

**In the High Court of New Zealand
Auckland Registry**

**I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV-2019-404-

Under Part 19 of the High Court Rules and ss239AT and 239ADO of the Companies Act 1993

In the matter of an application pursuant to s239AT of the Companies Act 1993 for orders extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed)

and in the matter of **Tamarind Taranaki Limited (Administrators Appointed)**, an incorporated company having its registered office at Level 6, 54 Gill Street, New Plymouth 4310

In the matter of an application by **Mitchell Wayne Mansfield** of the Cayman Islands and **Jason Aleksander Kardachi**, of Singapore, chartered accountants and insolvency practitioners

Applicants

Originating application without notice for orders extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed)

Dated: 4 December 2019

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Originating application without notice for orders extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed)

To: The Registrar of the High Court at Auckland.

This document notifies you that—

- 1 The applicants, **Mitchell Wayne Mansfield** of the Cayman Islands and **Jason Aleksander Kardachi**, of Singapore, both chartered accountants and accredited insolvency practitioners, apply for orders that:
 - a leave is granted for this application to be made on a without notice basis;
 - b under s239AT(2) of the Companies Act 1993 (the '**Act**') the convening period for the watershed meeting (the '**convening period**') be extended from 9 December 2019 to 17 February 2020 in respect of Tamarind Taranaki Limited (Administrators Appointed) ('**Tamarind**');
 - c pursuant to s239ADO, Part 15 of the Act is to have effect in relation to Tamarind as if it were provided that the watershed meeting under s239AV may be held at any time during, and within 5 working days after the end of, the convening period as extended by the above order, notwithstanding the provisions of s239AV of the Act;
 - d within 5 working days of the above orders being granted, a copy of this application and orders of the Court be:
 - i given to creditors of Tamarind by:
 - A email, where an email address has been provided to Tamarind; or
 - B post, to the postal address provided by creditors in instances where an email address has not been provided; and
 - ii posted on Borrelli Walsh's website (www.borrelliwalsh.com) on the webpage in respect of the administration of Tamarind;
 - e leave is granted to any person who can demonstrate sufficient interest to apply to modify or discharge these orders, including any creditor of Tamarind, on appropriate notice being given to the applicants;

- f pursuant to s239ADO, Part 15 of the Act is to have effect in relation to Tamarind as if it were provided that should:
 - i the Court not make the orders sought above; or
 - ii the Court makes the orders sought above, but a person subsequently successfully applies to modify or discharge the above orders, such that the convening period is deemed to have expired, the administrators of Tamarind will be given a period of six working days, from the date that the Court declines to make the orders sought, or of the date of the order modifying or discharging the above orders, to convene the watershed meeting in the administration of Tamarind, notwithstanding the terms of s239E of the Act;
- g leave is reserved to the applicants to apply further in respect of any ancillary orders arising out of the orders made; and
- h the costs of this application be paid out of the assets of Tamarind.

2 The grounds on which each order is sought are as follows:

Without notice application

- a It is in the interests of justice that this proceeding be commenced without notice because:
 - i the convening period expires on 9 December 2019;
 - ii seeking the orders on notice to creditors would cause undue delay or prejudice to the applicants; and
 - iii if the application is granted, there is no prejudice to creditors as they retain their right to challenge the orders.

Extension of time to convene the watershed meeting

- b On 11 November 2019, the applicants were appointed as joint and several administrators of Tamarind.
- c The applicants' role as administrators is to advance the objects of s239A of the Act, namely, to provide for the business, property, and affairs of Tamarind to be administered in a way that:

- i maximises the chances of Tamarind, or as much as possible of its business, continuing in existence; or
 - ii if that is not possible, results in a better return for creditors and shareholders of Tamarind than would result from an immediate liquidation of Tamarind.
- d Under s239AT of the Act, the applicants must convene the watershed meeting within 20 working days after their appointment as administrators of Tamarind, i.e. by Monday, 9 December 2019.
- e Pursuant to s239AU(3) of the Act, the applicants are also required by Monday, 9 December 2019, to:
 - i prepare a report about Tamarind's business, property, affairs and financial circumstances for circulation to Tamarind's creditors;
 - ii provide a statement to creditors setting out the applicants' opinion, with reasons for that opinion, about each of the following matters:
 - A whether it would be in the creditors' interests for the company to execute a deed of company arrangement (**DOCA**);
 - B whether it would be in the creditors' interests for the administration to end; and
 - C whether it would be in the creditors' interests for the company to be placed in liquidation; and
 - iii if a DOCA is proposed, provide a statement setting out the details of the proposed DOCA.
- f Since their appointment, the applicants have been investigating the affairs of Tamarind and how best to improve the outcome for creditors from the administration. The applicants consider that the best outcome for creditors would be if Tamarind can continue production at the Tui oil field until, at least, the end of the current production cycle in January 2020.
- g If production can continue on terms which are profitable to Tamarind, the money available to creditors will increase. The continuation of production would also make it more likely that a sale of Tamarind's assets or business (in part or whole) can be agreed, or that Tamarind can continue operating profitably for a longer period.

