



**Australian Government**

**Takeovers Panel**

**Reasons for Decision**

**FBR Limited 02**

**[2025] ATP 14**

**Catchwords:**

*Decline to conduct proceedings – placement – effect on control*

*Corporations Act 2001 (Cth), sections 249J, 602, 606, 657A(3)*

*ASX Listing Rule 7.1*

*MEC Resources Limited [2017] ATP 6, Accent Resources Limited [2007] ATP 14*

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

**INTRODUCTION**

1. The Panel, Chelsey Drake, Susan Forrester and Sarah Rennie (sitting President), declined to conduct proceedings on an application by Mr Bob Ciesla in relation to the affairs of FBR Limited. The application raised concerns over the lack of disclosure and the effects on control in relation to a two-tranche institutional placement undertaken by FBR. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable and the Applicant had not provided a sufficient body of material to justify the Panel making further enquiries.
2. In these reasons, the following definitions apply.

<b>Applicant</b>	Mr Bob Ciesla
<b>Bell Potter</b>	Bell Potter Securities Limited
<b>FBR</b>	FBR Limited
<b>EGM</b>	The extraordinary general meeting referred to in paragraph 5
<b>FIL</b>	Fidelity International Limited
<b>Placement</b>	The placement referred to in paragraph 4
<b>Placement Shares</b>	The ordinary shares issued by FBR under the Placement
<b>Resolutions</b>	The resolutions passed at the EGM as referred to in paragraph 5

**FACTS**

3. FBR is an ASX-listed company that designs, develops and builds dynamically stabilised robots to work outdoors (ASX: FBR).
4. On 27 March 2025, FBR announced that it had completed a \$6.3 million two-tranche placement at an issue price of \$0.01 per share to provide additional working capital

and for restructuring and development costs (**Placement**). The first tranche of the Placement (574,500,000 shares) was issued to sophisticated and professional investors under FBR's existing placement capacity. The second tranche of the Placement (53,800,000 shares) was to be issued to FIL subject to shareholder approval.

5. On 6 May 2025, FBR held a shareholders' meeting (**EGM**) where resolutions to approve the second tranche of the Placement, ratify the first tranche of the Placement and ratify another previous issue of 149,073,026 shares to Bell Potter (under a share purchase plan announced on 29 November 2024) were each carried (**Resolutions**).
6. Prior to this application, the Applicant had previously lodged an application to the Takeovers Panel dated 4 May 2025 in relation to the affairs of FBR but subsequently withdrew the application with the intention of submitting a fresh application.

### APPLICATION

#### Declaration sought

7. By application dated 18 May 2025, the Applicant sought a declaration of unacceptable circumstances. The Applicant submitted that (among other things):
  - (a) The Placement approved at the EGM '*consolidated control in institutional hands without triggering protections in Chapter 6 of the Corporations Act*' and that this outcome was facilitated by a '*procedurally deficient voting process that excluded and confused retail shareholders*' through inadequate disclosure and unclear meeting materials. It was contended that the structure of the placement enabled certain institutional investors, such as FIL, to significantly increase their voting power in the company.
  - (b) FBR made '*improper use of ASX Listing Rule 7.1 to bypass a broader vote and issue discounted shares to select institutions, contrary to the spirit of shareholder equity*' and that FBR's reliance on its placement capacity circumvented proper shareholder scrutiny and disadvantaged retail shareholders, who were excluded from participating in the Placement on the same terms.
  - (c) The FBR board '*refused to engage with shareholders who requested postponement and clarification*' in relation to the EGM, noting that several shareholders had sought to delay the meeting and requested further information on the proposed Resolutions but that those concerns were not adequately addressed by the FBR board prior to the vote at the EGM.
  - (d) The '*risk of FBR's intellectual property being transferred offshore and exploited by insiders [had] materially increased*' as a result of the Placement and its effect on control.

#### Final orders

8. The Applicant sought final orders including to the following effect:
  - (a) The outcomes of the EGM be set aside and the company be required to convene a new meeting with '*proper notice, revised explanatory materials and [an opportunity for shareholder] questions*'.

- (b) FBR be required to make disclosures regarding intellectual property ownership and any alternative financing options considered by the board.

