Australian Government

Takeovers Panel

Reasons for Decision
Twinza Oil Limited (Receivers and Managers Appointed)
[2025] ATP 30

Catchwords:

Decline to conduct proceedings – creditors' scheme of arrangement –section 602 principles – expert's report

Corporations Act 2001 (Cth), sections 411, 602, 606, 611, 657A

In the matter of Twinza Oil Limited (Receivers and Managers Appointed) [2025] FCA 939, Re Boart Longyear Ltd (No 2) [2017] NSWSC 1105, Re Coles Group Ltd (No 2) [2007] VSC 523, Re Ranger Minerals Ltd [2002] WASC 207

Guidance Note 1: Unacceptable Circumstances, ASIC Regulatory Guide 60: Schemes of Arrangement

Virgin Australia Holdings Limited (Administrators Appointed) 02 [2020] ATP 12, Quantum Graphite Limited (subject to Deed of Company Arrangement) [2018] ATP 1, Pasminco Ltd (Administrators Appointed) [2002] ATP 6, St Barbara Mines Limited and Taipan Resources NL [2000] ATP 10

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

INTRODUCTION

1. The Panel, Bruce Cowley (sitting President), Ruth Higgins SC, and Kierin Deeming, declined to conduct proceedings on an application by a shareholder in relation to the affairs of Twinza Oil Limited (Receivers and Managers Appointed). The application concerned a proposed creditors' scheme of arrangement whereby certain secured creditors of Twinza would acquire voting power of 85% in Twinza by way of a debt-for-equity swap, and the voting power of the ordinary and preference shareholders of Twinza would be diluted to 5% and 10% respectively. WM Clough submitted that the effect of the circumstances was to provide control of Twinza to its secured creditors without the ordinary shareholders of Twinza being given any opportunity either to participate in the transaction or vote as to whether the transaction should be approved, contrary to the purposes set out in paragraphs 602(a), (b), and (c).[1] The Panel declined to conduct proceedings on the basis that it considered that the Court was the more appropriate forum to decide the issues raised by the applicant.

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

2. In these reasons, the following definitions apply.

Independent Expert's Report	has the meaning given in paragraph 11
Other Senior Lenders	Hendale PNG Limited, Pacific World Energy Ltd and Henry Aldorf
ROCAP	has the meaning given in paragraph 10
Scheme	has the meaning given in paragraph 8
Scheme Creditors	the Tor Funds and the Other Senior Lenders
Tor Funds	Tor Asia Credit Opportunity Master Fund LP and Tor Asia Credit Master Fund LP
Twinza	Twinza Oil Limited (Receivers and Managers Appointed)
WM Clough	WM Clough Pty Ltd

FACTS

3. Twinza is an unlisted public company with approximately 188 ordinary shareholders and 56 preference shareholders. It is pursuing an offshore gas project in Papua New Guinea, but it is in substantial debt. As at 31 May 2025, Twinza owed approximately US$324 million in outstanding debt to its various senior lenders.

4. Most (approximately 92%) of this amount was owed to the Tor Funds, which are managed by Tor Investment Management (Hong Kong) Limited. The remainder was owed to the Other Senior Lenders.

5. WM Clough is an ordinary shareholder of Twinza, having a voting power of approximately 27.63% in Twinza.

6. On 19 February 2025, the Tor Funds appointed individuals associated with FTI Consulting (Australia) Pty Ltd as receivers and managers of Twinza.

7. Also on 19 February 2025, Twinza and the Scheme Creditors entered into a standstill agreement.

8. Also on 19 February 2025, Twinza and the Tor Funds entered into a Scheme Implementation Deed in relation to a proposed creditors' scheme of arrangement (the **Scheme**). The Scheme would have the following relevant features:

   (a) the Scheme Creditors would provide a release of up to 92% of the senior debt, reducing it from approximately US$324 million to US$30 million

   (b) in exchange for the partial release of the debt, there would be an issue of ordinary shares in Twinza to the Scheme Creditors so that, following the implementation of the Scheme, the Scheme Creditors would hold 85% of the total number of Twinza shares

   (c) the convertible redeemable preference shares on issue would be replaced with ordinary shares in Twinza so that, following the implementation of the Scheme,

the convertible redeemable preference shareholders would hold 10% of the total number of Twinza shares and

(d) existing shareholders would retain the remaining 5% of Twinza shares on issue following the implementation of the Scheme.

