(2)(a) requires the Panel to consider the effect of the circumstances and whether the effect appears to the Panel to be unacceptable:<sup>10</sup>
- (a) having regard to control or potential control of a company or
  - (b) having regard to the acquisition or proposed acquisition of a substantial interest in a company.
39. Pact submitted that the Proposed Delisting would not have any effect on the control or potential control of the company and was not coupled with any transaction which would involve the acquisition or proposed acquisition of a substantial interest in the company, noting that the Bennamon Share Acquisitions represented 0.09% of Pact's issued shares.
40. Kin Group submitted that "*[t]here is no takeover offer. There is no control proposal. There has been no breach of chapter 6 of the Corporations Act. Since Kin's prior takeover offer closed in June 2024, there has been no acquisition of a substantial interest in Pact. There is no conduct breaching the principles set out in section 602 of the Corporation[s] Act. There has been no conduct which involves unacceptable circumstances...*".
41. Kin Group also submitted that the Bennamon Share Acquisitions fully complied with law under Kin Group's 3% creep limit and did not represent the acquisition of a substantial interest.
42. While the Bennamon Share Acquisitions could conceivably be within our jurisdiction, no further acquisitions were made by Kin Group during the proceedings and Kin Group provided evidence that it was not the only buyer in the market.<sup>11</sup> In the circumstances, we do not consider the acquisition of 0.09% of Pact to represent a substantial interest.
43. As submitted by Pact and Kin Group, the Proposed Delisting was not coupled with any transaction. In and of itself, the Proposed Delisting has no control implication

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<sup>9</sup> at [2.1]

<sup>10</sup> See also Guidance Note 1: Unacceptable Circumstances

<sup>11</sup> See paragraph 53



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nor does it involve the acquisition of a substantial interest and therefore it did not appear to enliven our jurisdiction under section 657A(2)(a).

44. Mr Raper submitted that the Proposed Delisting *"concerns the likely control of a substantial interest in the company – being the minority shares, many of which have been, and will continue to be, acquired by the controlling shareholder should the Delisting be allowed"*. He also submitted that Kin Group had made it clear that it wished to acquire 100% of the shares in Pact during the Bid and that the recent Bennamon Share Acquisitions evidenced an intent regarding a future offer.
45. Kin Group submitted that *"there is no Kin takeover offer, no control proposal or no other offer to acquire shares at this time."*
46. Pact submitted that *"[t]here is no 'current or planned' offer. Whatever may or may not happened (sic) in the future is pure speculation and cannot be a basis for any action by the Panel."*
47. The Panel's concerns, when considering an application, relate more to the effect or likely effect of a proposal than the intention or purpose behind it. The Panel looks at the effect or likely effect of existing circumstances, not hypothetical scenarios. We note that the acquisition of a substantial interest post the Proposed Delisting would be a new circumstance, whether or not it is within the 3% creep limit, and in particular if it would allow Kin Group to hold 90% or more of the shares in Pact.

#### **No other grounds for unacceptability under section 657A**

48. Section 657A(2)(b) and 657A(2)(c) are the two additional grounds upon which the Panel can make a declaration of unacceptable circumstances. That is, if the circumstances are unacceptable:
  - (a) having regard to the section 602 principles (section 657A(2)(b)) or
  - (b) because of a contravention of Chapters 6-6C (section 657A(2)(c)).
49. Mr Machet submitted that the Proposed Delisting involved unacceptable circumstances contrary to sections 602(a).
50. Mr Raper submitted that the Proposed Delisting was *"concerned with the fundamental principles of s602, in that the specific delisting mechanism here is being promulgated under false and misleading circumstances, creating a disorderly and unfair market environment for minorities – one that leads to their coerced expropriation"*.
51. Manipur<sup>12</sup> submitted that *"[t]he compulsory acquisition provisions are essentially predicated on a bidder achieving a 90% shareholding. To permit a bidder to force many holders out by pursuing or threatening to pursue a delisting once it reaches 75%, is a material and fundamental change to the policy behind section 602(d)"* and that *"[s]uch a process may also be inconsistent with section 602(c) as a number of holders will be denied 'a reasonable and equal opportunity to participate in any benefits accruing to the holders' by virtue of participating in the 'mop up' as for various reasons they are unable or unwilling to remain in a delisted entity."*

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<sup>12</sup> See paragraph 79

