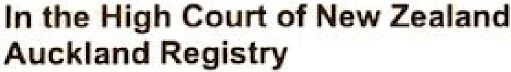

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV–2019–404–

Under	Part 19 of the High Court Rules and sections 239AT and 239ADO of the Companies Act 1993
In the matter of	an application pursuant to section 239AT of the Companies Act 1993 for an order 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)**
In the matter of an application by	**M W Mansfield** and **J A Kardachi** Applicants

---

Affidavit of Jason Aleksander Kardachi in support of originating application without notice for order extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed)

Affirmed: 3 December 2019

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Solicitor: J A McMillan / M L Broad
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IMELDA JULIA GOZAL, S.H., M.Kn.
BOGOR

Affidavit of Jason Aleksander Kardachi in support of originating application without notice for order extending the convening period by which the administrators must convene the watershed meeting of Tamarind Taranaki Limited (Administrators Appointed)

I, **Jason Aleksander Kardachi**, of **Singapore**, chartered accountant and insolvency practitioner, affirm:

Background

1 I am a managing director of Borrelli Walsh and I am the second-named applicant in this proceeding. I am also authorised to affirm this affidavit on behalf of Mitchell Mansfield, the first named applicant in this proceeding.

2 I am familiar with the matters at issue in this proceeding. Annexed to this affidavit as exhibit '**JAK-1**' is a paginated bundle of documents which I will refer to by page number.

3 On 11 November 2019, Mr Mansfield and I were appointed administrators of Tamarind Taranaki Limited (Administrators Appointed) ('**Tamarind**'). Printouts from the Companies Office website confirming our appointment are at **pages 01 and 02** of the bundle. Tamarind operates the Tui oil field off the Taranaki coast. It took over the oil field in 2017 and operates it using the *Umuroa*, a floating production, storage and offloading vessel owned by BW Offshore Singapore Pte Ltd ('**BWO**').

4 At the point at which Mr Mansfield and I were appointed administrators, Tamarind had 117 creditors owed a total of US$231,647,512.57. Of this sum, US$66,940,821.85 is owed to Orchard Capital Partners, which was granted a general security by Tamarind over all of its assets (subject to confirmation of the validity of the security). A further US$812,480.17 is owed to seven employees of Tamarind, of which US$152,200.20 is preferential debt.

5 Prior to our appointment, we applied to this Court for orders permitting us to act as administrators, deed administrators or liquidators of Tamarind. I affirmed an affidavit in support of that application, a copy of which is at **page 03** of the bundle. Those orders were granted and a copy of the Court orders is at **page 31** of the bundle.

Orders sought

6 In this application, Mr Mansfield and I seek orders:

a for an extension of the convening period for Tamarind's watershed meeting by 41 working days, from 9 December 2019 to 17 February 2020, pursuant to section 239AT(3) of the Companies Act;

b that we are able to convene the watershed meeting by notice of meeting before the convening period (as extended) has expired, if we are able to take the necessary steps and form the necessary opinions before completion of the extended convening period; and

c that leave is reserved for any creditor of Tamarind to apply to vary or set aside these orders prior to the next hearing date.

Steps taken since our appointment as administrators of Tamarind

7 Since our appointment as administrators, we have:

a secured Tamarind's assets whilst determining whether there is demand to effect a sale of the business or its assets or third party funding available to facilitate continued production;

b engaged in negotiations with key creditors and suppliers to ascertain whether, and for how long, production at the Tui oil field can continue and to secure that continuation on terms favourable to Tamarind;

c held the first meeting of creditors in New Plymouth on 20 November 2019. At the meeting, the administrators highlighted to creditors that, depending on the progress of the administration, they may need to extend the convening period. A copy of the minutes of that meeting is at **page 34** of the bundle;

d terminated the employment of all of Tamarind's employees within 14 days of appointment in order to limit our personal liability and re-engaged those employees whose services are necessary to the continued operation of Tamarind; and

e begun to investigate Tamarind's affairs, business, property, and financial circumstances in order to form an opinion on the possible outcomes of the administration (see s 239AE of the Act).