## DISCUSSION

9. FBR made preliminary submissions, submitting that (among other things):
  - (a) FBR had an urgent need for capital and the directors considered that a private placement was the best means of raising capital because it would be completed over a shorter period of time and *'offer[ed] certainty as to the level of participation and the amount of funds raised'*.
  - (b) The Notice of Meeting for the EGM complied with the relevant requirements of the *Corporations Act 2001* (Cth) and ASX Listing Rules. The Notice of Meeting was approved by ASX prior to being dispatched and sent to FBR shareholders in accordance with section 249J.
  - (c) The Placement and the associated passing of the Resolutions had no effect on control in relation to FBR because no shareholder, as a result of the Placement, increased their holding beyond the 20% threshold prohibited by section 606. Furthermore, no shareholder acquired a substantial interest in the company or obtained a position of influence sufficient to determine the outcome of decisions about FBR's financial or operating policies within the meaning of section 50AA.
  - (d) There was no improper use by FBR of ASX Listing Rule 7.1. The Placement Shares were issued under the company's available capacity in accordance with the ASX Listing Rules. Shareholder approval was sought at the EGM to ratify the share issues and refresh the company's placement capacity.
  - (e) The price of the Placement Shares was determined in consultation with Bell Potter, having regard to prevailing market conditions and the demand from institutional and sophisticated investors at the time of the Placement.
10. FBR further submitted that in relation to persons who were substantial shareholders of FBR prior to the Placement:
  - (a) three of its four substantial shareholders provided a Form 604 – Notice of change of interest of substantial holder following the Placement disclosing a decrease in voting power of more than 1% and
  - (b) its other substantial shareholder, FIL, did not lodge an updated Form 604 which it would have been required to do if there had been a movement of at least 1% in its holding in FBR. FBR noted that the shares issued to FIL under the Placement represented 0.946% of the total shares on issue following the Placement and that the last Form 604 lodged by FIL (dated 16 December 2019) stated that FIL had voting power of 9.9% in FBR.
11. Our jurisdiction is primarily concerned with issues that relate to control or potential control of, or the acquisition or proposed acquisition of a substantial interest in, a

company.<sup>1</sup> The Placement appeared to have been conducted in compliance with the ASX Listing Rules and made within FBR's existing capacity under ASX Listing Rule 7.1. There was no evidence to suggest the Placement had any effect on control of, or the acquisition of a substantial interest in, FBR<sup>2</sup>. There was also no material to indicate that the Placement was inconsistent with the purposes of Chapter 6.

12. The issues raised in the application relating to corporate governance and operational decision-making, including in relation to the management or ownership of intellectual property and the risk of offshore transfer are not matters for us unless such issues are connected to a control transaction or the acquisition of a substantial interest or are inconsistent with the principles in section 602.
13. The Placement formed part of a broader capital management strategy in response to FBR's financial constraints and was undertaken through a process that complied with the ASX Listing Rules and *Corporations Act 2001* (Cth). The Placement reflected a conventional capital raising of the kind commonly conducted by ASX-listed entities. The proportion of shares issued and the procedural steps followed for the capital raising were consistent with market standards.
14. We are not satisfied that there was any evidence to suggest that the Placement conferred a control benefit on any particular shareholder, nor that it was structured to avoid shareholder approval or entrench the voting powers of a particular group of shareholders.
15. The Applicant did not clearly articulate the basis on which he alleged that the circumstances were unacceptable. While broad concerns were raised in relation to the Placement, explanatory materials, lack of shareholder engagement and management decisions more generally, the application did not sufficiently explain how those matters amounted to unacceptable circumstances within the meaning of section 657A.
16. We acknowledge that while shareholders with standing are entitled to bring applications, prospective applicants should consider whether the circumstances genuinely raise issues within our jurisdiction. Our powers are designed to address unacceptable circumstances that undermine the principles set out in section 602, particularly in the context of control transactions. Where matters relate to routine placements or capital raisings that fall within market norms, prospective applicants need to assess carefully whether there is a reasonable basis to warrant our intervention. We encourage potential applicants to obtain independent legal advice prior to lodging an application, particularly where the circumstances do not clearly disclose matters falling within our jurisdiction.

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<sup>1</sup> See *Accent Resources Limited* [2007] ATP 14 where the Panel did not consider that an application relating to a placement of more than 15% of the company's capital under ASX Listing Rule 7.1 raised issues for the Panel.

<sup>2</sup> See *MEC Resources Limited* [2017] ATP 6 where the Panel declined to conduct proceedings on an application relating to a placement of 7.5% of the company's capital and none of the places increased their shareholding to over 20%.

## DECISION

17. 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). 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.

**Sarah Rennie**

**President of the sitting Panel**

**Decision dated 28 May 2025**

**Reasons given to parties 21 July 2025**

**Reasons published 22 July 2025**

## Takeovers Panel

Reasons – FBR Limited 02  
[2025] ATP 14

### Advisers

Party	Advisers
FBR Limited	MPH Lawyers
Mr. Bob Ciesla	-