



**Australian Government**

**Takeovers Panel**

**Reasons for Decision  
Mobile Asset Holdings Ltd  
[2026] ATP 7**

**Catchwords:**

*Declaration – orders – contravention of section 606 – section 602 principles – tag along – drag along – relevant interests – effect on control – disclosure*

*Corporations Act 2001 (Cth), sections 140, 602, 606, 608, 609, 611, 657A*

*Guidance Note 4: Remedies General*

*Takeovers Panel Procedural Rules 2020, Rules 7(1), 20(2)*

*Hongkong Xinhe International Investment Company Ltd v Bullseye Mining Ltd [No 3] [2021] WASC 260, Edensor Nominees Pty Ltd v Australian Securities and Investments Commission [2002] FCA 307, Australian Securities and Investments Commission v Yandal Gold Pty Ltd [1999] FCA 799, Aberfoyle Ltd v Western Metals Ltd (1998) 84 FCR 113, Green v Crusader Oil NL (1985) 10 ACLR 120, Gambotto v WCP Ltd (1995) 182 CLR 432*

*Humm Group Limited [2026] ATP 4, Ringers Western 02R [2024] ATP 17, The President's Club Limited [2012] ATP 10*

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

**INTRODUCTION**

1. The Panel, Kellie Benda, Rebecca Maslen-Stannage (sitting President) and Georgina Varley, made a declaration of unacceptable circumstances in relation to the affairs of Mobile Asset Holdings Ltd. The application concerned a special resolution to insert drag-along and tag-along rights into Mobile Asset’s constitution. The Panel considered the drag-along and tag-along rights created a mechanism for the acquisition of 100% of Mobile Asset in a manner that circumvents the protections of Chapter 6. The Panel also considered that shareholders had not been given sufficient information to consider the special resolution and that the market for the control, or potential control, of Mobile Asset was not taking place in an efficient, competitive and informed market. The Panel made a declaration of unacceptable circumstances and orders that Mobile Asset must not hold a general meeting to put the special resolution to shareholders. The Panel also awarded costs in favour of the Applicant.

2. In these reasons, the following definitions apply.

- Applicant** Andrew John Barlow, as director of Venturian Pty Ltd  
ATF Maverick Innovation Trust
- Board** the board of directors of Mobile Asset
- dragging shareholders** has the meaning given in paragraph 6
- Explanatory Statement** has the meaning given in paragraph 5

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<b>EGM</b>	has the meaning given in paragraph 5
<b>Mobile Asset</b>	Mobile Asset Holdings Ltd
<b>Proposed Resolution</b>	has the meaning given in paragraph 5
<b>Relevant Provisions</b>	has the meaning given in paragraph 5

## FACTS

3. Mobile Asset is an unlisted Australian public company (the parent company of Mobile Assets Pty Ltd, trading as “Rush Gold”) operating a gold-backed digital payments platform.
4. Mobile Asset has approximately 649 shareholders. It has 52,997,746 ordinary shares on issue, of which 26,957,164 (approximately 50.86%) are held by the directors of Mobile Asset and their associated entities. The Applicant is a minority shareholder of Mobile Asset.
5. On 18 March 2026, Mobile Asset issued a Notice and Explanatory Statement (**Explanatory Statement**) to convene a general meeting of shareholders (**EGM**) scheduled for 3:00 pm on Thursday, 9 April 2026. The Explanatory Statement proposed a special resolution to insert drag-along and tag-along rights (**Relevant Provisions**) into Mobile Asset’s constitution (**Proposed Resolution**). An extract of the Relevant Provisions is set out in Annexure A.
6. The Relevant Provisions are proposed to apply where any person proposes to acquire 20% or more in Mobile Asset, or otherwise proposes to acquire control of Mobile Asset, where the acquisition is regulated by the requirements of the *Corporations Act 2001* (Cth). They operate so that shareholders with more than 50% of the shares in Mobile Asset (**dragging shareholders**) could, subject to certain pre-conditions being met, require Mobile Asset to issue a notice to shareholders with details of the transaction, with the effect that:
  - (a) in relation to the drag-along rights, minority shareholders would be compelled to transfer all their shares if required under the proposed transaction and
  - (b) in relation to the tag-along rights, where the dragging shareholders agree to sell all their shares to the proposed acquirer, minority shareholders may issue a tag-along notice with an intention to sell their shares to the proposed acquirer. The dragging shareholders would be required to use best endeavours to cause the proposed acquirer to purchase all of the shares “referred to in the Tag Along Notice(s)”.
7. In addition, the Relevant Provisions:
  - (a) authorise any two directors of Mobile Asset (under an irrevocable power of attorney) to complete any transfer of shares required under the Relevant Provisions on behalf of minority shareholders
  - (b) do not contain any requirement for a minimum sale price, an independent valuation or a fairness opinion and

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(c) are not expressly subject to an item 7, section 611 resolution or any ASIC relief.<sup>1</sup>

8. The Explanatory Statement described the Relevant Provisions as follows:

*“These provisions provide mandatory rules for the acquisition of certain levels of shareholder control over companies, including 100% control. The proposed modifications to the Constitution comply with these rules. In particular, they provide that any proposed sale of the Company must comply with an exception in section 611 of the Act, including without limitation the shareholder approval exception under item 7. The modifications to the Constitution are deliberately drafted to support, and not to undermine, the takeover principles in s 602 of the Act.”*

9. On 18 March 2026, the Applicant lodged proxies against the Proposed Resolution and sent an email to Mobile Asset raising several objections to the Relevant Provisions.

10. On 2 April 2026, the company secretary of Mobile Asset responded to the Applicant’s email and stated that:

*“The matters you have raised are noted. The Board considers that the proposed amendments are appropriate and in the best interests of the Company and its shareholders, and that they have been structured to operate consistently with the Corporations Act, including the takeover provisions in Chapter 6.*

*Given the nature of your queries, the Board considers it most appropriate to address these at the Extraordinary General Meeting, where all shareholders have the opportunity to hear the discussion and ask questions.”*

## APPLICATION

### Declaration sought

11. By application dated 7 April 2026, the Applicant sought a declaration of unacceptable circumstances. The Applicant made submissions (among other things) to the effect that:

- (a) the Board collectively holds between 51% and 72% of voting power in Mobile Asset (based on known shareholdings and historical voting patterns)
- (b) the Explanatory Statement was materially deficient, misleading and inadequate to enable shareholders to make an informed decision on the Proposed Resolution
- (c) the Proposed Resolution, if passed, would have enabled the Board to unilaterally trigger a forced sale of all minority shares at any price, without independent valuation, fairness protections or minority shareholder consent
- (d) the irrevocable power of attorney (described in paragraph 7(a)) was coercive

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

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- (e) minority shareholders would not have had a reasonable and equal opportunity to participate in any benefits accruing through the Relevant Provisions and
  - (f) no independent expert report had been obtained despite the Board's conflict of interest in relation to the proposed provisions.
12. The Applicant submitted that the effect of the circumstances was to create a mechanism for the acquisition of 100% control of Mobile Asset by a path that circumvented the protections of Chapter 6 while purporting to comply with it.

#### Interim orders sought

13. The Applicant sought interim orders that the EGM be adjourned and that Mobile Asset not proceed with the Proposed Resolution until shareholders were given no less than 28 days to consider adequate supplementary disclosure and an independent expert's report.

#### Final orders sought

14. The Applicant sought final orders to prohibit the Proposed Resolution being put to shareholders without:
- (a) an independent expert's report opining on whether the Relevant Provisions were fair and reasonable to minority shareholders
  - (b) adequate supplementary disclosure and
  - (c) amendments to the Relevant Provisions aimed at providing minimum protections for minority shareholders.

