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Australian Government
Takeovers Panel

MEDIA RELEASE

No: TP21/27

Monday, 18 October 2021

PM Capital Asian Opportunities Fund Ltd – Panel Receives Application

The Panel has received an application from WAM Capital Limited in relation to the affairs of PM Capital Asian Opportunities Fund Ltd.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

PM Capital Limited is the investment manager of PM Capital Asian Opportunities Fund Ltd (**PAF**) and PM Capital Global Opportunities Fund Ltd (**PGF**).

On 7 June 2021, PGF, together with PM Capital Limited (**PM Manager**) and others, provided a notice of change of interests of substantial holder disclosing a combined voting power of 27.48% in PAF.

On 15 September 2021, PAF and PGF announced they had entered into a scheme implementation deed under which PGF will acquire all of PAF's shares which it does not already own by way of scheme of arrangement, with PAF shareholders offered PGF shares as consideration. The scheme implementation deed includes a break fee of $500,000 payable by PAF or PGF depending on the occurrence of certain circumstances (**Break Fee**).

Also on 15 September 2021, PGF and PM Manager[1] separately provided notices of change of interests of substantial holder disclosing voting power of 19.96% and 8.51% in PAF, respectively. PM Manager's notice stated that PGF's relevant interest changed on 14 September 2021 as a result of a "*[r]evocation of control of shares*".

On 28 September 2021, WAM Capital Limited (**WAM**) announced its intention to make a scrip off-market takeover bid for PAF. WAM also announced its intention to increase its bid consideration if the Break Fee is removed.

[1] Substantial holder notices by PM Manager are lodged on behalf of PM Manager and others

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On 29 September 2021, PM Manager disclosed in a substantial holder notice acquisitions of PAF shares increasing its voting power to 9.90% in PAF.

On 1 October 2021, PGF provided a notice of change of interests of substantial holder disclosing no change in its voting power in PAF but attaching a letter dated 14 September 2021 from PGF to its investment manager (namely, PM Manager) instructing the investment manager that it *"must not acquire or dispose of any securities held by [PGF] in [PAF]"* and *"must not hold or exercise any rights of voting the shares"*.

On 13 October 2021, PM Manager disclosed in a substantial holder notice further acquisitions of PAF shares increasing its voting power to 13.09% in PAF.

WAM submits that:

- there is an absence of proper disclosure to explain the basis for the purported revocation and therefore WAM's bid is not taking place in an efficient, competitive and informed market
- the revocation did not remove either the relevant interest or the association between PGF and PM Manager and accordingly, the recent acquisitions by PGF and PM Manager of PAF shares represent a 6.19% increase in their combined voting power of 26.86% held six months previously and constitute a breach of section 606(1) and
- the Break Fee creates an unreasonable and unequal opportunity for PGF to participate in any benefits that arise under the WAM bid. If the WAM bid is successful, PGF would, due to the Break Fee, receive $1.201 per PAF share, compared to $1.157 per PAF share for other PAF shareholders. This would deliver a 3.8% premium to PGF in circumstances where PGF has assumed minimal cost and effort and has assumed no risk in proposing the scheme and it is unclear why PAF agreed to grant PGF the Break Fee.

WAM seeks interim orders to prevent PGF and PM Manager and their associates from acquiring any additional interests in PAF shares and require each of them to correct their substantial holding disclosure.

WAM seeks final orders including that the scheme implementation deed be amended to remove the Break Fee and that all PAF shares acquired by PM Manager and its associates on or after 29 September 2021 be vested in ASIC.

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