9. On 25 February 2025, the receivers and managers of Twinza delegated certain of their powers in relation to the day-to-day management of Twinza to its directors.

10. On 10 April 2025, the receivers and managers of Twinza lodged with ASIC a Report on Company Activities and Property (**ROCAP**). The ROCAP valued the assets of Twinza at between US$458 million and US$528 million (both values being greater than the approximately US$324 million owed by Twinza to the Scheme Creditors).

11. On 24 June 2025, BDO Corporate Finance Australia Pty Ltd, which had been engaged by Twinza, provided its independent expert's report in relation to the Scheme (the **Independent Expert's Report**). The Independent Expert's Report valued the assets of Twinza, in the event the Scheme does not proceed, at between US$179 million and US$254 million in a low and high scenario respectively (both values being less than the approximately US$324 million owed by Twinza to the Scheme Creditors).

12. On 5 August 2025, ASIC wrote to Twinza in relation to the Scheme, advising that:

> "*ASIC does not propose to appear to make submissions, or intervene to oppose the Scheme, at the first court hearing under subsection 411(1) of the Act.*
>
> *ASIC does not intend at the first court hearing or the second court hearing to provide a statement under paragraph 411(17)(b) of the Act. We note that ASIC's policy on when it will provide such a statement in Regulatory Guide 60: Schemes of arrangement refers to ASIC being satisfied that a compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Chapter 6 of the Act. This issue is not a relevant consideration in the context of this Scheme, which is a creditors' scheme. However, we will confirm in writing after the Scheme meeting has occurred whether we intend to make submissions at the second court hearing.*"

13. On 6 August 2025, the Federal Court heard an application brought by Twinza to convene a meeting of its creditors to consider and, if thought fit, agree to the Scheme.[2] This was the first Court hearing. The Federal Court ordered that Twinza convene and hold the meeting. It also made other orders usual in proceedings relating to creditors' schemes of arrangement.

14. On 8 August 2025, Twinza wrote to its shareholders advising them of the orders made by the Federal Court and providing access to the scheme booklet.

[2] *In the matter of Twinza Oil Limited (Receivers and Managers Appointed)* [2025] FCA 939

APPLICATION

Declaration sought

15. By application dated 20 August 2025, WM Clough sought a declaration of unacceptable circumstances. WM Clough submitted that:

    (a) the effect of the circumstances was to dilute the voting power of the ordinary shareholders of Twinza "*from 100% to 5% while providing control of Twinza to the secured creditors of Twinza without the ordinary shareholders of Twinza being given any opportunity to either participate in the transaction or vote as to whether the transaction should be approved*"

    (b) the circumstances were unacceptable because:

        (i) "*[t]he acquisition of control over 85% of voting shares in Twinza by the secured creditors is not taking place in an efficient, competitive and informed market contrary to the purpose set out in section 602(a) of the Corporations Act*"

        (ii) "*[t]he holders of shares in Twinza do not have a reasonable time to consider the proposal for the change of control nor have they been given enough information to enable them to assess the merits of the proposal, contrary to the purpose set out in section 602(b) of the Corporations Act*"

        (iii) "*[t]he shareholders of Twinza will not have a reasonable and equal opportunity to participate in any benefits accruing from [the Scheme], nor indeed are they being afforded any opportunity to participate in any benefits, contrary to the purpose set out in section 602(c) of the Corporations Act.*"

16. As to the Panel's jurisdiction to consider the matter, WM Clough referred to the Panel's statement in *St Barbara Mines Limited and Taipan Resources NL*[3] that:

> "*The Panel is empowered to declare that unacceptable circumstances exist in relation to the affairs of the company, because of their effect on the control of that company. There is no express exclusion of a change of control resulting from a members' scheme of arrangement under Part 5.1 of the Law.*[4] *Nonetheless, in our view, it would generally be inappropriate for the Panel to conduct proceedings concerning a scheme of arrangement.*"

17. WM Clough submitted that the Panel "*clearly has jurisdiction to declare that unacceptable circumstances exist in relation to a change of control of a public company with more than 50 shareholders pursuant to a scheme of arrangement or other control transaction*" and that the "*statement by the Panel in that case importantly also only speaks to members' schemes of arrangement. Whilst there are a number of instances where the Panel has considered applications in relation to schemes of arrangement there are none that are analogous to the current circumstances arising out of a creditors' scheme of arrangement.*" It highlighted the difference between a members' scheme of arrangement, where members are given the opportunity to vote on the proposed scheme, and the

[3] [2000] ATP 10 at [21]
[4] Referring to Part 5.1 of the Corporations Law, since superseded by Part 5.1 of the Corporations Act

creditors' scheme proposed by Twinza, under which Twinza was not proposing to give shareholders any vote in relation to the change of control transaction.

18. It further submitted that, while it "*accepts that it will have the opportunity to make submissions at the second Court hearing … including in relation to the specific issue that arises under section 411(17)(a) of the Corporations Act … if it was successful in making a submission at that time the submission would be very much a Pyrrhic victory because it would mean that [the Scheme] would not be approved by the Court after the expenditure of very significant time and money by Twinza in promoting the Scheme*".

19. WM Clough submitted that, while it had "*not had sufficient time since the Independent Expert's Report was published to obtain its own expert appraisal of that Report, [it] noted that on three separate occasions since early 2024 Twinza has provided or used the company's Open Book Economic Model (OBEM) … [including being] used by [the] Twinza board to sign off the company's official ROCAP valuation … this ROCAP valuation values Twinza's assets at an amount substantially in excess of the valuation undertaken by the independent expert*".

Interim orders sought

20. WM Clough did not seek any interim orders.

Final orders sought

21. WM Clough sought a final order requiring Twinza to obtain approval from its ordinary shareholders, pursuant to item 7 of section 611 of the Corporations Act, for the proposed issue of shares by Twinza to the secured creditors under the scheme.

DISCUSSION

Preliminary submissions

22. In its preliminary submissions, Twinza submitted that:

    (a) "*Mr [William] Clough, WM Clough and McRae Clough Pty Ltd (being another entity in respect of which Mr Clough is the ultimate sole shareholder, director and controlling mind) (the Clough Parties) have intervened in the Federal Court Proceedings and were represented*" at the first Court hearing

    (b) "*It is the Panel's general approach not to conduct proceedings where a court has already commenced scrutiny of a scheme*" and, although it accepted that "*that general approach does not apply if there are defects in the Court's ability to apply the policy*", there was no such defect in this case because:

        (i) "*the issue of value is currently before the Federal Court*" and the Clough Parties would have the ability to make submissions in relation to that issue to the Court

        (ii) "*the Clough Parties have had ample time to obtain an expert report. They have already applied for an adjournment and can make a further application to the Federal Court*"

        (iii) "*the Clough Parties have already made submissions before the Court about the interaction of the Scheme with Chapter 6 and the purposes of s602 of the*

> *Corporations Act, and it is accepted that the Clough Parties will have the opportunity to make further submissions at the second court hearing, which will be considered by the Federal Court*"
>
> (iv) "*it is not correct, as submitted by the Clough Parties, that the general provisions of Chapter 6 of the Corporations Act nor the Eggleston principles will not be considered as part of the Scheme process*"
>
> (c) There is "*no reason that the Panel should depart from its usual approach of not conducting proceedings and to interfere with the Federal Court's scrutiny of the Scheme*."