## DISCUSSION

15. We have considered all the material presented to us in coming to our decision, but only specifically address those things that we consider necessary to explain our reasoning.

#### Interim orders

16. The substantive President considered the interim orders on an urgent basis given the EGM was originally scheduled for 3:00 pm on Thursday, 9 April 2026 (2 days after the date of the Panel application).
17. On 7 April 2026, ASIC made preliminary submissions that the application raised "*a prima facie serious question of whether shareholders have been given sufficient information to assess the effect and operation of the proposed constitutional amendment in the context of Chapter 6*" and that given the timing of the EGM, ASIC would "*presently support interim relief to defer the meeting or at least deferring the resolution in question, pending further submissions and consideration of whether supplementary disclosure is required*".
18. On 8 April 2026:
- (a) Mobile Asset informed shareholders that the Board had deferred the EGM and that it was considering whether "*any supplementary information, adjustments to the proposed resolution, or alternative approaches are appropriate*" and

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- (b) the Applicant made preliminary submissions that Mobile Asset's notice to shareholders regarding the deferral of the EGM was misleading and did not resolve the unacceptable circumstances.
19. The President was concerned that any further action taken by Mobile Asset in respect of the Proposed Resolution or the EGM could prejudice the consideration by the Panel of the application and considered that an interim order was necessary to preserve the status quo. The President did not consider it necessary to address whether any supplementary disclosure or an independent expert's report was required, given those issues would be considered by the Panel in the course of proceedings.
20. Accordingly, the President made interim orders (see Annexure B) restricting Mobile Asset from holding a general meeting at which shareholders were asked to consider, and if thought fit, pass a resolution inserting drag-along or tag-along rights into Mobile Asset's constitution (including the Proposed Resolution). Any votes cast on a resolution inserting drag-along or tag-along rights into Mobile Asset's constitution were to be disregarded.

#### Decision to conduct proceedings

21. ASIC made a very helpful preliminary submission, submitting (among other things) that:
- (a) the Explanatory Statement presents the Relevant Provisions as a legally effective mechanism *"without adequately explaining that the amendment does not itself authorise any acquisition above the threshold in s606 and that any future reliance on item 7 would require a separate, s611 approval process with prescribed disclosure and voting exclusions (which can become complicated where drag/tag along rights result in all shareholders having a relevant interest in all other shares in the company, depending on how such rights are drafted)"*
  - (b) it was *"having difficulty understanding how the proposed drag/tag along rights can operate to "support, and not to undermine" the principles of Chapter 6" and*
  - (c) there is a question of *"whether the drag/tag along rights in proposed clause 4A would in fact bind existing shareholders to the extent they impose or increase restrictions on the transfer of shares already held by those shareholders, having regard to s140(2)(c) of the Corporations Act 2001 (Cth)."*
22. The Applicant made a preliminary submission (which we decided to accept<sup>2</sup>) stating that, even though Mobile Asset had deferred the EGM, the Panel's intervention is *"necessary to ensure that any future resolution is accompanied by the protections that ASIC and the Applicant have identified as required under Chapter 6."*
23. The Panel executive asked Mobile Asset when the EGM had been deferred to (given no date had been specified in the 8 April 2026 correspondence to shareholders – see paragraph 18) and when Mobile Asset expected to provide a further update to

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<sup>2</sup> See Rules 7(1) and 20(2) of the Takeovers Panel Procedural Rules 2020

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shareholders on the matters referred to in the 8 April 2026 correspondence. Mobile Asset submitted that:

- (a) no revised date had yet been determined for the EGM and
- (b) on 10 April 2026, it provided an update to shareholders which stated that “a small number of shareholders provided feedback that they were unhappy with the nature and wording of the [Relevant Provisions]” and informed shareholders that an application to the Panel had been made.

24. We considered the application raised matters within our jurisdiction that warranted further inquiry. Our preliminary view was that there were several features of the Relevant Provisions and the Explanatory Statement that were flawed and likely to have an effect on the control, or potential control, of Mobile Asset.

25. Accordingly, we decided to conduct proceedings.

#### Effect of the Relevant Provisions

26. We invited submissions from the parties on whether the insertion of the Relevant Provisions into Mobile Asset’s constitution gives rise to unacceptable circumstances.

27. The Applicant submitted that “the circumstances are unacceptable..., having regard to each of the section 602 principles and to the effect of the Relevant Provisions on control of Mobile Asset”. The Applicant submitted this was because (among other reasons):

- (a) the Relevant Provisions are structurally adverse and oppressive to minority shareholders, including because:
  - (i) the 50% drag-along threshold enables “the majority shareholders (associated with or controlled by the) Board to trigger the mechanism without external shareholder support”
  - (ii) there is no requirement for a minimum sale price, an independent board committee recommendation, an independent valuation or a fairness opinion
  - (iii) the irrevocable power of attorney operates coercively as it removes a shareholder’s capacity to resist a forced transfer, even where they consider the price inadequate
- (b) the Relevant Provisions are expropriative and do not satisfy the requirements established in the High Court decision of *Gambotto v WCP Ltd* (1995) 182 CLR 432.

28. ASIC submitted that:

*“its principal concern in this matter is that the Relevant Provisions have the effect of lowering the legislative compulsory acquisition/expropriation of minority shareholding thresholds in respect of future control transactions. A member who votes against the Proposed Resolution could, if the Relevant Provisions operate as intended, have their shares compulsorily acquired at a threshold inconsistent with the compulsory acquisition settings in Parts 5.1 and 6A.1 of the Act. In addition, we note that the expropriation of shares which is enabled by the Relevant Provisions may not be*

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*exercised for a proper purpose and may be oppressive to minority shareholders. In this regard we refer to the decision in Gambotto v WCP Ltd (1995) 182 CLR 432."*

29. ASIC also submitted that the *"Relevant Provisions will be understood by the market, counterparties, and members themselves to have a legal force they do not appear to possess, and might still be relied on unlawfully."*
30. Mobile Asset submitted that *"the matter concerns the operation of a prospective and conditional constitutional mechanism"*. Accordingly, Mobile Asset submitted that:
- "The Relevant Provisions are not inconsistent with section 602. The provisions do not themselves effect any acquisition of control, but operate only following a transaction implemented in accordance with the Act. Any future proposed transaction would need to occur in an efficient, competitive and informed market, including through the disclosure of details of the acquirer and offer as prescribed by the Act. The Relevant Provisions enshrine that shareholders are treated equally and have a reasonable and equal opportunity to participate in transaction benefits. These provisions are consistent with, and supportive of, the principles in section 602."*
31. We had similar concerns to the Applicant and ASIC that the Relevant Provisions create a mechanism for the acquisition of 100% of Mobile Asset in a manner that circumvents the protections of Chapter 6. In particular, the drag-along rights gave the Board (or any other shareholder(s) with more than 50% of the shares in Mobile Asset) the ability to compel minority shareholders to transfer all of their shares to a third party. That transfer of shares comes without any requirement for Mobile Asset to provide substantive disclosure or obtain shareholder approval, nor does it involve any requirement for a minimum sale price, a recommendation from an independent board committee, an independent valuation or a fairness opinion.
32. Mobile Asset submitted that *"there is not currently (and was not at the time the Relevant Provisions were circulated to shareholders) any control transaction proposed or on foot in relation to the Company"*. This did not resolve or reduce our concerns. It is clear that the Relevant Provisions are designed to capture future transactions and that Mobile Asset intended to rely on such provisions. We did not agree with Mobile Asset that the Relevant Provisions *"do not themselves effect any acquisition of control"* (see paragraph 30). Not only is it possible for the Relevant Provisions to facilitate an acquisition of control, it is what the Relevant Provisions are intended to achieve. This is consistent with Mobile Asset's submission that:
- "Shareholders in unlisted companies do not have access to a liquid market exit mechanism. Without a drag-along, a majority shareholder wishing to sell the entire company to a third party at a premium cannot deliver 100% of shares, which may make it more difficult to implement a transaction across all shareholders, even where that transaction is otherwise capable of being implemented in accordance with applicable law."*
33. Accordingly, we consider there was a real risk that Mobile Asset continued to present, and potentially rely on, the Relevant Provisions as a legally compliant mechanism which, in our view, is not the case.

