

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

CIV/2021-404-

UNDER

Part 15 of the Companies Act 1993

IN THE MATTER OF an application by **TOWER LIMITED** a duly incorporated company having its registered office at Level 5, 136 Fanshawe Street, Auckland, and carrying on business as an insurance business, for approval of an arrangement

APPLICANT

**WITHOUT NOTICE ORIGINATING APPLICATION FOR ORDER APPROVING
ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated: 30 November 2021

TO: The Registrar of the High Court at Auckland

AND TO: Any person that the High Court directs to be served

This document notifies you that –

1. The applicant, Tower Limited (**Tower**) applies for the following orders:
 - (a) approving the scheme of arrangement described in the Arrangement Document (a draft of which is attached to this originating application marked “**A**”) between Tower and its shareholders for the return of capital (the **Arrangement**);
 - (b) declaring the Arrangement to be binding upon Tower, all its shareholders, and all such other persons necessary to give effect to the Arrangement, with (amongst other things) the effect that:
 - (i) One (1) of every ten (10) ordinary shares registered in the name of each shareholder at 7:00pm on either 4 March 2022, or the date that is five business days after the date on which final orders of this Court are made sanctioning the Arrangement, whichever is the latest (**Record Date**), together with all rights attaching to those shares, will be cancelled.
 - (ii) Within 10 business days after the Record Date, Tower will make payment by direct credit to each shareholder NZ\$0.72 for each share registered in the name of the shareholder, which has been cancelled in accordance with paragraph (i) above.
 - (iii) Shareholders with an address on the register in Australia at 7:00pm on the Record Date will be paid NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower’s share registrar on or about that time as approved by Tower.
 - (c) dispensing with formal service of this application, or any other application made by Tower in this proceeding, on any person; and
 - (d) granting leave to apply to this Court for approval of any amendment, modification, or supplement to the Arrangement.

2. The grounds upon which each order is sought are as follows:
- (a) the board of directors of Tower has resolved to seek the approval of (and apply to this Court for approval of) a scheme of arrangement under Part 15 of the Companies Act 1993 (**Act**);
 - (b) section 236(1) of the Act provides jurisdiction for the Court to make orders that the Arrangement is binding on Tower and any other such persons as the Court may specify and on terms and conditions the Court thinks fit;
 - (c) Tower has, at the same time as filing this application, filed an interlocutory application for orders pursuant to s 236(2) of the Act directing and approving the process to be followed in holding a meeting of shareholders to vote on the Arrangement;
 - (d) if approved by the shareholders of Tower, final orders in terms of section 236(1) of the Act will be required so as to make the Arrangement binding;
 - (e) by the date on which this originating application is determined, Tower will have complied with the initial interlocutory orders requested and the requirements of Part 15 of the Act;
 - (f) all persons who might be affected by the Arrangement, being all shareholders of Tower, will receive notice of and be entitled to vote at the proposed meeting seeking the approval of shareholders to the Arrangement;
 - (g) any shareholder who may oppose this Originating Application will have the opportunity to oppose it and to be heard;
 - (h) the Arrangement will not adversely impact Tower's creditors or shareholders as Tower will maintain the level of solvency required by the Insurance (Prudential Supervision) Act 2010 and the Reserve Bank of New Zealand;
 - (i) by the date on which this originating application is determined, Tower will also have received the approval of the IRD to the Arrangement;