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52. Pact submitted that the likelihood of Pact being delisted, as well as the steps involved including that Kin Group would be entitled to vote, had been spelt out repeatedly in great detail on a number of occasions since Bennamon launched its takeover bid in September 2023. Pact submitted that the market was therefore very well informed and that the Proposed Delisting was compliant with section 602. Kin Group made similar submissions.
53. Kin Group also submitted that the Bennamon Share Acquisitions represented only circa 19.8% of all on market trades undertaken on the ASX between the announcement of the Proposed Delisting and close of trading on the date of the application. Kin Group submitted that this evidenced that there were other buyers of Pact shares on the market, which was therefore not that illiquid, and that the Bennamon Share Acquisitions added demand and liquidity to the market, assisting in upward pricing pressure and providing an opportunity for those shareholders who wanted to sell.
54. It was not alleged that there had been a breach of Chapter 6, therefore section 657A(2)(c) does not apply.
55. Section 602 sets out the purposes of Chapter 6. They are principles to ensure that:
- (a) the acquisition of control over voting shares takes place in an efficient, competitive and informed market (section 602(a))
  - (b) the holders of shares and the directors know the identity of a person who proposes to acquire a substantial interest, have a reasonable time to consider the proposal and are given enough information to enable them to assess the merits of the proposal (section 602(b))
  - (c) as far as practicable, the holders of shares in the relevant class all have a reasonable and equal opportunity to participate in any benefits accruing to holders through any proposal under which a person would acquire a substantial interest (section 602(c)) and
  - (d) an appropriate procedure is followed as a preliminary to compulsory acquisition following a takeover bid (section 602(d)).
56. As discussed above, the Proposed Delisting did not involve the acquisition of a substantial interest and therefore, sections 602(b) and 602(c) do not apply.
57. Section 602(d) relates to compulsory acquisition following a takeover bid. Given the Bid already closed, any compulsory acquisition that would occur would be under the general compulsory acquisition regime, therefore section 602(d) does not apply.
58. Section 602(a) ensures that the market trades on an efficient, competitive and informed basis.
59. In *Flinders Mines Limited 02 and 03*,<sup>13</sup> the fact that the delisting had not been clearly contemplated or flagged was one of the factors the Panel took into account when making its declaration of unacceptable circumstances.

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<sup>13</sup> [2019] ATP 2 at [22]

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60. Here, we were satisfied that Kin Group's intentions with regards to Pact's delisting had been sufficiently clear so that the Proposed Delisting was not contrary to the efficient, competitive and informed market principle under section 602(a).

#### **Awareness of intention to delist**

61. Pact submitted that both Mr Machet and Mr Raper had purchased most of (and all of, in the case of Mr Raper) their shares in Pact on or after March 2024, when Bennamon's disclosed voting power was already 86.98% and its intention with regards to the delisting of Pact had been spelt out in detail on many occasions.
62. Kin Group submitted that Mr Raper was a sophisticated investor and made a calculated investment decision to invest in Pact, fully aware of the stated intentions to delist.
63. We considered the effect of the circumstances generally, not just in relation to the applicants and their investments. However, we did consider it relevant that any shareholders dealing in Pact shares over the last 12 months or so would have done so with the knowledge of the likelihood of a delisting of Pact.

#### **ASX's approval of a decision made by Pact directors**

64. Kin Group submitted that the Panel "*should not allow itself to be used as a forum for ventilating grievances outside the scope of the Panel's remit, or for challenging legitimate decisions of other regulators (ie the ASX), directors and shareholders that the Applicant happens not to like.*"
65. Pact submitted that ASX had given its approval for the Proposed Delisting and that the Panel should not second guess the ASX when it permits an action under its listing rules and in accordance with its guidance.
66. Mr Machet submitted that ASX does not ensure compliance with section 602 and therefore a delisting approved by ASX may still involve unacceptable circumstances under the Panel's jurisdiction. Mr Raper similarly submitted that ASX has responsibility in the administration of the delisting but that does not remove the Panel's jurisdiction when circumstances around a delisting are unacceptable.
67. The ASX listing rules are designed to ensure market integrity, fairness and investor confidence. They do govern, among other things, the delisting process of entities. We agree that it is not our role, in the ordinary course, to intervene in relation to circumstances that fall within ASX's remit especially where an intention has been clearly stated and time has elapsed. Nevertheless, there is clearly potential for overlap with our jurisdiction as described by the Panel in *Flinders Mines Limited 02 and 03*.<sup>14</sup>
68. We do not make any comments about the Panel's jurisdiction with regards to delisting generally, but only with respect to the circumstances in the applications. As stated in *Flinders Mines Limited 02 and 03*,<sup>15</sup> the manner and circumstances in which a delisting occurs may vary greatly and our decision is based on the particular facts

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<sup>14</sup> See paragraph 31

<sup>15</sup> [2019] ATP 2 at [20]

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involved. We maintain that, in circumstances where a delisting is coupled with a transaction which has a control effect or which involves the acquisition or proposed acquisition of a substantial interest in the company, a delisting may very well involve unacceptable circumstances. Here, it was not the case.