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#### *Application of section 140(2)*

34. There is also a question of how, in practice, the Relevant Provisions may bind shareholders given the application of section 140(2) which states as follows:

*“(2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:*

*(a) requires the member to take up additional shares; or*

*(b) increases the member’s liability to contribute to the share capital of, or otherwise to pay money to, the company; or*

*(c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:*

*(i) in connection with the company’s change from a public company to a proprietary company under Part 2B.7; or*

*(ii) to insert proportional takeover approval provisions into the company’s constitution.”*

35. The Applicant submitted that section 140(2)(c) applies to the Proposed Resolution and has the effect that if passed, *“existing shareholders of Mobile Asset (being members at the date the modification is made) will not be bound by the Relevant Provisions unless they have each agreed in writing to be so bound. New shareholders who acquire shares after the modification would take subject to the Relevant Provisions in the usual way.”*

36. The Applicant also submitted that:

*“They [the drag-along rights] go further and convert it into a mandatory obligation of disposal: clause 4A.4 requires each shareholder to “sell and transfer all of their Shares” on being given a Proposed Transaction Notice, and clause 4A.6 provides an irrevocable power of attorney for “any two Directors” to execute the transfer if the shareholder does not.*

37. ASIC submitted that the drag-along rights also engaged s 140(2)(c) and that *“[a] “restriction on the right to transfer” is apt to include a clause that replaces the member’s own decision about transfer with someone else’s decision, and that textual conclusion is reinforced by the protective purpose of the subsection.”* ASIC also submitted that:

*“The consequence of our analysis that s140(2)(c) applies, at least to the drag along, is that members at the date of the Proposed Resolution would not be bound unless they individually agree in writing. It seems unlikely that all members would agree to be bound, and the Applicant plainly will not. The members of the company would therefore fall into two groups following the passage of the Proposed Resolution:*

*(a) existing members at the date of the amendments who do not agree in writing to be bound; and*

*(b) existing members who agree in writing to be bound, and any future members who take shares and are bound under s140(1)”.*

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38. ASIC submitted that *“the tag along might be less likely to enliven s 140(2)(c)”*. This is because the provisions did not appear to ASIC to impose a restriction on the right to transfer shares held by minority shareholders and that, from the perspective of the dragging shareholders, it was arguable whether a *“restriction”* on their right to transfer exists in the sense that they *“cannot exit on the terms they might otherwise have negotiated without accommodating the tag along”*. ASIC concluded that:
- “On balance, the tag along might be less likely to enliven s140(2)(c) than the drag along. That conclusion is not free from doubt, and reasonable minds may differ, particularly in a factual setting where a Dragging Shareholder is faced with an acquirer unwilling to take tagged shares and is deprived of the exit the Dragging Shareholder had sought to negotiate. However... we do not consider it necessary for the Panel to form a concluded view on this question. The fact it may be considered ambiguous is relevant to the legal uncertainty of the Relevant Provisions, their operability and the disclosure given in the Notice of Meeting.”*
39. Mobile Asset submitted that section 140(2) does not apply because:
- “The Relevant Provisions operate as a shareholder liquidity mechanism, rather than a restriction on the right to transfer shares for the purposes of section 140(2)(c). They do not impose any ongoing limitation on a member’s ability to transfer shares, but instead define how a transfer may occur in connection with a particular transaction.”*
40. We do not agree that the Relevant Provisions merely define *“how a transaction may occur in connection with a particular transaction.”* We agree with the Applicant and ASIC that the drag-along rights enliven section 140(2) because, in our view, such shareholders cannot freely exercise their right to sell Mobile Asset shares if an effective drag-along notice is in force. The position with respect to the tag-along rights is less clear, however, we did not consider it necessary to form a concluded view on this question. Rather, we consider that the potential consequences of section 140(2)(c) supported our view that the Relevant Provisions have not been structured in a manner consistent with the protections of Chapter 6 and that Mobile Asset failed to properly inform shareholders of their effect.

#### **Explanatory Statement disclosure**

41. The Applicant submitted that the Explanatory Statement is *“materially deficient, misleading and inadequate to enable shareholders to make an informed decision on the resolution.”* In particular, the Applicant submitted that the Explanatory Statement:
- (a) created the false impression that the Board and *“a majority of shareholders”* are two separate groups and that it did not disclose that the Board, in effect holding collectively more than 50% of the shares on issue, can alone trigger the Relevant Provisions
  - (b) stated that a transaction proposed in relation to the Relevant Provisions *“must comply with Chapter 6”* but that this does not provide any shareholder protection and

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- (c) was not supported by an independent expert's report despite the Board's conflict of interest as both "*proponent and primary beneficiary of the proposed provisions*".
42. ASIC submitted that the Explanatory Statement did not "*fairly disclose the control implications of what is being put to members*" and "*contains inadequate disclosure about the Relevant Provisions, including their operation and risks, which is contrary to the principle of an informed market in s602(a)*".
43. We asked Mobile Asset how the Board satisfied itself that the Explanatory Statement disclosed all material information. Mobile Asset submitted that:
- (a) the Board was "*focused on simply explaining the purpose and general effect of the provisions within the framework of applicable law*" and
- (b) at the time of the Explanatory Statement, there was no specific proposal under negotiation and that accordingly there was "*nothing to disclose in this regard*".
44. We did not accept Mobile Asset's submissions on this point. It does not follow that because there was no existing control proposal for Mobile Asset, there was no reason to explain the potential control effects of the Relevant Provisions. The Relevant Provisions directly impact how, and in what circumstances, control may pass in Mobile Asset, irrespective of whether any control proposal exists at that point in time. Proper disclosure to shareholders was of particular importance and sensitivity where, as part of a potential control proposal, the Relevant Provisions facilitate the compulsory acquisition of shares from minority holders.
45. We considered the Explanatory Statement did not fairly and adequately disclose all information that was relevant to shareholders in making a decision on the Proposed Resolution. While we do not describe all of the disclosure deficiencies in these reasons, we considered the key areas of our concern related to:
- (a) the control implications of the Relevant Provisions
- (b) the advantages and disadvantages of the Relevant Provisions (specifically for minority shareholders)
- (c) how Chapter 6 applies to the Relevant Provisions, including how an item 7, section 611 resolution would operate given the effect of the voting exclusions under items 7(a)(i) and 7(a)(ii) and
- (d) how the Relevant Provisions may bind existing and future shareholders of Mobile Asset given the potential application of section 140.
46. Mobile Asset submitted it "*would be willing to consider targeted clarifications to the drafting to further reflect the intended operation of the Relevant Provisions, together with some form of supplementary disclosure that is appropriate in the context of what is a future and conditional constitutional mechanism.*" The limited scope of this potential undertaking did not sufficiently address our concerns. Having regard to our conclusions in respect of the effect of the Relevant Provisions themselves (see paragraphs 26 to 40), and the legal issues regarding compliance with section 606 (see paragraphs 47 to 78), we did not consider "*targeted clarifications*" or "*some form of*

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*supplementary disclosure*” were an appropriate remedy and decided not to accept the undertaking on that basis.