- (j) the Arrangement is such that an intelligent and honest person of business acting in respect of his or her own interest would reasonably approve it;
 - (k) the terms and conditions of the Arrangement are otherwise fair and equitable to the shareholders of Tower;
 - (l) as set out in the Affidavit of Michael Peter Stiasny sworn 30 November 2021 the memorandum of counsel and interlocutory application for initial orders filed with this originating application; and
 - (m) as set out in any further updating affidavits to be filed following the implementation of initial orders and prior to the determination of this application.
3. This application is made in reliance upon:
- (a) Part 15 of the Act;
 - (b) rules 7.19, 7.20, 7.23, 19.2(c) and 19.10 of the High Court Rules 2016;
 - (c) *Re CM Banks Ltd* [1944] NZLR 248 (SC); *Weatherston v Waltus Property Investments Ltd* [2001] 2 NZLR 103 (CA), *Re Auckland International Airport* [2014] NZHC 405, *Re Kirkcaldie & Stains Limited* [2016] NZHC 112, *Re Tenon Limited* [2016] NZHC 2497, *Re Nuplex Industries* [2016] NZHC 1677, *Re Tenon Limited* [2017] NZHC 674, *Re New Zealand Oil & Gas Ltd* [2017] NZHC 809, *Re PGG Wrightson Ltd* [2019] NZHC 1780 and *Re Tilt Renewables Ltd* [2020] NZHC 1398;
 - (d) the memorandum of counsel filed in support of this application and the without notice interlocutory application for initial orders;
 - (e) the evidence filed in support of this application as set out in the affidavit of Michael Peter Stiasny, sworn 30 November 2021; and
 - (f) any further affidavit evidence or memorandum of counsel filed prior to the Court's determination of this application.

4. This application is made without notice to any other party on the following grounds:
- (a) that requiring the applicant to proceed on notice to each shareholder would cause undue delay or prejudice to the applicant;
 - (b) that all persons who might be affected by the Arrangement will receive notice of and be entitled to vote at the proposed meeting seeking the approval of shareholders to the Arrangement; and
 - (c) that the interests of justice require the application to be determined without serving notice of the application.
5. I certify that –
- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
 - (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

DATED at Auckland on 30 November 2021



S C D A Gollin
Counsel for the Applicant

This **ORIGINATING APPLICATION** is filed by **SEAN CHRISTOPHER DAVID ALBERT GOLLIN**, of MinterEllisonRuddWatts, PwC Tower, 15 Customs Street West, Auckland 1010, solicitor for the abovenamed Applicant. The address for service of the Applicant is at the offices of MinterEllisonRuddWatts, PwC Tower, 15 Customs Street West, Auckland 1010.

Documents for service on the abovenamed Applicant may be left at that address for service or may be:

- (A) posted to the solicitor at PO Box 105 249, Auckland 1143; or
- (B) emailed to the solicitor at sean.gollin@minterellison.co.nz and ana.simkiss@minterellison.co.nz

ARRANGEMENT DOCUMENT

Scheme of Arrangement pursuant to Part 15 of the Companies Act 1993 (NZ)

BETWEEN: Tower Limited and the holders of shares in Tower Limited.

1. INTERPRETATION

1.1 In this document, unless the context otherwise requires:

“**Business Day**” means a day on which the stock exchanges operated by NZX and ASX are open for trading.

“**Record Date**” means 4 March 2022, or the date five Business Days after the date on which the final order from the High Court of New Zealand is made pursuant to section 236(1) of the Companies Act 1993 sanctioning the arrangement, whichever is the latest.

“**Share**” means an ordinary share in Tower.

“**Shareholder**” means each person who is registered in the share register of Tower as the holder of a Share at 7:00pm (New Zealand time) on the Record Date.

“**Tower**” means Tower Limited.

2. ARRANGEMENT

2.1 One (1) Share for every ten (10) Shares registered in the name of each Shareholder at 7:00pm (New Zealand time) on the Record Date shall be cancelled (together with all the rights attaching to those Shares). For this purpose, fractions of a Share shall be rounded up or down to the nearest whole Share (with 0.5 rounded down).

2.2 Within ten Business Days after the Record Date, Tower shall pay to each Shareholder for each Share registered in the name of that Shareholder which has been cancelled in accordance with clause 2.1:

(a) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register other than in Australia, NZ\$0.72; or

(b) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register in Australia, NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower’s share registrar on or about that time, as approved by Tower.