



Australian Government

Takeovers Panel

**Reasons for Decision
Kingsland Minerals Ltd
[2026] ATP 11**

Catchwords:

Decline to conduct proceedings – association – contract – effect on control – exclusivity – relevant interest – shareholder approval – independent expert’s report – substantial holding – term sheet – voting power – corporate governance

Corporations Act 2001 (Cth), sections 12(2)(a), 50AA, 602, 606, 671B, 657D(2)

Takeovers Panel Procedural Rules 2020, rule 20(1)

Takeovers Panel Procedural Guidelines 2020, para [5.8]

FBR Limited 02 [2025] ATP 15, Vmoto Limited [2025] ATP 7, Mighty Kingdom Limited [2023] ATP 14, Careers Australia Group Limited 02 [2013] ATP 5, Dragon Mining Limited [2014] ATP 5, Viento Group Limited [2011] ATP 1, Mount Gibson Iron Limited [2008] ATP 4

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

INTRODUCTION

1. The Panel, James Burchnall (sitting President), Jonathan Gidney, and Reeny Paraskeva, declined to conduct proceedings on an application by Quinbrook Asset Management Pty Ltd as trustee for the Critical Resources Strategy in relation to the affairs of Kingsland Minerals Ltd. The application concerned an alleged association between certain shareholders and officers of Kingsland in the context of a proposed acquisition by Kingsland of certain exploration licences from a Kingsland substantial shareholder. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable because (among other things) an effect of control on Kingsland had not been established, given the alleged association related primarily to a transaction that had only progressed as far as a signed non-binding term sheet.

2. In these reasons, the following definitions apply.

Bacchus	Bacchus Resources Pty Ltd
Capital Raising	Has the meaning given in paragraph 16
Consideration Shares	Has the meaning given in paragraph 11(a)
Exclusivity Payments	Has the meaning given in paragraph 11(d)
Fisher Metals	Fisher Metals Pty Ltd
Funding Notice	Has the meaning given in paragraph 15
Kingsland	Kingsland Minerals Ltd
Maintenance Obligation	Has the meaning given in paragraph 11(e)

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Subscription Agreement	Has the meaning given in paragraph 9
Tenements	Has the meaning given in paragraph 10
Term Sheet	Has the meaning given in paragraph 10
Transaction	Has the meaning given in paragraph 11, as supplemented by the details in paragraph 16
Quinbrook	Quinbrook Asset Management Pty Ltd as trustee for the Critical Resources Strategy
Yendah	Yendah Pty Limited

FACTS

3. Kingsland is an ASX-listed exploration company with assets in the Northern Territory and Western Australia (ASX code: KNG).
4. The applicant, Quinbrook, has voting power of 19.22% in Kingsland.
5. Bacchus holds 8.64% of Kingsland’s shares. Yendah holds another 1.37%.
6. Yendah holds 85% of Bacchus’ shares. As a result, Yendah and Bacchus are associates¹ so that both companies have voting power of 10.01% in Kingsland.
7. The directors of Kingsland are:
 - (a) Mr Anthony Latimer (Chairman)
 - (b) Mr Richard Maddocks (Managing Director)
 - (c) Mr Bruno Seneque (Director, CFO and Company Secretary)
 - (d) Mr Nicholas Revell (Non-Executive Director) and
 - (e) Mr Robert Johansen (Non-Executive Director, Quinbrook’s nominee)
8. Mr Maddocks has voting power of 5.45% in Kingsland and Mr Seneque has voting power of 9.26% in Kingsland.
9. Quinbrook and Kingsland are parties to a subscription agreement dated 28 October 2024 (**Subscription Agreement**) entered into in the context of Kingsland’s Leilyn Graphite Project pursuant to which:
 - (a) under clause 10.2, Kingsland is required to consult with Quinbrook ‘first’ in relation to its funding requirements “[t]o the extent further funding is required by” Kingsland and
 - (b) under clause 10.3, if Quinbrook and Kingsland do not agree to terms for a funding solution for the project within a specified time period, Kingsland may seek and enter into an alternative funding arrangement with any third party on terms no more favourable to the third party than those offered by Kingsland to Quinbrook or by Quinbrook to Kingsland.