#### Contravention of section 606

47. We consider that the Relevant Provisions were not clearly drafted and it was not apparent how the Relevant Provisions purported to comply with Chapter 6.
48. However, for the reasons set out below, we were satisfied that the Relevant Provisions could give rise to a potential contravention of section 606 if none of the exceptions in section 611 apply. While the scope of any section 606 contravention is contingent upon which shareholders “*agree in writing to be bound*” by the Relevant Provisions,<sup>3</sup> it appears that shareholders could acquire up to a 100% relevant interest in Mobile Asset and that any exceptions to such acquisition are unlikely to apply.

*Do the Relevant Provisions give rise to a relevant interest?*

49. Section 606 prohibits acquisitions of relevant interests in voting shares if, because of that transaction, a person’s voting power in a company increases from under 20% to over 20%, or otherwise increases from a starting point above 20% and below 90%. The concept of ‘relevant interest’ is defined under section 608.
50. The Applicant submitted that the Relevant Provisions give rise to a relevant interest because the dragging shareholders, “*together with any two directors acting under the irrevocable power of attorney, would have the power to dispose of - or, at minimum, to control the exercise of a power to dispose of - every share in Mobile Asset*”.
51. We agree with the Applicant. The Relevant Provisions confer upon shareholders the “*power to dispose of, or control the exercise of a power to dispose of,*” up to 100% of the shares in Mobile Asset. Specifically, any one or more shareholders who hold more than 50% of the shares in Mobile Asset are conferred the power under the Relevant Provisions to:
- (a) control the circumstances in which the drag-along rights apply. The drag-along rights are only enlivened where the dragging shareholders “*propose to enter into a Proposed Transaction*”, with the effect that minority shareholders would (subject to certain pre-conditions) be compelled to sell their shares if required by the proposed transaction and
  - (b) control the circumstances in which the tag-along rights apply. The tag-along rights are only enlivened if the dragging shareholders “*agree to sell the whole of their Shares under the same Proposed Transaction*” with the effect that the dragging shareholders are then required to use “*best endeavours to cause the acquirer to purchase all of the Shares referred to in the Tag Along Notice(s)*”.
52. Mobile Asset submitted that “*the [Relevant Provisions] do not enable or effect any acquisition in breach of section 606.*” The Relevant Provisions, as Mobile Asset submitted, are “*properly characterised as facilitative and ancillary in nature, arising only in connection with, and operating to give effect to, a specific transaction that has been effected in*

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<sup>3</sup> See section 140(2)(c) and paragraphs 34 to 40

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*accordance with Chapter 6". Mobile Asset submitted the Relevant Provisions do not confer "on any shareholder a presently exercisable power to control the disposal of shares."*

53. We do not accept Mobile Asset's submission to the effect that a shareholder can only have a relevant interest in securities if they have a present power to control the disposal of such securities. The words of section 608(1) do not support this, in particular that "*[it] does not matter how remote the relevant interest is or how it arises. If 2 or more people can jointly exercise one of these powers, each of them is taken to have that power*". It is also possible the 'accelerator provision' in section 608(8) applies in relation to the Relevant Provisions. Under section 608(8), a person is taken to have a relevant interest in securities that another person has if they have an agreement with respect to the securities or the latter has given the former an enforceable right in relation to the securities (whether or not that right is enforceable now or in the future). Should the Relevant Provisions become binding on Mobile Asset shareholders via the constitution, this section may apply to treat any conditions to the exercise of the Relevant Provision as having been satisfied for the purpose of assessing a relevant interest.

*Do any exemptions under section 609 apply?*

54. Section 609 outlines situations that do not give rise to relevant interests. There are two possible exemptions which may apply here, but we did not consider that either were enlivened in the circumstances.
55. The first possible exception lies in section 609(7), which states that a relevant interest does not arise merely because of an agreement that is, among other things, conditional on an item 7 section 611 resolution being passed. Mobile Asset submitted that section 609(7) is enlivened in the circumstances and drew comparisons with the reasoning of the Panel in *Ringers Western 02R*<sup>4</sup> where the Panel held that "*no relevant interest arose as the Drag Along Rights satisfied the requirements of the exclusion in s609(7).*"<sup>5</sup> The Panel stated that:

*"While the history of the s609(7) exclusion does not suggest it was introduced to apply to agreements such as this found in corporate constitutions, for the purposes of assessing the impact of the Drag Along Rights on whether there was a breach of s606 in the circumstances it appears to us that the exclusion means RW Trust did not already have a relevant interest in all Ringers Western shares at the time it acquired the Bonus Shares."*

56. We agree with the Panel in *Ringers Western 02R* that it is possible for drag-along rights to be inserted into a public company's constitution without giving rise to a contravention of section 606. The Panel's findings in that case, however, were informed by the drafting of the drag along rights in *Ringers Western's* constitution. The Panel said that "*[t]he Drag Along Right is drafted such that the power for the Board to give a drag along notice is subject to passage of an item 7 s611 resolution while Chapter 6*

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<sup>4</sup> [2024] ATP 17 (*Ringers Western 02R*)

<sup>5</sup> [2024] ATP 17 at [65]

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applied to the company.”<sup>6</sup> In particular, the drag-along rights were subject to the following clause:

*“Rule 19.5(a) is, at all times while Chapter 6 of the Corporations Act applies to the Company, subject to a resolution under item 7 in the table in section 611 of the Corporations Act being passed (and any necessary relief being provided by ASIC in respect of such resolution).”*

57. Here, the Relevant Provisions were not drafted to fall within section 609(7). Mobile Asset sought to draw our attention to the fact that the Relevant Provisions:
- (a) are conditional in *“multiple independent respects”*, including that a proposed transaction must be on foot and must have received *“all necessary approvals required by the Corporations Act”* before a drag-along notice may be issued and
  - (b) the provisions of the constitution were subject to the following provision *“[n]othing in this Constitution requires or permits any shareholders to Transfer Shares or take any action if doing so would contravene Chapter 6 of the Corporations Act or otherwise be unlawful”*.
58. We did not consider that either of the above aspects of the Relevant Provisions satisfy the requirement in section 609(7)(a)(i) that the relevant agreement is conditional on *“a resolution under item 7 in the table in section 611 being passed”*. For example, on a plain reading of the Relevant Provisions, the drag-along rights could be triggered by a takeover bid without any item 7 approval. Accordingly, Mobile Asset could satisfy the requirement to obtain *“necessary approvals”* without ever putting forward any item 7 resolution. We also do not accept that section 609(7)(a)(i) can be read in such a way that exempts a relevant interest from arising merely because an agreement includes a general statement of compliance with Chapter 6.
59. The second possible exception lies in 609(8), which states that a member of a company does not have a relevant interest merely because the company’s constitution *“gives members pre-emptive rights on the transfer of the securities if all members have pre-emptive rights on the same terms”*.
60. The Applicant submitted that the exception under section 609(8) only applies to a narrow category of pre-emptive rights which have no application here.
61. ASIC similarly submitted that neither the drag-along rights or tag-along rights are pre-emptive rights within the meaning of section 609(8). The drag-along rights *“facilitate rather than prevent a transfer, and they involve forced disposal rather than a right of first refusal”*. ASIC acknowledged that the tag-along rights are *“arguably closer to a pre-emptive right”* but are unlikely to satisfy the requirement that all members *“have pre-emptive rights on the same terms”*. This is because section 140(2)(c) is likely to have the effect that members of Mobile Asset will be split into different classes who will not have rights on the same terms (see paragraph 37).
62. We agree with ASIC and the Applicant that the drag-along rights cannot properly fall within section 609(8). The explanatory memorandum to the bill introducing the

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<sup>6</sup> Ibid

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section 609(8) exclusion, stated that '[a] right of pre-emption occurs where the members of the company are able to purchase the shares of any other member who proposes to sell their parcel, before any outsider can purchase them'.<sup>7</sup> Here, rather than providing a pre-emptive right of sale, the drag-along rights compel a minority shareholder to sell to a proposed acquirer, including an 'outsider', at the initiative of majority shareholders.