- h The applicants have been in discussions with BW Offshore Singapore Pte Ltd ('**BWO**') in respect of the amendment of a key contract for the operation and maintenance of the *Umuroa*, a floating production storage and offloading vessel moored at the Tui oil field (the '**FPSO Contract**'). The applicants anticipate that they will shortly enter into a variation agreement with BWO on terms acceptable to both parties which allows for the continued extraction of oil at the Tui oil field.
- i While negotiations with BWO in respect of the FPSO Contract have been ongoing, the applicants had to halt production at the oil field due to a minor oil leak and the discovery of a cut to the outer layer of one of the pipes through which oil was being pumped.
- j The applicants arranged a full inspection of the remaining pipes by remote operated vehicle. The applicants also liaised with the Environmental Protection Authority (the '**EPA**') and other regulatory authorities as to the next steps. The EPA issued an abatement notice confirming that it required to review the full remote operated vehicle inspection report before production could recommence.
- k The applicants were initially hopeful that the inspection and reporting process could be completed in time to restart production on 1 December 2019. However, the weather conditions at the oil field delayed the carrying out of the inspection, initially to this week, but now until 11 December 2019. The applicants now expect the report from the inspection to be ready at the end of next week. Once the report from the inspection is available, the EPA will review it and make a decision as to whether production can recommence. The earliest date on which the EPA is likely to approve the restarting of production is 16 December 2019.
- l If the convening period is not extended, the applicants will have to report to creditors on 9 December 2019. The applicants will not have received confirmation by that date as to whether production can restart.
- m The date on which production can restart and any conditions attached to the approval from the EPA will have a material impact on the options available for the future of Tamarind. The time taken in resolving this issue has also delayed attempts to ascertain the interest in purchasing Tamarind's assets or the availability of ongoing funding. Any report prepared for creditors by the applicants without the benefit of this information will, by necessity, be incomplete.

- n It is not in the interests of Tamarind's creditors for the applicants to have to report to them at a time when a key factor in respect of whether the company is able to continue operations is yet to be determined and the level of interest in the company's assets is also uncertain. If the applicants have to report before the required information is available, the creditors may be denied options that could later be put to them.
- o There is no likely prejudice to Tamarind's creditors (and potentially advantage) if the convening period is extended.
- p An extension of the convening period will facilitate the applicants achieving the objectives of s239A of the Act, namely, to maximise the chances of Tamarind's creditors receiving a better return than would result from an immediate liquidation of Tamarind.

An order that the watershed meeting may be called during the extended convening period

- q While the extension of the convening period sought is until 17 February 2020, order 1(c) will allow the applicants to call the watershed meeting at an earlier date within the convening period if it is appropriate or desirable to do so.

Appropriate to make orders sought

- r The extension of the convening period would improve the chances that production can be re-started thereby increasing the funds available for distribution to creditors. The extension would also increase the chances either that Tamarind's assets or business can be sold or that third party funding can be secured to facilitate continued production (possibly aided by the execution of a deed of company arrangement).
- s Personal service of this application on Tamarind's creditors would be expensive and time consuming, and such costs would be detrimental to all creditors and stakeholders in the administration.
- t If the orders are made, there is no prejudice to creditors, as they:
 - i will be served with a copy of this application and the Court's orders by:
 - A email, where an email address has been provided to Tamarind; or

B by post, in instances where an email address has not been provided; and

ii they retain the right to challenge the orders.

3 The application is made in reliance upon:

- a sections 239AT, 239AV, and 239ADO of the Companies Act 1993;
- b rules 7.23, 7.46, 18.7, 19.2(c), 19.10 and 19.11 of the High Court Rules 2016;
- c *Re Jackson* [2018] NZHC 477; *Re Pumpkin Patch Limited* [2016] NZHC 2771; *Re Postie Plus Group Limited* [2014] NZHC 1337; *Re Nylex (New Zealand) Limited* Unreported 11/03/09, Heath J HC Auckland CIV-2009-404-1217 and *Re Drikolor New Zealand Limited* Unreported 14/11/09, Edwards J HC Auckland CIV-2019-404-002183 (minute only); and
- d the affidavits of Jason Aleksander Kardachi and Patrick James Nicoll Glennie affirmed in support of this application.

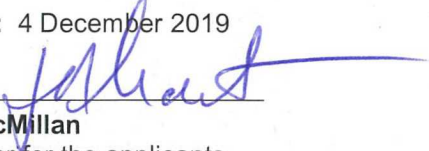
4 The application is made without notice to any other party on the following grounds:

- a that requiring the applicants to proceed on notice would cause undue delay or prejudice; and
- b 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: 4 December 2019



J A McMillan
Solicitor for the applicants

Address for service:

This document is filed by **James Alexander McMillan**, solicitor for the applicants of the firm Kensington Swan, Auckland. The address for service of the applicants is 18 Viaduct Harbour Avenue, Auckland 1010. Documents for service on the applicants may be left at that address for service or may be:

- a posted to the solicitor at c/o Kensington Swan, Private Bag 92101, Auckland 1142; or
- b left for the solicitor at a document exchange for direction to c/o Kensington Swan, DX CP22001, Auckland; or
- c emailed to the solicitor at james.mcmillan@kensingtonswan.com and mark.broad@kensingtonswan.com.