¹ See paragraph 12(2)(a) and section 50AA of the *Corporations Act 2001* (Cth)

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10. On 24 March 2026, Kingsland entered into a confidential non-binding² term sheet (**Term Sheet**) in relation to a proposed acquisition of certain exploration licences (**Tenements**) from Bacchus.
11. The Term Sheet contemplated the following (collectively, the **Transaction**):
 - (a) the transfer of the Tenements from Bacchus to Kingsland in exchange for the issue to Bacchus of the number of shares in Kingsland sufficient to give it a 19.99% interest (**Consideration Shares**), with the issue price to be determined
 - (b) among other conditions precedent, a capital raising to be undertaken by Kingsland to raise at least [REDACTED]
 - (c) Kingsland having an exclusivity period to negotiate and enter into a formal agreement for a period of up to 6 months from the date of executing the Term Sheet
 - (d) Kingsland being required to pay an initial non-refundable exclusivity fee of \$ [REDACTED] on execution of the Term Sheet, and a further non-refundable exclusivity fee of \$ [REDACTED] if the Term Sheet remains in effect on the date 2 months from executing the Term Sheet (**Exclusivity Payments**) and
 - (e) Kingsland taking on the management and maintenance of the Tenements at its own cost from the time of execution of the Term Sheet until execution of a formal agreement or termination of the Term Sheet, whichever occurs first (**Maintenance Obligation**).
12. Mr Maddocks and Mr Seneque executed the Term Sheet on behalf of Kingsland.
13. On 24 April 2026 and 19 May 2026, Quinbrook wrote to Kingsland expressing its concerns in relation to the Term Sheet. Among other things, it required Kingsland to provide a written undertaking that it will fully adhere to its obligations under clauses 10.2 and 10.3 of the Subscription Agreement.
14. On 20 May 2026, Kingsland wrote to Quinbrook stating (among other things) that it:
 - (a) *“does not accept that it has breached, or is in breach of, clause 10.2 of the Subscription Agreement”* including because clause 10.2 of that agreement *“does not require consultation in respect of preliminary, non-binding or contingent capital management considerations”* and
 - (b) *“does not accept that any obligation under clauses 10.2 or 10.3 [of the Subscription Agreement] has been enlivened on the facts to date”*.
15. Subsequently, on 2 June 2026, Kingsland purported to give notice to Quinbrook under clause 10.3 of the Subscription Agreement of its intention to enter into funding

² Some of the terms in the Term Sheet were binding, including the clause dealing with the Exclusivity Payments and Maintenance Obligation (see paragraphs 11(d) and 11(e) above)

arrangements in relation to the purchase of the Tenements from Bacchus (**Funding Notice**). The Funding Notice stated that:

“The Company confirms that it has previously consulted with [Quinbrook] in relation to its funding requirements and proposed funding structure, including at meetings held on 31 March 2026, 16 April 2026, 20 April 2026 and 23 April 2026. The Company now provides further detail of a proposed funding solution and gives the Subscriber notice of such proposal for the purposes of clause 10.3.

*The scope of [Quinbrook’s] right under clause 10.3 of the Agreement is limited to funding required for the Leilyn Graphite Project (**Project**) and does not extend to funding associated with other projects or transactions, including the proposed acquisition of the Bacchus tenements...”*

16. The proposed funding solution specified in the Funding Notice represented an evolution of the Transaction, which now involved a corporate advisory firm and contemplated a [REDACTED] equity raising to raise approximately \$ [REDACTED] (the proposed method of capital raising was not specified in the notice) (**Capital Raising**).
17. On 4 June 2026, Quinbrook responded to Kingsland stating its view that the Funding Notice did not comply with the Subscription Agreement on the bases that Kingsland had not consulted with Quinbrook ‘first’ in relation to its funding requirements (as required by clause 10.2) and that those funding requirements are not limited to any particular project being considered by Kingsland.