63. Even if the drag-along rights could be characterised as pre-emptive rights, it is unlikely that all shareholders would have "pre-emptive rights on the same terms" because all shareholders may not "agree to be bound" for the purposes of section 140(2)(c) (see paragraph 40). Put another way, not all shareholders would have the rights on the same terms, because some shareholders would not have those rights at all. This same analysis could arguably also apply in relation to the tag-along rights however, as stated above, we acknowledge this relies on a view that the tag-along rights "imposes or increases restrictions on the right to transfer the shares", which we accept is not free from doubt.

*Are Mobile Asset shareholders "acquiring the interest...through a transaction"?*

64. Section 606 is only engaged if a person "acquires a relevant interest" and that person does so "through a transaction in relation to securities entered into by or on behalf of the person".<sup>8</sup> A person is taken to enter into a transaction if a person enters into, or becomes a party to, a relevant agreement in relation to shares or other securities.<sup>9</sup>
65. The Applicant submitted that:

*"Section 9 defines "enter into" to include entering into or becoming a party to a "relevant agreement" in relation to shares. The term "relevant agreement" is widely defined to extend to any agreement, arrangement or understanding, whether or not enforceable. The term "understanding" itself is wide and subsumes "agreement" and "arrangement": McPherson J in Adsteam Building Industries Pty Ltd v Queensland Cement and Lime Co Ltd (No 5) (1984) 14 ACLR 456 at 456. It is submitted that the combination of "relevant agreement" and the fact that the constitution is a statutory contract by which all shareholders are bound (section 140) has the result that the amendments do constitute entering into a transaction and thus immediately engage a section 606(1) contravention."*

66. ASIC submitted that (footnote excluded):

*"'Transaction' is not defined for the purposes of Chapter 6. Whether the Proposed Resolution to modify the constitution under s136(2) is a 'transaction' is not free from doubt. The definition of 'enter into' in s9 provides that a person 'is taken to enter into a transaction in relation to the shares or securities' if that person 'enters into, or becomes a party to, a relevant agreement in relation to shares or other securities.'"*

67. ASIC also submitted that (footnote excluded):

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<sup>7</sup> Corporate Law Economic Reform Program Bill, Explanatory Memorandum (CLERP EM) para 7.17

<sup>8</sup> Section 606(1)(b)

<sup>9</sup> Section 9

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*"On a broad view, the constitution is a "relevant agreement" within s9. Section 140(1) provides that a company's constitution "has effect as a contract" between the company and each member, between the company and each director and company secretary, and between a member and each other member. The constitution is "in relation to" the shares, because it defines the rights attaching to them. On that view, passing the Proposed Resolution effects the variation of a relevant agreement in relation to shares, which is the "entering into" of a transaction.*

*On a narrower view, the passing of the Proposed Resolution is not a "transaction in relation to securities" for the purposes of s606(1). A special resolution under s136(2) is the exercise of a statutory power to alter the company's internal rules and does not itself transfer, exchange or acquire any shares. The amendment may also not sit comfortably within the s9 definition of "enter into, or become a party to" a relevant agreement, because it presupposes an act of "entry" or "becoming a party to.*

[...]

*Ultimately, although we think the broader interpretation is the better view, we do not think the Panel needs to reach a concluded position on the question of whether a "transaction" has arisen for the purposes of making a declaration given our submissions[on the effect of the Relevant Provisions]."<sup>10</sup>*

68. Mobile Asset submitted that "[t]here is no acquisition of shares proposed, and the relevant Provisions are stated to operate only to facilitate a transaction implemented in accordance with the Act." Mobile Asset also submitted:

*"... A constitutional amendment:*

- is an act of the company, not each shareholder;*
- binds shareholders by statute (under s 140), not by voluntary entry into an arrangement; and*
- applies equally to dissentients and future members.*

*... It is therefore not a 'transaction' entered into by shareholders, nor a 'relevant agreement' of the kind contemplated in Chapter 6. The reliance on the breadth of 'understanding' (e.g. Adsteam) is misplaced, as those authorities concern consensual arrangements affecting control, not statutory governance rules."*

69. Mobile Asset also submitted that:

*"Whilst we understand the argument that the Constitution may properly be regarded as a 'relevant agreement', we cannot agree that passing the proposed resolution with respect to the Relevant Provisions amounts to entering into 'a transaction in relation to securities'. There is no transaction on foot, no person is acquiring control of the Company, and no substantial interest is being acquired or proposed to be acquired. As such, this is a dormant constitutional mechanism."*

70. Young J in *Green v Crusader Oil NL* (1985) 10 ACLR 120 observed at 125 that the normal meaning of "acquire" involves obtaining title to the share or the relevant

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<sup>10</sup> See ASIC's submissions at paragraphs 28 and 29

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interests. However, Courts have since recognised the difficulty of applying that restricted view to the notion of a relevant interest in securities.<sup>11</sup> As Finkelstein J pointed out in *Aberfoyle Ltd v Western Metals Ltd* (1998) 84 FCR 113 at 144:

*"But the usual meaning of the word [acquired] surely cannot have application to a case where the legislation contemplates the acquisition of a relevant interest by an informal arrangement or understanding that has no legal or equitable force."*

71. Accordingly, we consider that that Courts have preferred the view that the term "acquire" is "not to be given a narrow interpretation"<sup>12</sup> and that to acquire a relevant interest is to obtain that interest, whether that is an actual or deemed relevant interest.<sup>13</sup> We note that the Panel in *The President's Club*<sup>14</sup> accepted this view. We also consider that unacceptable circumstances may still arise even if reliance was placed on a technical reading of the word "acquire" in these circumstances to state that there has been no contravention of section 606.
72. We agree with ASIC that, on a broad view of section 606, passing the Proposed Resolution satisfies the requirement to enter into a relevant agreement. It is clear that a company's constitution has the effect of a contract by virtue of section 140(1) and applies in relation to Mobile Asset securities. However, as stated, the circumstances in this case also require that for shareholders to acquire the relevant interest arising from the Relevant Provisions, such shareholders would need to agree to become bound for the purposes of section 140(2).