69. Given the disclosure around the Proposed Delisting in the Notice of Meeting and the fact that there is no current or planned offer from Kin Group to buy out the minority shareholders, we do not consider that the reasons why Pact sought the Proposed Delisting were unacceptable, including having regard to ASX Guidance Note 33.<sup>16</sup>

#### Other Remedies

70. Mr Raper submitted that a Panel application was one of the Remedies listed in the announcement regarding the Proposed Delisting and the Notice of Meeting and that therefore it could not be argued that the Proposed Delisting was a matter outside of the Panel's jurisdiction. Manipur made submissions of a similar nature.
71. Pact submitted that the Remedies had been included in the Notice of Meeting to address a specific disclosure requirement from the ASX in Guidance Note 33.<sup>17</sup>
72. Kin Group submitted that the Panel "*should not allow itself to in effect be a small claims tribunal for a shareholder to challenge or second guess legitimate decisions of directors which the shareholder does not like. Even more so when it involves matters which are the domain of the ASX and the Courts.*" Kin Group also submitted that if, at some future time, Kin Group was to acquire a further 1.9% and satisfied the tests for compulsory acquisition, the acquisition of minority shares would be subject to the safeguards in Chapter 6A which protect minority interests, including the provision of an independent expert's report under the general compulsory acquisition power and various procedural steps including the right to apply to the courts in certain circumstances.
73. Mr Raper submitted that there were no real remedies available to minority shareholders alleging oppression in the court, given how prohibitively expensive and time consuming the process would be. Manipur made submissions to the same effect.
74. Mr Raper also submitted that any future compulsory acquisition would be at a price which would be difficult to assess given "*any ultimate valuation would not benefit from public-market comparables (which invariably trade at much higher multiples and thus imply higher value for minorities)*" and would be at a large illiquidity discount. He submitted that the protection of minority interests under Chapter 6A would be insufficient in light of these issues.
75. We consider that there are other remedies available to shareholders in relation to the Proposed Delisting, including with the Panel should unacceptable circumstances occur at a later stage. This informed our decision not to conduct proceedings.<sup>18</sup>

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<sup>16</sup> ASX Listing Rules Guidance Note 33: Removal of Entities from the ASX Official List at [2.1]

<sup>17</sup> See at [2.11]

<sup>18</sup> See Takeovers Panel Procedural Guidelines 2020 at [4.6]

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#### Out of time allegations

76. Mr Raper alleged a lack of disclosure from the independent directors of Pact during the Bid period and submitted that the Proposed Delisting was the project of a partial board.
77. Pact submitted that any allegations from the applicants regarding the independence of the Pact board in relation to the Bid were unsupported by evidence and in any event were out of time under section 657C(3).
78. We agree that the allegation made with respect to the Bid was not timely and the material in support of the allegations more generally was not sufficient to justify further enquiry.

#### Procedural matters

79. We received a Notice to Become a Party in both proceedings from Manipur who submitted that it held approximately 6.7% of the currently issued shares in Pact and would therefore directly be affected by, and have a significant interest in, the Proposed Delisting the subject matter of the applications.<sup>19</sup> We noted that Manipur's interest as a minority shareholder may not be substantially different from that of the applicants. Although we note that Manipur's shareholding alone would be sufficient to trigger the objection right under section 664E(4) in relation to any compulsory acquisition (if undertaken immediately), it was the applicant in *Pact Group Holdings Ltd*.<sup>20</sup> For this reason and the fact it was represented by a law firm when the applicants were individuals without legal representation, we considered that Manipur may be able to assist us and we accepted its Notice to Become a Party.<sup>21</sup>
80. A number of Pact shareholders wrote to the Panel executive in support of the submissions made by the applicants. Two of these shareholders also submitted a Notice to Become a Party.
81. We sought submissions from the parties as to whether we should accept the two Notices to Become a Party.
82. Pact submitted that we should not accept them, that the interests of minority shareholders was already represented by the applicants and Manipur (which was represented by a law firm) and that, therefore, accepting these Notices to Become a Party would not add anything relevant that had not already been covered by the parties.
83. We agreed and decided not to accept the Notices to Become a Party from the two minority shareholders. However, we decided to receive their submissions, after they consented to the parties also being provided with their submissions.

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<sup>19</sup> Manipur was identified as an interested person in Mr Machet's application (*Pact Group Holdings Ltd 02*) but not in Mr Raper's application (*Pact Group Holdings Ltd 03*)

<sup>20</sup> [2024] ATP 4

<sup>21</sup> See Takeovers Panel Procedural Rules 2020, rules 16(2) and 16(3)

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84. We did not receive submissions from other non-party shareholders. As noted in *Vmoto Limited 02R*,<sup>22</sup> we accept that a proposed delisting attracts considerable market interest, however the Panel has discretion to receive, or not to receive, submissions from non-parties.<sup>23</sup>

## DECISION

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

## Orders

86. 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.

**Rory Moriarty**

**President of the sitting Panel**

**Decision dated 21 May 2025**

**Reasons given to parties 21 July 2025**

**Reasons published 24 July 2025**

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<sup>22</sup> [2025] ATP 9

<sup>23</sup> See Takeovers Panel Procedural Rules 2020, rule 20 and Takeovers Panel Procedural Guidelines 2020 at [4.5]

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### Advisers

Party	Advisers
Mr Jeremy Machet and Scrap Invest Pty Ltd	-
Mr Jeremy Raper	-
Pact Group Holdings Ltd	Herbert Smith Freehills
Bennamon Industries Pty Ltd and Kin Group Pty Ltd	Ashurst
Manipur Nominees Pty. Ltd., Shriar Consolidated Pty Ltd, Stanningfield Proprietary Limited and Gandur Superannuation No. 3 Pty Ltd	Mills Oakley