APPLICATION

18. By application dated 4 June 2026, Quinbrook sought a declaration of unacceptable circumstances.
19. Quinbrook submitted that there was an undisclosed association between Bacchus, Mr Maddocks and Mr Seneque.
20. Quinbrook submitted that this association could be inferred because of:
 - (a) *“a strong level of cooperation, trust and the pursuit of common interests and concerns between [them] over a sustained period of time”*, having regard to previous dealings and structural links between the parties and
 - (b) *the existence of “a relevant agreement to effectuate control over Kingsland’s Board and/or its affairs... from the effect of the Term Sheet and the Bacchus Transaction”*and that as a result those parties had contravened section 606.³
21. Quinbrook also submitted that:
 - (a) Bacchus and Yendah had not informed the market of the size of their holding in Kingsland and had contravened section 671B
 - (b) the Term Sheet, and the transactions contemplated by the Term Sheet, are contrary to the purposes of Chapter 6 and

³ Unless otherwise specified, all statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6, 6A or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

- (c) the circumstances are otherwise unacceptable.

Interim order sought

22. Quinbrook sought an interim order suspending obligations under the Term Sheet pending determination of its application.

Final orders sought

23. Quinbrook sought final orders:
- (a) terminating the Term Sheet and preventing the Transaction from proceeding or
 - (b) in the alternative, requiring that:
 - (i) Mr Maddocks, Mr Seneque and Mr Latimer⁴ be excluded from voting on the Transaction at the board level and
 - (ii) the Transaction receive shareholder approval, with Mr Maddocks, Mr Seneque, and Bacchus (and their respective associates and related parties) being excluded from voting and
 - (c) requiring Kingsland to pay Quinbrook's costs.

DISCUSSION

24. We have considered all the material, but address only specifically that part of the material we consider necessary to explain our reasoning. The material included:
- (a) a preliminary submission from each of Kingsland and Bacchus submitting that we should decline to conduct proceedings
 - (b) an out of process rebuttal to Kingsland's preliminary submission made by Quinbrook, and a further out of process response from Kingsland, each of which we decided to receive⁵ and
 - (c) responses from the parties to our preliminary questions.

Interim orders

25. The President of the Panel considered the interim order request on an urgent basis given Quinbrook's view that the Transaction was likely to proceed before a sitting Panel could be appointed to consider the application. He decided not to make the interim order on the basis that the materials provided did not establish sufficient urgency for the interim order to be made in advance of the appointment of a sitting Panel and because any unacceptable circumstances could be remedied by final orders.

⁴ Quinbrook submitted that while Mr Latimer was not associated with Bacchus, Mr Maddocks or Mr Seneque, he should nevertheless be excluded from voting on the Transaction because of "*his awareness of the Term Sheet and likely involvement in its negotiation (at least by acquiescence)*"

⁵ See Takeovers Panel Procedural Rules 2020, rule 20(1) and Takeovers Panel Procedural Guidelines 2020 at [5.8]

Preliminary submissions

26. In its preliminary submission, Kingsland submitted that we should decline to conduct proceedings. It submitted that the allegations made by Quinbrook did not engage the Panel’s jurisdiction. It said that the dispute as to the Subscription Agreement was more properly characterised as a private contractual dispute, and therefore more appropriately determined by a court. It also said that the alleged association between Bacchus, Mr Maddocks and Mr Seneque was based on “*contested assertions and inferences drawn from historical commercial dealings and structural relationships in unrelated entities*”. Kingsland also expressed its view that the application was directed at obtaining commercial leverage in the context of the dispute between Quinbrook and Kingsland in relation to the Subscription Agreement.
27. In its out of process submission in response to Kingsland’s preliminary submission, Quinbrook said that it did not argue that Kingsland’s alleged breach of the Subscription Agreement was a basis on which the Panel should make a declaration of unacceptable circumstances. Rather, it submitted that it had made reference to those facts “*simply to enable the Panel to obtain an understanding*” of why the application was made. Quinbrook argued that the existence of the alleged breach did not mean that the Panel was an inappropriate forum. It said that shareholders were going to be “*presented with a fait accompli in which their existing shareholding will be significantly diluted*” even though the Transaction would be subject to shareholder approval because the “*practical effect of the Maintenance Obligation and Exclusivity Payments*” was that Kingsland was already “*materially committed*” to the Transaction.
28. In its preliminary submission, Bacchus also submitted that the Panel should decline to conduct proceedings. Bacchus stated that it adopted the submissions of Kingsland as to the Panel’s jurisdiction and the threshold for conducting proceedings. It also confirmed that, on 15 June 2026, it had lodged with ASX an updated substantial holder notice disclosing that it and Yendah held 10.01% voting power in Kingsland.
29. We saw this application as more than just a contractual dispute between Kingsland and Quinbrook. Our principal concern was the alleged association and we proceeded on that basis.