23. In their preliminary submissions, the Tor Funds agreed with Twinza and raised two additional reasons why, according to the Tor Funds, the Panel should not conduct proceedings. The first reason was that if the Scheme did not go ahead, the Tor Funds would need to "*determine [their] future course of action, including alternate enforcement of their rights*", such as through the liquidation of Twinza. The second reason was that:

> "*It is well established that where the constituents of a class have no economic interest in the assets of the scheme company, they should not be entitled to have a vote on the scheme. In cases where there is no equity value left (that is, the assets of the scheme company are insufficient to repay creditors in full), the creditors' scheme should be free to proceed without the need for a separate vote of the members.*"

The role of the Panel in schemes of arrangement generally

24. The Panel is empowered to make a declaration of unacceptable circumstances on a number of grounds,[5] including that the circumstances are:

    (a) unacceptable having regard to the control, or potential control, of a company, or on the acquisition, or proposed acquisition, by a person of a substantial interest in a company;[6] and

    (b) otherwise unacceptable having regard to the purposes of Chapter 6 set out in section 602.[7]

25. The power to make a declaration of unacceptable circumstances is not limited to takeover bids and extends to other control transactions, including schemes of arrangement.[8]

26. However, the Panel has historically been reluctant to conduct proceedings once the Court has commenced its scrutiny of a scheme of arrangement.[9] That is because the Court has the power to deal with all aspects of schemes of arrangement[10] and the breadth of the discretion conferred by subsection 411(17) evidences a legislative

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[5] Set out in section 657A(2)
[6] Section 657A(2)(a)
[7] Section 657A(2)(b)
[8] See generally Guidance Note 1: Unacceptable Circumstances at [18]
[9] *St Barbara Mines Limited and Taipan Resources NL* [2000] ATP 10 at [32]; see also *Village Roadshow Limited 01* [2004] ATP 4, *PM Capital Asian Opportunities Fund Limited 01* [2021] ATP 17, *Nitro Software Limited* [2023] ATP 2 and *Dropsuite Limited* [2025] ATP 10
[10] Ibid at [28] and [30]

intention that the Courts be the forum for the resolution of issues relating to schemes.[11] The Panel has been less reluctant to conduct proceedings after the first Court hearing where the issues are distinct from the matters before the Court.

27. In this case, the Court's involvement weighs against conducting proceedings.

Creditors' schemes of arrangement

28. There are additional considerations that the Panel must take into account when deciding whether to conduct proceedings on an application relating to a creditors' scheme of arrangement.

29. Where no equity value remains in the shares of a given company, the relevance of the objectives of Chapter 6 may be limited.[12] In the case of a creditors' scheme of arrangement, that is principally because the interests of creditors assume greater weight in comparison with members who (in such a case) have no real economic interest in the company.[13]

30. The Panel has not previously considered a creditors' scheme. The Panel has considered several matters where a company is in receivership or administration and has entered into a deed of company arrangement.[14] In those matters, the Panel has noted that there is no exception from section 606 for deeds of company arrangement and therefore, the requirements of Chapter 6 cannot be ignored.[15] Even so, the Panel has stated that "*proceedings will generally be unlikely to be conducted where a company is in administration, and no equity value remains in its shares. The exercise of discretion to conduct proceedings depends on whether we consider there is any reasonable prospect that we would declare the specific circumstances before us to be unacceptable circumstances taking into account relevant public interest considerations.*"[16]

31. In *Quantum Graphite Limited (subject to Deed of Company Arrangement)* where the Panel decided to conduct proceedings, it did so because it considered, among other things, that the application contained credible allegations of potentially serious unacceptable circumstances on matters squarely within the Panel's jurisdiction and it was not clear to the Panel that the shares in question had no value.[17] Despite continuing disclosure concerns, ultimately the Panel concluded that making a declaration would be against the public interest having regard to the object of Part 5.3A, the matters in section

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[11] Ibid at [31]

[12] *Quantum Graphite Limited (subject to Deed of Company Arrangement)* [2018] ATP 1 at [14] citing *Pasminco Ltd (Administrators Appointed)* [2002] ATP 6 at [130]–[131]

[13] See *Re Boart Longyear Ltd (No 2)* [2017] NSWSC 1105 at [281]

