

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2024

Under Part 15 of the Companies Act 1993

In the matter of an application by **Tower Limited** for approval of an
arrangement

Applicant

Without Notice Originating Application for Order approving
arrangement under Part 15 of the Companies Act 1993

Dated 28 November 2024

MinterEllisonRuddWatts.

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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 14 March 2025, 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\$1.1858 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 NZ1.1858 converted into Australian dollars at the exchange rate organised by Tower's share registrar on or about that time as approved by Tower.
 - (iv) The Arrangement will be implemented only if the Board of Directors of Tower, at its sole discretion, remains satisfied that up to 8:00am on the date the Arrangement is implemented:

- (A) Tower is complying with solvency and regulatory capital requirements, including under its capital management process requirements; and
- (B) it remains prudent to undertake the Arrangement.

(the Key Scheme Condition)

- (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) the Key Scheme Condition is an appropriate precaution to ensure that the Arrangement is only implemented if it remains prudent to do so;
- (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 affirmed 28 November 2024 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, *Re Tilt Renewables Ltd* [2020] NZHC 1398 *Re Tower Limited* [2022] NZHC 328 and *Burger Fuel Group Ltd v Mason Trustee Ltd* [2024] NZHC 1352;

- (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, affirmed 28 November 2024; 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 28 November 2024



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

"A"

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:

"Annual Meeting" means the annual meeting of shareholders of Tower, and any adjournment of that meeting, to be held to, among other things, consider and, if thought fit, approve the Scheme.

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

"Conditions" means the Board, at its sole discretion, remaining satisfied that:

- (a) Tower is complying with solvency and regulatory capital requirements, including under its capital management process requirements, up to the Condition Time; and
- (b) it remains prudent to undertake the Scheme up to the Condition Time.

"Condition Time" means 8:00am (New Zealand time) on the Implementation Date.

"Implementation Date" means the date on which Shares are to be cancelled under the Scheme.

"Record Date" means 14 March 2025, 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.

"Scheme" means the proposed scheme of arrangement between Tower and its Shareholders, the terms of which are set out in this document.

"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 Subject to the satisfaction of the Conditions as at the Condition Time, [one] Share for every [ten] 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 on a date chosen by it within that period, 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\$[1.1858]; 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\$[1.1858] converted into Australian dollars at the exchange rate organised by Tower's share registrar on or about that time, as approved by Tower,

provided that at the Condition Time the Conditions have been satisfied.

2.3 Payments will be made by electronic funds transfer to a bank account for the Shareholder where Tower or its share registrar holds sufficient details to make payment in that manner. Where an electronic funds transfer has failed, or Tower and its share registrar do not hold sufficient details to make payment, funds will be dealt with as unclaimed distributions in accordance with clause 4.6 of Tower's constitution (without any interest on any payment thereunder).

3. Amendment of Scheme

3.1 Tower reserves the right to amend this Scheme at any time and from time to time provided that any such amendment must be contained in a written document which is filed with the Court and, if made following the Annual Meeting, approved by the Court and communicated to the shareholders of Tower in the manner required by the Court (if so required).

3.2 Any amendment to this Scheme may be proposed by Tower at any time prior to or at the Annual Meeting with or without any other prior notice or communication and, if so proposed and accepted by the persons voting at the Annual Meeting, will become part of this Scheme for all purposes.

4. Lapse of Scheme

4.1 If the Conditions are not satisfied as at the Condition Time, the Scheme will lapse and be of no effect, with the consequence that no Shares will be cancelled or funds paid to Shareholders hereunder.