The association hurdle and effect of the Transaction

30. The Transaction was central to the alleged association between Bacchus, Mr Maddocks and Mr Seneque.
31. As is well established, the Panel’s starting point for an association matter is that it is for the applicant to demonstrate a sufficient body of evidence of association and to convince the Panel as to that association, albeit with proper inferences being drawn.⁶

⁶ *Mount Gibson Iron Limited* [2008] ATP 4 at [15]

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32. This test, commonly referred to as the Mount Gibson hurdle, was discussed in *Dragon Mining Limited*:⁷

“In deciding whether to conduct proceedings on an association case, [the difficulties that an applicant faces in gathering evidence in association matters] must be kept in mind. However, the Panel has limited investigatory powers which means, before we decide to conduct proceedings, an applicant must do more than make allegations of association and rely on us to substantiate them. An applicant must persuade us by the evidence it adduces that we should conduct proceedings.”

33. Having regard to the association indicia that we discuss below, we considered this to be a borderline case in relation to whether the association hurdle had been met.

34. However, because the Transaction has only progressed so far as a signed, non-binding term sheet (and may not progress further), its effect in relation to Kingsland is difficult to assess. Kingsland submitted that *“the commercial terms of any binding agreement may differ from those contemplated in the Term Sheet”*. Until we see the final terms of the Transaction and the Capital Raising, Kingsland’s disclosure in relation to the Transaction and the Capital Raising, and who is entitled to vote on the Transaction (noting that this is also a consideration for ASX if Mr Maddocks and Mr Seneque are associates of Bacchus) any effects are hypothetical and may not eventuate. For that reason, we thought that the application was somewhat premature, including because Quinbrook sought orders that we prevent the Transaction occurring or, in the alternative, determine voting exclusions for any shareholder approval of the Transaction, at a time when the terms of the Transaction have not been finally determined.

35. Accordingly, we considered that, even if the association hurdle had been met, there was limited potential for any current material effect in relation to Kingsland, and ultimately declined to conduct proceedings.

36. If the Transaction does become binding, at which time its final commercial terms and its effect in relation to Kingsland would be more apparent, it would be open to Quinbrook to make a new application at that time.

Consideration of association indicia

Previous dealings and structural links

37. Quinbrook submitted that it could be inferred that Bacchus, Mr Maddocks and Mr Seneque had *“at the very least”* an understanding for the purpose of controlling or influencing the composition of Kingsland’s board or the conduct of its affairs because those persons had had a *“number of significant previous dealings”* including:

- (a) Mr Maddocks and Mr Seneque both being directors of Antares Metals Ltd, of which Bacchus is a shareholder (6.47%), and
- (b) Mr Maddocks and Mr Seneque also both being directors and shareholders of Fisher Metals (as to 25% each), of which Yendah is also a shareholder (25%).

⁷ [2014] ATP 5 at [59]-[60], footnotes omitted

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38. Quinbrook also said that Mr Maddocks had stated that Fisher Metals had previously held an option over the Tenements and that he and Mr Seneque had been asked “to *“babysit” the Tenements and assist Bacchus in “finding management” with respect to the underlying assets*” on the basis that “*there was “a decent trust factor” between Bacchus and Mr Maddocks and Mr Seneque.*”
39. Kingsland submitted that the dealings between Bacchus, Mr Maddocks and Mr Seneque were “*equally consistent with ordinary commercial relationships in the resources sector*” and that the application therefore did not establish “*even a prima facie case of association*”.
40. To better understand the possible links between the alleged associated parties, we asked Mr Maddocks and Mr Seneque about Fisher Metals, including its purpose and its interactions with the subject matter of the Term Sheet. In a joint response with Kingsland, Mr Maddocks and Mr Seneque submitted that:
- (a) “*Fisher Metals was established as a potential vehicle in connection with preliminary discussions regarding the possible listing of exploration assets, including the Tenements. This arose in the context of Bacchus considering an IPO, and Fisher Metals was incorporated to facilitate that process at an early stage. The concept remained preliminary and exploratory in nature and did not progress beyond initial structuring steps.*”
 - (b) “*In that preliminary context, Mr Maddocks and Mr Seneque provided limited assistance at an early stage, including involvement in the incorporation of Fisher Metals Pty Ltd as a potential vehicle. Any references to “babysitting” or assisting with management were made in that informal context and did not reflect any agreed role, responsibility or operational involvement in relation to the Tenements.*”
 - (c) “*Fisher Metals is not a party to, and has no relevant involvement in, the Term Sheet. While there is a factual connection in that the Tenements were previously the subject of discussions involving Fisher Metals, those arrangements were discontinued prior to the Term Sheet. In particular, any prior arrangements between Bacchus and Fisher Metals were terminated by agreement on 23 March 2026.*”
41. It is clear from the materials and submissions that there have been previous dealings between or involving Bacchus, Mr Maddocks and Mr Seneque.