*Does any exception under section 611 apply?*

73. The only exception to section 606 that could apply is item 7 of section 611. Item 7 of section 611 provides that an acquisition of relevant interests in a company's voting shares is exempt if:

*"An acquisition approved previously by a resolution passed at a general meeting of the company in which the acquisition is made, if:*

*(a) no votes are cast in favour of the resolution by:*

*(i) the person proposing to make the acquisition and their associates; or*

*(ii) the persons (if any) from whom the acquisition is to be made and their associates; and*

*(b) [...]"*

74. The Applicant submitted that item 7, section 611 is structurally unavailable on the present facts because (among other things) "if all shareholders obtain a 100% interest [through the Relevant Provisions], then all shareholders are "the person proposing to make

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<sup>11</sup> See *Australian Securities and Investments Commission v Yandal Gold Pty Ltd* [1999] FCA 799 at [83]

<sup>12</sup> *Hongkong Xinhe International Investment Company Ltd v Bullseye Mining Ltd* [No 3] [2021] WASC 260 at [152]

<sup>13</sup> *Australian Securities and Investments Commission v Yandal Gold Pty Ltd* [1999] FCA 799 at [82]-[100] (on appeal upheld on this point: *Edensor Nominees Pty Ltd v Australian Securities and Investments Commission* [2002] FCA 307 at [34]-[39])

<sup>14</sup> *The President's Club Limited* [2012] ATP 10 at [90]

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*the acquisition" for the purpose of item 7" and therefore cannot vote in favour of the Proposed Resolution.*

75. Mobile Asset submitted that:

*"The Proposed Transaction must first be approved and effected in compliance with Chapter 6 (including, where applicable, item 7 of section 611). Until that time, no shareholder has any ability to compel or control the transfer of any other shareholder's shares. The provisions do not enable unilateral action, nor do they enable any shareholder to control the outcome of any approval process required under the Corporations Act."*

76. It is important to note that Mobile Asset is not proposing an item 7 of section 611 resolution at the EGM. However, even if an item 7 of section 611 resolution was being proposed, we do not consider it to be structurally available. This is because paragraph (a) of item 7 excludes the votes of *"the persons proposing to make the acquisition and their associates"*. Absent any relief from ASIC, any shareholder proposing to become bound by the Relevant Provisions would therefore not be able to vote on the Proposed Resolution because those shareholders would be *"the persons proposing to make the acquisition and their associates"*.<sup>15</sup>

77. ASIC submitted that even if the Relevant Provisions were validly inserted into the constitution, any subsequent exercise of them would appear to contravene section 606. This is because item 7 of section 611 is an exception with *"a defined scope that presupposes an identified acquisition, disclosed in advance to members and approved by an eligible voting group"* which has not been addressed in the Explanatory Statement. ASIC also indicated that *"without prejudging any potential future application which must be considered on its merits, it can be assumed that ASIC may be unlikely to grant relief in circumstances where it has publicly declined the same relief in the past"*.

78. We did not form a view on how any subsequent exercise of the Relevant Provision may operate (given this would likely require an assumption of which shareholders *"agree in writing to be bound"* by the Relevant Provisions), but we noted ASIC's submissions that any relief in these circumstances was unlikely.

#### **Mobile Asset's proposed undertaking**

79. On 6 May 2026, Mobile Asset offered an undertaking to not proceed with the Proposed Resolution. This was provided after we had shared a draft of our proposed declaration and orders.

80. While an undertaking in the form suggested by Mobile Asset would have addressed our concerns, there was considerable opportunity for this to be offered at an earlier stage. The Applicant first raised substantive issues with the Proposed Resolution in an email to the company secretary on 18 March 2026, and we had expressed our preliminary concerns on the Proposed Resolution in our initial brief dated 16 April 2026. Despite this, the unacceptable circumstances have persisted, and we saw little

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<sup>15</sup> See paragraph (a)(i) of item 7 of section 611

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advantage in accepting an undertaking at such a late stage in proceedings where we had already formed a view that a declaration and orders were appropriate.

81. On that basis, we did not accept Mobile Asset's proposed undertaking.

## DECISION

### Declaration

82. It appears to us that the circumstances are unacceptable :

- (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
  - (i) the control, or potential control, of Mobile Asset or
  - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Mobile Asset
- (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 and
- (c) in the further alternative, because they give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6 or of Chapter 6A, 6B or 6C of the Act.

83. Accordingly, we made the declaration set out in Annexure C and consider that it is not against the public interest to do so. We had regard to the matters in s657A(3).

### Orders

84. Following the declaration, we made the final orders set out in Annexure D. The Panel is empowered to make 'any order'<sup>16</sup> if 4 tests are met:

- (a) it has made a declaration under s657A. This was done on 15 May 2026.
- (b) it must not make an order if it is satisfied that the order would unfairly prejudice any person. We are satisfied that our orders do not unfairly prejudice any person.
- (c) it gives any person to whom the proposed order would be directed, the parties and ASIC an opportunity to make submissions. This was done on 4 May 2026 and 11 May 2026. Each party made submissions and rebuttals.
- (d) it considers the orders appropriate to either protect the rights and interests of persons affected by the unacceptable circumstances, or any other rights or interests of those persons. For the reasons below, we are satisfied that our orders are appropriate to protect rights or interests of persons who have been, are being, or will be or are likely to be affected by the unacceptable circumstances.

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<sup>16</sup> Including a remedial order but other than an order requiring a person to comply with a provision of Chapters 6, 6A, 6B or 6C

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### No EGM to consider the Proposed Resolution

85. We made an order that Mobile Asset must not hold a general meeting to consider the Proposed Resolution and that any votes cast on the Proposed Resolution are to be disregarded. We consider the circumstances in this case were clearly unacceptable and it follows that it was necessary to protect the rights and interests of minority shareholders in Mobile Asset by preventing the Proposed Resolution being put forward at the EGM.
86. Mobile Asset submitted that such orders are not required to be made because it had offered an undertaking which achieved a similar outcome (see paragraphs 79-81). For the reasons discussed above, we were not minded to accept the undertaking.
87. The Applicant submitted that:
- “the Panel should make orders in relation to any future general meeting at which Mobile Asset proposes a drag-along and/or tag-along resolution. Without further orders, there is a real risk that Mobile Asset returns with a nominally different but substantively defective resolution, in circumstances where the Panel’s concerns have not been meaningfully addressed and Chapter 6 protections have not been restored to minority shareholders.”*
88. We did not consider it necessary to go as far as the Applicant suggested. Based on the materials before us, it was not clear that Mobile Asset was intending to propose another resolution to insert drag-along rights or tag-along rights, or a resolution substantially similar in effect. Even if that was the case, a further application may be brought before the Panel (noting that we have awarded costs in favour of the Applicant for these proceedings – see paragraphs 90 to 95).
89. Similarly, given our orders have the effect that the EGM cannot proceed, we did not consider what form of supplementary disclosure may have been appropriate in the circumstances or whether any independent expert’s report was necessary (as the Applicant had originally sought - see paragraph 14).

### Costs order

90. We also made a costs order to require Mobile Asset to pay \$35,220.15 to the Applicant, representing the fair and reasonable costs incurred by the Applicant in connection with these proceedings. Here, we consider it would be unfair for the Applicant to bear the burden of fair and reasonable costs incurred in connection with the proceedings. This is in a context where the Applicant raised several objections in relation to the Relevant Provisions prior to the commencement of Panel proceedings, but only at a late stage in these proceedings did Mobile Asset offer to resolve such issues by not proceeding with the Proposed Resolution. We consider Mobile Asset’s unwillingness to engage meaningfully with the Applicant’s concerns at an early stage prompted the need for a Panel application.
91. Mobile Asset submitted that a costs order was *“inconsistent with the policy objectives underlying Guidance Note 4”* and that *“[t]hroughout these proceedings, Mobile Asset submits that it has presented a case of reasonable merit in a businesslike way”*. We accept that Mobile Asset conducted itself in a businesslike way throughout the proceedings.

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However, Guidance Note 4 states that that the Panel's approach to costs orders is guided by the Panel's primary role to "*resolve disputes expeditiously and informally*". Despite the clear concerns with the Relevant Provisions expressed by ASIC in its preliminary submissions and in our initial brief, Mobile Asset sought to resist the matter.