[14] Including, for example, *Financial Resources Limited* [2007] ATP 27, *Quantum Graphite Limited (subject to Deed of Company Arrangement)* [2018] ATP 1, and *Moreton Resources Limited (in Liquidation) (Receivers Appointed) (Subject to Deed of Company Arrangement) 03* [2022] ATP 19

[15] See *Quantum Graphite Limited (subject to Deed of Company Arrangement)* [2018] ATP 1 at [14] and *Pasminco Ltd (Administrators Appointed)* [2002] ATP 6 at [81]-[88]. ASIC relief may be given for share transfers under s444GA by an administrator of a deed of company arrangement, see ASIC Regulatory Guide 6, Takeovers: Exceptions to the general prohibition, Section G

[16] *Virgin Australia Holdings Limited (Administrators Appointed) 02* [2020] ATP 12 at [39]

[17] *Quantum Graphite Limited (subject to Deed of Company Arrangement)* [2018] ATP 1 at [15]

657A(3) and the potential advantages and disadvantages to creditors and shareholders if the deed of company arrangement proceeded or did not proceed.

32. We are guided by these decisions and accordingly see little benefit in conducting proceedings if no equity value remains in the company's shares.

Equity value

33. The applicant raised concerns with the valuation in the Independent Expert's Report. The Independent Expert concluded that, among other things, "In the event the Scheme does not proceed, the total debts owing to the Senior Lenders and Other Senior Lenders exceeds the value of Twinza's assets by between US$55 million and US$128 million. The independent expert also compared the book value of Twinza's assets as at 30 June 2024 (US$281 million) to Twinza's debt of US$324 million as at 31 May 2025 and noted "we do not consider there to be a material difference between book value and fair value".

34. The Panel applies a high threshold to question the correctness of an expert's report.[18] In our view, the report provides a basis for the conclusion reached by the Independent Expert, while recognising that different experts may form different views in relation to key judgments (including risk adjustments) and accordingly reach a different conclusion.

35. In any event, we consider in this case that the Court is the more appropriate forum in which this issue should be challenged. The Independent Expert's Report forms part of the scheme booklet lodged with and reviewed by ASIC and approved for distribution by the Court.

Shareholder approval

36. The application also raised concerns that the dilution of the ordinary shareholders and the proposed lack of shareholder approval for the Scheme were contrary to the section 602 principles. If there is no equity value remaining in Twinza's shares, the purposes of Chapter 6 may have limited relevance. Nevertheless, we note that the issue of potential classes for existing shareholders was explicitly identified at the first Court hearing and will be decided on a final basis at the second Court hearing.[19]

Control effect

37. The scheme booklet disclosed that the Scheme Creditors would receive 85% of the Twinza shares on issue upon implementation of the Scheme. There was no disclosure as to whether any person would obtain or increase their voting power above the 20% threshold as a result of the Scheme, although that possibility clearly arises.

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[18] See, for example, *Minemakers Limited 02R* [2012] ATP 16 at [10]-[11], *Mungana Goldmines Limited 01R* [2015] ATP 7 at [50], and *The Agency Group Australia Limited 03R* [2021] ATP 5 at [84]-[88]

[19] *In the matter of Twinza Oil Limited (Receivers and Managers Appointed)* [2025] FCA 939 at [42] to [49]

38. In order to ensure that the Court has all relevant information before it when considering Chapter 6, the Panel asked Twinza to provide the following information to the Court at the second Court hearing:

    (a) the name of each person whose voting power in Twinza will increase from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%, as a result of the Scheme and

    (b) the resultant voting power in Twinza held by each such person.

39. Twinza confirmed that it would provide that information.

40. ASIC also confirmed that the Court will be made aware of any persons who will obtain or increase their voting power above the 20% threshold as a result of the Scheme.

DECISION

41. For the reasons above, 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

42. 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.

Bruce Cowley
President of the sitting Panel
Decision dated 8 September 2025
Reasons given to parties 19 September 2025
Reasons published 22 September 2025

Advisers

Party	Advisers
WM Clough	Bennett