Maintenance Obligation and Exclusivity Payments

42. Quinbrook submitted that an inference of association could also be made because of the effects of the Term Sheet and the Transaction, which, it said, “*effectively binds Kingsland to an outcome... and creates material obstacles to Kingsland investing in an alternative transaction which may be more beneficial to Kingsland and its shareholders*”, referring to the Maintenance Obligation (which Quinbrook said would impose “*substantial liability*” on Kingsland “*without any guarantee Kingsland will in fact receive the benefit of the Tenements*”) and the Exclusivity Payments (which Quinbrook submitted would impose “*substantial, irrecoverable costs designed to coerce Kingsland into implementing the Bacchus Transaction*”).
43. We asked Kingsland what actions it was required to take to comply with the Maintenance Obligation and what costs were involved in complying with that

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obligation. It said that compliance with the obligation would involve “ensuring that the Tenements remain in good standing under the applicable mining legislation, including the payment of rent and fees, engagement of a tenement manager where required, compliance with reporting obligations and general regulatory and administrative oversight” and did not require it to carry out any exploration activity. It said that Kingsland would incur costs of “hundreds or, at most, a few thousand dollars” in complying with the obligation. Kingsland also said that this arrangement would facilitate “efficient due diligence” and that similar arrangements were “not uncommon in transactions of this nature within the resources sector”.

44. The Maintenance Obligation (on top of the Exclusivity Payments) raised commerciality concerns. Neither Kingsland nor Bacchus satisfactorily explained to us why it was necessary or efficient. If the Transaction does not proceed then the management of the Tenements will need to be transferred back to Bacchus.
45. However, based on the responses we received from Kingsland, it does not appear that the Maintenance Obligation has imposed any significant costs on Kingsland to date. It also does not appear to us that the Exclusivity Payments, which totalled \$██████, were disproportionate in the context of the Transaction. In addition, Kingsland’s liability to make the payments was independent of whether it entered into a formal agreement.
46. As a result, we do not consider that either the Maintenance Obligation or the Exclusivity Payments likely bind Kingsland to an outcome or will “coerce” Kingsland or its shareholders in the manner suggested by Quinbrook.

Commerciality of the Transaction

47. Quinbrook also noted that the Transaction contemplated that Bacchus would receive 19.99% of Kingsland’s shares but that the Tenements had “not been the subject of an independent valuation” and that “the stake being allocated to Bacchus is not linked to the underlying price per share.”
48. We asked Kingsland what the value of the Tenements was and what mechanism was proposed to be used to value the Consideration Shares. Kingsland provided a spreadsheet showing comparable transactions and their respective implied acquisition cost per ounce of gold which included a proposed value for the Consideration Shares and showed the acquisition cost per ounce of gold under the Transaction as being “at the lower end of the range observed across comparable companies”. It also said that the actual number and issue price of the Consideration Shares would be determined prior to execution of a binding agreement “having regard to prevailing market conditions, the pricing of the [Capital Raising], and an independent expert’s report required under Chapter 10 of the ASX Listing Rules.”
49. We were initially concerned that this aspect of the Transaction was in some way designed to give Bacchus a fixed 19.99% interest in Kingsland without regard for the underlying value of the Tenements. However, the materials provided by Kingsland did demonstrate some preliminary assessment of valuation had been undertaken, including a comparison against precedent gold transactions, to determine the

amount of Consideration Shares that would be issued to Bacchus in exchange for the Tenements.

50. We are also comforted by the fact that correspondence with ASX disclosed that shareholder approval (with Bacchus not voting) will be required under the Listing Rules and that an independent expert's report is proposed to be obtained by Kingsland in relation to the Transaction, which would serve to inform a view on value.