92. Mobile Asset also submitted that the "*[a]pplicant continually advised that they were self-represented throughout the proceedings, and implied [they] were not taking legal advice.*" We accept that no request was made by the Applicant to be legally represented in these proceedings. However, we consider that it can be of benefit to the proceedings for unrepresented parties to obtain external legal advice from time to time, particularly in matters like this which involve technical legal issues. It may improve the quality of submissions with a minimum of legal formality.<sup>17</sup>
93. The fact that the Applicant was not formally represented does not limit our power under section 657D(2)(d) to make a costs order in the Applicant's favour. The costs of a party to the proceedings are those fairly and reasonably incurred and may include costs of legal and other advisers.<sup>18</sup>
94. It is also relevant to note that we consider the Applicant made genuine efforts to limit the costs incurred by external lawyers. The Applicant submitted it sought to "*minimise the costs burden on the proceedings and on the Panel*" which included limiting the engagement of its external lawyers to "*general advice on the Panel process and settling the form of the Applicant's submissions and rebuttals prepared by the Applicant*". This is generally consistent with the time narratives that were provided as part of the invoices issued by the Applicant's external lawyers.
95. Accordingly, we considered it appropriate to include the external legal costs incurred by the Applicant as part of our costs order and that any prejudice caused to Mobile Asset was not unfair in the circumstances. In future cases, we would encourage unrepresented parties in Panel proceedings to notify the Panel (and all other parties to proceedings) if it is incurring external legal costs. This is to ensure all parties are kept reasonably informed of the potential consequences if the Panel is minded to make a costs order.

**Rebecca Maslen-Stannage**  
**President of the sitting Panel**  
**Decision dated 15 May 2026**  
**Reasons given to parties 22 June 2026**  
**Reasons published 25 June 2026**

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<sup>17</sup> See *Humm Group Limited* [2026] ATP 4 at [424]-[425]

<sup>18</sup> GN4 at [34]

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### Advisers

Party	Advisers
Andrew John Barlow, as director of Venturian Pty Ltd ATF Maverick Innovation Trust	N/A
Mobile Asset Holdings Ltd	Edwards and Co Legal Pty Ltd



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## Annexure A

### Extract of the Relevant Provisions

#### 4A. Drag Along and Tag Along Right

##### 4A.1 Definitions

**Proposed Transaction** means a transaction under which a person proposes to acquire voting power in the Company in excess of 20%, or otherwise acquire control of the Company, where the acquisition is regulated by the requirements of the Corporations Act.

**Dragging Shareholders** means Shareholders holding more than 50% of the Shares, which propose a Proposed Transaction permitted under Chapter 6 of the Corporations Act.

**Remaining Shareholders** means all Shareholders except the Dragging Shareholders.

**Transfer** means the transfer of Shares to the acquirer in return for cash, scrip or a combination in connection with a Proposed Transaction.

##### 4A.2 Proposed Transaction

- (a) Any Proposed Transaction must be conducted subject to the requirements of Chapter 6 of the Corporations Act.
- (b) Without limitation to clause 4A.2, if Dragging Shareholders propose to enter into a Proposed Transaction, they may give a notice to the Company advising it of that intention and specifying:
  - (i) the identity of the proposed acquirer;
  - (ii) the price and other material terms of the transaction;
  - (iii) the mechanism under the Corporations Act under which the acquisition will occur; and
  - (iv) the proposed completion date,**(Proposed Transaction Notice)**.
- (c) Upon a valid Proposed Transaction Notice being provided to the Company under rule 4A.2(a), the Company must take all reasonable steps to facilitate the Proposed Transaction, including convening a meeting where shareholder approval is required under the Corporations Act.

##### 4A.3 Drag Along

- (a) In the event that the Proposed Transaction receives the necessary approvals required by the Corporations Act, the Company must as soon as possible give a notice to the Remaining Shareholders specifying:
  - (i) the identity of the proposed acquirer;
  - (ii) the price and other material terms of the transaction;

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- (iii) the mechanism under the Corporations Act under which the acquisition will occur; and
- (iv) the proposed completion date,  
(**Drag Along Notice**).

#### 4A.4 Transfer of Shares

- (a) If completion of the Proposed Transaction requires a Transfer of Shares, each Remaining Shareholder must:
  - (i) Transfer all of their Shares to the acquirer; and
  - (ii) execute all documents reasonably required to effect the transaction, but only to the extent that the Transfer is permitted under the Corporations Act.

#### 4A.5 Tag Along Notice

- (a) If the Dragging Shareholders agree to sell the whole of their Shares under the same Proposed Transaction, then the Dragging Shareholders must require the Company to notify each Remaining Shareholder of the sale price and terms.
- (b) Where a Remaining Shareholder wishes to sell its Shares on the same price and terms, that Remaining Shareholder must provide a notice to the Company within 21 days (**Tag Along Notice**).
- (c) The Company must provide to the Dragging Shareholders any Tag Along Notices within 10 Business Days of receiving them from any Remaining Shareholder.
- (d) Following receipt of any Tag Along Notice(s), the Dragging Shareholders will use best endeavours to cause the acquirer to purchase all of the Shares referred to in the Tag Along Notice(s).

#### 4A.6 Appointment of attorney

- (a) Each shareholder:
  - (i) severally and irrevocably appoints any two directors jointly as its agent and attorney with power to complete any Transfer held by that shareholder under this Constitution and to do anything on behalf of the shareholder that it is required to do, but has failed to do, under rule 4A of this Constitution, including the power for any two directors together on behalf of that member to:
    - (A) sign all necessary documents to complete a Transfer under rule 4A.4;
    - (B) warrant and represent on behalf of that the shareholder, including without limitation that it has the capacity to enter into the documents and has good title to, and possession and control of the shares, free from encumbrances;
    - (C) receive the purchase money or other consideration and hold it on trust for that member; and

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- (D) sign a receipt for the consideration; and
- (E) register the transfer of shares in the register of members.
- (ii) declares that it is bound by, and will ratify and confirm, anything done by any director under this power of attorney; and
- (iii) declares that this power of attorney is given for valuable consideration and is irrevocable.

#### **4A.7 Compliance with the Corporations Act**

- (a) Nothing in this Constitution requires or permits any shareholder to Transfer Shares or take any action if doing so would:
  - (i) contravene Chapter 6 of the Corporations Act; or
  - (ii) otherwise be unlawful.
- (b) This clause must be interpreted so as to operate consistently with the takeover provisions of the Corporations Act.

#### **4A.8 Equal Treatment**

- (a) All shareholders participating in the Proposed Transaction must receive the same price and terms for each Share of the same class, subject only to differences permitted under the Corporations Act.



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## **Annexure B**

# **CORPORATIONS ACT SECTION 657E INTERIM ORDERS**

### **MOBILE ASSET HOLDINGS LTD**

Andrew John Barlow, as director of Venturian Pty Ltd ATF Maverick Innovation Trust, made an application to the Panel dated 7 April 2026 in relation to the affairs of Mobile Asset Holdings Ltd (**Mobile Asset**).

The President ORDERS:

1. Mobile Asset must not hold a general meeting at which shareholders are asked to consider, and if thought fit, pass a resolution inserting drag-along or tag-along rights into Mobile Asset's constitution (including the special resolution proposed in Mobile Asset's notice of extraordinary general meeting dated 18 March 2026).
2. Any votes on a resolution inserting drag-along or tag-along rights into Mobile Asset's constitution are to be disregarded.
3. These interim orders have effect until the earliest of:
  - (a) further order of the President or the Panel
  - (b) the determination of the proceedings and
  - (c) 2 months from the date of these interim orders.