Entry into the Term Sheet / Transaction

51. Quinbrook submitted that the Term Sheet had been executed by Mr Maddocks and Mr Seneque without full consideration of the Kingsland board. It was Quinbrook's position that *"the Term Sheet was of such materiality (particularly given the nature and scope of both the Exclusivity Period and the Maintenance Obligation, terms which in fact became immediately binding on Kingsland from the time the Term Sheet was executed) that the Term Sheet ought instead to have been put to Kingsland's entire Board for consideration and approval prior to being executed."*
52. We made enquiries of Mr Maddocks and Mr Seneque in respect of their authority to enter into and sign the Term Sheet on behalf of Kingsland. In their joint response with Kingsland, they submitted that the full Kingsland board had not been informed of the Transaction prior to executing the Term Sheet and that *"[t]he Term Sheet was entered into in circumstances where Bacchus had received interest from other parties, and it was necessary to act promptly to secure exclusivity over the Tenements."* They also submitted that *"[a]s executive officers responsible for the day to day management and commercial activities of Kingsland, they had implied and ostensible authority to progress commercial discussions and enter into a non-binding indicative term sheet to preserve a potential transaction opportunity pending full Board consideration. This approach is consistent with Kingsland's governance framework..."*
53. We do not consider this to be a satisfactory explanation as to why the full Kingsland board was not at the very least consulted prior to executing the Term Sheet.
54. We were also provided correspondence between Kingsland and Quinbrook in the period between Quinbrook being made aware of the Term Sheet and in the lead up to the issue of the Funding Notice by Kingsland. While Quinbrook does not seek to rely on Kingsland's alleged breach of the Subscription Agreement as a basis for the Panel to declare unacceptable circumstances,⁸ some of the views expressed by Kingsland in that correspondence regarding its alleged breach piqued our interest.
55. For example, in response to Quinbrook's letter which raised concerns in relation to the Term Sheet and Kingsland's obligations under clauses 10.2 and 10.3 of the Subscription Agreement,⁹ Kingsland expressed its position that it did not accept that an obligation to consult Quinbrook under those clauses had been enlivened, including because there was no requirement to consult *"in respect of preliminary, non-*

⁸ See further at paragraph 27 above

⁹ See further at paragraph 13 above

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binding or contingent capital management considerations".¹⁰ Yet two weeks later, Kingsland's Funding Notice stated that it was "providing notice in accordance with clauses 10.2 and 10.3 of the [Subscription] Agreement" and "confirms that it has previously consulted with [Quinbrook] in relation to its funding and proposed funding structure, including at meetings held on 31 March 2026, 16 April 2026, 20 April 2026 and 23 April 2026".¹¹

56. In its reply to Kingsland, Quinbrook stated that Kingsland's position in the Funding Notice was "plainly irreconcilable" with its position asserted earlier. Specifically, that Kingsland "cannot maintain... that its obligations had not been enlivened, and then retrospectively assert that those obligations were not only enlivened but satisfied by conduct which preceded that denial."
57. We observe that Kingsland's position as expressed in the Funding Notice appears to us to have been clearly inconsistent with its previous statements to Quinbrook (see paragraph 55 above). However, we ultimately do not draw any conclusions from this correspondence insofar as it related to the question of association.

Dilution

58. Quinbrook also submitted that cooperation to achieve a material influence over Kingsland's board and its affairs was further reflected by the dilution that the Transaction would have on Kingsland's existing shareholders. It said that "the implications of this dilution are particularly severe" for Quinbrook given that, based on the numbers set out in the Funding Notice, its shareholding in Kingsland would reduce from approximately 19.22% to 5.61% so that Quinbrook would also lose its right¹² to nominate a director to the board of Kingsland.
59. The dilutionary impact to Kingsland shareholders upon completion of the Transaction and Capital Raising are likely to be substantial. Although not entirely clear from the materials we have received (and noting that there is uncertainty as to final transaction structure), we assume that the Consideration Shares to be issued to Bacchus will also be subject to shareholder approval with Bacchus excluded from voting.

Conclusion on meeting the association hurdle

60. Circumstances which are relevant to establishing an association include a shared goal or purpose, prior collaborative conduct, structural links, common investments and dealings, common knowledge of relevant facts and actions which are uncommercial.¹³
61. It was clear from the materials and submissions that elements of a number of these circumstances existed here. In particular, we considered that the following

¹⁰ See further at paragraph 14 above

¹¹ See further at paragraph 15 above. Quinbrook's position was that at those meetings, no attempt was made by Kingsland to consult or negotiate with Quinbrook

¹² Pursuant to clause 6.1(a) of the Subscription Agreement

¹³ *Viento Group Limited* [2011] ATP 1 at [120]

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circumstances put us close to scaling the Mount Gibson hurdle and might have justified further enquiries in respect of the alleged associated parties:

- (a) The previous dealings and structural links. In particular, the history behind Fisher Metals, and the timing of terminating the previous arrangements between Bacchus and Fisher Metals in respect of the Tenements and subsequent entry into the Term Sheet between Bacchus and Kingsland (which occurred on 23 and 24 March 2026 respectively).
 - (b) The Term Sheet being executed by Mr Maddocks and Mr Seneque without prior knowledge of the full Kingsland board.
 - (c) Certain aspects of the Term Sheet/Transaction, in particular, that the Maintenance Obligation and Exclusivity Payments raised commerciality concerns and that Bacchus was to be provided a fixed 19.99% interest in Kingsland in consideration for the Tenements.
62. However, Kingsland did provide some materials that partially alleviated our concerns in respect of these circumstances (see paragraphs 45, 48 and 49 above) and we also note that the Transaction, should it proceed, will require shareholder approval (with Bacchus not voting) and an independent expert's report.
63. Having regard to the whole material, we considered that the application was on the cusp of meeting the association hurdle. However, given our view that there is limited potential for any effect in relation to Kingsland at this time,¹⁴ we ultimately do not consider that we were justified in making further inquiries into the alleged association.

Substantial holder notices

64. Bacchus became a substantial holder in Kingsland on 31 May 2022, but it did not give a substantial holder notice to Kingsland until 16 March 2023. That notice omitted any reference to its associate, Yendah, and Yendah had not filed any separate notice disclosing their relationship or extent of their substantial holding. Accordingly, Quinbrook submitted that Bacchus and Yendah had contravened section 671B.
65. During the course of proceedings, Bacchus and Yendah¹⁵ lodged an updated substantial holder notice disclosing that it, together with Yendah, had voting power in Kingsland of 10.01%. In its submissions, Bacchus also acknowledged that "*Yendah should have been reflected in its disclosure earlier*".
66. We had concerns about the delay in Bacchus' and Yendah's disclosure. However, while the Panel does from time to time make orders relating to substantial holder notice disclosure in certain contexts,¹⁶ we do not think there is a reasonable prospect of us making a declaration and orders solely in relation to this issue given that the

¹⁴ See paragraphs 30 to 36 above

¹⁵ The notice of change of interests of substantial holder form was filed on behalf of Bacchus and Yendah but only executed by a director of Bacchus (who is not also a director of Yendah)

¹⁶ Noting the Panel's orders power in section 657D(2) excludes an order directing a person to comply with a requirement of Chapter 6, 6A, 6B or 6C

market has now been formally notified of Bacchus' and Yendah's holding.¹⁷ We also note that there has been some disclosure of Bacchus' approximate 10% holding in Kingsland (albeit not in the form of a formal substantial holder notice) in prior ASX announcements from Kingsland.¹⁸