**Allan Bulman**  
**Chief Executive**  
**with authority of Alex Cartel**  
**President**  
**Dated 9 April 2026**



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## **Annexure C**

### **CORPORATIONS ACT SECTION 657A**

#### **DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

##### **MOBILE ASSET HOLDINGS LTD**

##### **CIRCUMSTANCES**

1. Mobile Asset Holdings Ltd (**Mobile Asset**) is an unlisted Australian public company operating a gold-backed digital payments platform.
2. Mobile Asset has approximately 649 shareholders. It has 52,997,746 ordinary shares on issue, of which 26,957,164 (approximately 50.86%) are held by the board of directors and their associated entities.
3. On 18 March 2026, Mobile Asset issued a Notice and Explanatory Statement (**Explanatory Statement**) to convene a general meeting of shareholders (**EGM**) scheduled for 3:00 pm on Thursday, 9 April 2026. The Explanatory Statement proposed a special resolution to insert drag-along and tag-along rights (**Relevant Provisions**) into Mobile Asset's constitution (**Proposed Resolution**).
4. The Relevant Provisions are proposed to apply where any person proposes to acquire voting power in excess of 20% in Mobile Asset, or otherwise proposes to acquire control of Mobile Asset, where the acquisition is regulated by the requirements of the *Corporations Act 2001* (Cth). They operate so that shareholders with more than 50% of the shares in Mobile Asset (**dragging shareholders**) could, subject to certain pre-conditions being met, require Mobile Asset to issue a notice to shareholders with details of the transaction, with the effect that:
  - (a) in relation to the drag-along rights, minority shareholders would be compelled to transfer all their shares if required under the proposed transaction and
  - (b) in relation to the tag-along rights, where the dragging shareholders agree to sell all their shares to the proposed acquirer, minority shareholders may issue a tag-along notice with an intention to sell their shares to the proposed acquirer. The dragging shareholders would be required to use best endeavors to cause the proposed acquirer to purchase all of the shares "*referred to in the Tag Along Notice(s)*".

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5. In addition, the Relevant Provisions:
  - (a) authorise any two directors of Mobile Asset (under an irrevocable power of attorney) to complete any transfer of shares required under the Relevant Provisions on behalf of minority shareholders
  - (b) do not contain any requirement for a minimum sale price, an independent valuation or a fairness opinion and
  - (c) are not expressly subject to an item 7, section 611 resolution or any ASIC relief.<sup>1</sup>
6. The Explanatory Statement did not fairly and adequately disclose all information that was relevant to shareholders in making a decision on the Proposed Resolution, including in relation to:
  - (a) the control implications of the Relevant Provisions
  - (b) the advantages and disadvantages of the Relevant Provisions (specifically for minority shareholders)
  - (c) how Chapter 6 applies to the Relevant Provisions, including how an item 7, section 611 resolution would operate given the effect of the voting exclusions under items 7(a)(i) and 7(a)(ii) and
  - (d) how the Relevant Provisions may bind existing and future shareholders of Mobile Asset given the potential application of section 140.
7. On 8 April 2026, Mobile Asset informed shareholders that the Board had deferred the EGM and that (among other things) it was considering whether “*any supplementary information, adjustments to the proposed resolution, or alternative approaches are appropriate*”.
8. On 10 April 2026, Mobile Asset informed shareholders that (among other things) “*a small number of shareholders provided feedback that they were unhappy with the nature and wording of the [Relevant Provisions]*” and that an application to the Panel had been made.

#### **EFFECT**

9. The Panel considers that:
  - (a) the Relevant Provisions create a mechanism for the acquisition of 100% of Mobile Asset in a manner that circumvents the protections of Chapter 6. This is because (among other reasons) the Relevant Provisions facilitate the compulsory acquisition of shares held by minority shareholders without adequate or appropriate protections and

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

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- (b) Mobile Asset shareholders have not been given sufficient information to enable them to consider the Relevant Provisions, particularly their effect on the control, or potential control, of Mobile Asset.
10. The Panel therefore considers the market for the control, or potential control, of Mobile Asset is not taking place in an efficient competitive and informed market.

#### CONTRAVENTION OF SECTION 606

11. In addition, the Relevant Provisions give rise to a potential contravention of section 606 if none of the exceptions in section 611 apply. Whilst the scope of any section 606 contravention is contingent upon which shareholders “agree in writing to be bound” by the Relevant Provisions,<sup>2</sup> it appears to the Panel that the Relevant Provisions:
- (a) operate so that all shareholders could acquire up to a 100% relevant interest in Mobile Asset under section 608(1). This is because the Relevant Provisions confer upon shareholders the “power to dispose of, or control the exercise of a power to dispose of,” up to all the shares in Mobile Asset, notwithstanding that the Relevant Provisions are subject to certain pre-conditions<sup>3</sup> and
  - (b) do not fall within the pre-emptive rights exception in section 609(8). We note that the effect of section 140(2)(c) will likely result in the Relevant Provisions not satisfying the requirement that all members “have pre-emptive rights on the same terms”.
12. The only exception to section 606 that could apply is item 7 of section 611. However, in this case for the purpose of item 7 of section 611, and absent any relief from ASIC, any shareholder proposing to become bound by the Relevant Provisions would not be able to vote in favour of the Proposed Resolution because those shareholders would be acquiring voting power in Mobile Asset.<sup>4</sup>

#### CONCLUSION

13. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
    - (i) the control, or potential control, of Mobile Asset or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Mobile Asset

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<sup>2</sup> See section 140(2)(c)

<sup>3</sup> See sections 608(1) and 608(8). In particular, section 608(1) states “It does not matter how remote the relevant interest is or how it arises. If 2 or more people can jointly exercise one of these powers, each of them is taken to have that power”

<sup>4</sup> See paragraph (a)(i) of item 7 of section 611

## Takeovers Panel

Reasons - Mobile Asset Holdings Ltd  
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- (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 and
  - (c) in the further alternative, because they give rise to, or will or are likely to give rise to, a contravention of a provision of Chapter 6 or of Chapter 6A, 6B or 6C of the Act.
14. 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 Mobile Asset.

**Tania Mattei**  
**General Counsel**  
**with authority of Rebecca Maslen-Stannage**  
**President of the sitting Panel**  
**Dated 15 May 2026**



**Australian Government**

**Takeovers Panel**

**Annexure D**  
**CORPORATIONS ACT**  
**SECTION 657D**  
**ORDERS**

**MOBILE ASSET HOLDINGS LTD**

The Panel made a declaration of unacceptable circumstances on 15 May 2026.

**THE PANEL ORDERS**

1. Mobile Asset Holdings Ltd (**Mobile Asset**) must not hold a general meeting at which shareholders are asked to consider, and if thought fit, pass the special resolution proposed in Mobile Asset's notice of extraordinary general meeting dated 18 March 2026.
2. Any votes cast on the special resolution proposed in Mobile Asset's notice of extraordinary general meeting dated 18 March 2026 are to be disregarded.
3. By no later than 15 business days from the date of this order, Mobile Asset must pay \$35,220.15 to an account nominated by Andrew John Barlow, as director of Venturian Pty Ltd ATF Maverick Innovation Trust (**Applicant**), representing the fair and reasonable costs incurred by the Applicant in connection with these proceedings.

**Tania Mattei**  
**General Counsel**  
**with authority of Rebecca Maslen-Stannage**  
**President of the sitting Panel**  
**Dated 15 May 2026**