Contraventions of Chapter 6 policy

67. Quinbrook submitted that in the event the Panel did not accept its submissions in relation to the alleged association and contraventions of sections 606 and 671B, that *"the Panel ought to make a declaration of unacceptable circumstances on the basis of serious concerns with respect to the control in the Company sought to be achieved by the Term Sheet and the Bacchus Transaction, as well as the underlying policy considerations of Chapter 6 of the Act."*
68. Quinbrook submitted that the Transaction and Term Sheet breached *"these core policy objectives"* because (among other things):
- (a) *"[T]he Term Sheet – and particularly the Maintenance Obligation and the Exclusivity Payments – in substance and practical effect, operate to coerce and induce the adoption of the Bacchus Transaction as a matter of course, presenting it as a pre-determined outcome with sufficient road blocks to deter Kingsland and its shareholders from legitimately pursuing alternative transactions and considering the relative merits."*
 - (b) Kingsland shareholders had not been provided with *"any financial metrics to determine the fairness and "quid pro quo"* of the Tenements being provided in exchange for Bacchus' 19.99% stake in Kingsland.
 - (c) Even if the Transaction is put to a shareholder vote, Kingsland shareholders will be *"materially influenced in their assessment of the Bacchus Transaction by the views of the Board"*. It submitted that Mr Maddocks and Mr Seneque were in a position of conflict with respect to the Transaction and ought to be precluded from voting on the Transaction at both a board and shareholder level.
 - (d) Kingsland shareholders have not been given a fair opportunity to equally participate in the purported benefits of the Transaction and instead stand to have their shareholdings significantly diluted.
69. For the reasons we have discussed above, we do not consider that the Term Sheet (including the Maintenance Obligation and the Exclusivity Payments) likely has a coercive effect on Kingsland shareholders to adopt the Transaction.¹⁹
70. Further, should the Transaction proceed, shareholder approval (with Bacchus not voting) is required by ASX and an independent expert's report would be prepared in relation to the Transaction. We considered that this may address Quinbrook's concerns that shareholders will be unable to assess the merits of the Transaction

¹⁷ A similar approach was taken by the Panel in *Vmoto Limited* [2025] ATP 7 at [41]

¹⁸ For example, see Kingsland's ASX announcement dated 1 October 2025 entitled *"\$1.6m Capital Raising and Chairman appointment"*

¹⁹ See paragraphs 42 to 46 above

(including whether it is in the best interests of Kingsland), and may deal with any future potential unacceptable circumstances that could otherwise have arisen.

71. Quinbrook also submitted that corporate governance breaches in connection with the Transaction, including that the Term Sheet was executed without full consideration of the Kingsland board, contributed to a state of affairs in which a *“significant control transaction risks being “rubber stamped” outside of a fair, informed and efficient market”*.
72. Our enquiries of Mr Maddocks and Mr Seneque in respect of their authority to enter into and sign the Term Sheet on behalf of Kingsland and their responses are set out above. As mentioned, we did not consider their responses to be satisfactory.²⁰ However, issues relating to corporate governance and operational decision making are not matters for the Panel unless such issues are connected to a control transaction or the acquisition of a substantial interest or are inconsistent with the principles in section 602.²¹
73. While we do not condone the decision to execute the Term Sheet without the full consideration of the Kingsland board, we do not consider it necessary to take this matter further from a governance perspective alone given our views on the other matters above.

The Panel’s involvement in contractual matters

74. Kingsland submitted that the application was, in substance, a contractual dispute which turned on whether Kingsland consulted with Quinbrook ‘first’ and had complied with the procedures set out in the Subscription Agreement in relation to funding. It said that *“[t]hese issues require construction of contractual provisions and resolution of contested factual matters as to meetings and negotiations”* and were matters more appropriate determined by a court.²²
75. Quinbrook’s response however made clear that it was not relying on the breach of the Subscription Agreement as a basis for the Panel declaring unacceptable circumstances.²³
76. In *Mighty Kingdom Limited*,²⁴ the Panel referred to the comments made by the Panel in *Careers Australia Group Limited 02*²⁵ at [33] (footnotes omitted):

“While the Panel may have jurisdiction to consider a contract, there would need to be a relevant nexus between the contract terms and their effect on control of a company before the Panel would become involved.”
77. There was clearly an underlying contractual dispute at play between Quinbrook and Kingsland. However, given that Quinbrook did not seek to rely on the alleged contractual breach as part of the circumstances giving rise to unacceptability and that

²⁰ See paragraphs 52 and 53 above

²¹ *FBR Limited 02* [2025] ATP 15 at [12]

²² See also paragraph 26 above

²³ See also paragraph 27 above

²⁴ [2023] ATP 14

²⁵ [2013] ATP 5

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our focus was on the alleged association, we did not need to consider the interplay between our jurisdiction and contractual matters further.

DECISION

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

James Burchnell

President of the sitting Panel

Decision dated 18 June 2026

Reasons given to parties 29 June 2026

Reasons published 3 July 2026

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[2026] ATP 11

Advisers

Party	Advisers
Bacchus	-
Kingsland	HWLE Lawyers
Quinbrook	Hamilton Locke