IMELDA JULIA GOZAL, S.H., M.Kn. NOTARIS KABUPATEN BOGOR

8 At **pages 53-62** of the bundle is a copy of some media articles about the administration of Tamarind.

The watershed meeting

9 Under section 239AT of the Act, we are required to convene a watershed meeting of creditors within the convening period, being 20 working days after the date of our appointment. The convening period currently ends on Monday, 9 December 2019. The watershed meeting must be held within five working days after the end of the convening period (that is, by Monday, 16 December 2019). It is at the watershed meeting that Tamarind's creditors will decide on the future of the company.

Extension of convening period for watershed meeting

10 Mr Mansfield and I consider that, to maximise the return to Tamarind's creditors, a short extension to the convening period is required to 17 February 2020.

11 Since our appointment, we have been assessing the business of Tamarind and its assets and liabilities. Our view is that the best way to improve the return for creditors and shareholders of Tamarind is for it to continue to produce oil from the Tui oil field until, at least, the end of the current production cycle in January 2020.

12 If production can continue until that point, the oil can be uplifted and sold resulting in a better return for creditors. At the same time, we can continue to explore options for sale of Tamarind's assets or the availability of third party funding to facilitate continued production by Tamarind beyond the current production cycle (possibly in conjunction with a deed of company arrangement).

13 In order to secure continued production, we have been in discussions with BWO to agree an amendment of the contract for the operation and maintenance of the *Umuroa* at the Tui oil field (the '**FPSO Contract**').

14 The discussions have been positive and Mr Mansfield and I anticipate that we will shortly enter into a variation agreement with BWO that amends the FPSO Contract. The variation agreement will allow production to continue on terms acceptable to both parties. However, a leak of oil at the Tui oil field has increased the uncertainty surrounding production and this uncertainty will

continue until at least 9 December 2019. The uncertainty has also meant that we have not been in a position to ascertain the interest in Tamarind's assets or the availability of third party funding to facilitate continued production.

IMELDA JULIA GOZAL, S.H., M.Kn. NOTARIS KABUPATEN BOGOR

15 On 22 November 2019, a small oil leak was discovered at the Tui oil field. Production was immediately suspended until the cause of the leak could be determined and we could assess the risk of further leaks. On further inspection, it was determined that the leak was caused by a cut in one of the lines between the seabed and the *Umuroa*. Mr Mansfield and I therefore instructed a full inspection of the remaining lines by remote operated vehicle.

16 At the same time, we liaised with the Environmental Protection Authority (the '**EPA**') and other regulatory authorities to keep them appraised of the situation. The EPA issued an abatement notice confirming that it required to review the full inspection report before production could recommence.

17 Mr Mansfield and I initially believed that it would be possible to complete the inspection and reporting process in time to restart production on 1 December 2019. However, the weather has delayed the carrying out of the inspection. The third party survey is to be carried out this week and the report is expected at the end of the week. Mr Mansfield and I understand that the earliest day on which the EPA is likely to complete its assessment of the report and authorise the recommencing of production is 9 December 2019. Throughout, we will be working closely with the EPA to ensure best practice is adhered to.

18 If the convening period is not extended, we will have to convene the watershed meeting on 9 December 2019. On the same day we will need to circulate a report to Tamarind's creditors about Tamarind's business, property, affairs and financial circumstances. We will also need to provide a statement setting out our opinion on, among other things, whether it would be in the creditors' interests for the company to execute a deed of company arrangement or to be placed into liquidation.

19 Due to the continuing uncertainty as to whether, and when, production at the Tui oil field can recommence, we do not expect to be in a position to provide a useful report to creditors or advise them as to the options open to them in respect of Tamarind on 9 December 2019.

20 We require time to consider the outcome of the EPA's review of the survey report and what effect it has on the viability of continued production. We do not expect to receive confirmation from the EPA of their findings until on or around

IMELDA JULIA GOZAL, S.H., M.Kn.
NOTARIS KABUPATEN BOGOR

9 December 2019. The current timetable therefore does not allow consideration of the EPA's findings before our report must be circulated to creditors.

21 Our report will also be more meaningful to creditors once we have had the opportunity to approach potential purchasers of Tamarind's assets to ascertain the interest in those assets and to investigate the availability of third party funding to facilitate continued production. We will be in a stronger position to do so once we have secured the short term future of production at the oil field.

22 Mr Mansfield and I have suggested a 42 working day extension to the 20 working day convening period. The length of the extension is designed to allow for any delays in receiving authorisation to recommence production or any other obstacles that arise. Further, the extension is over the Christmas holiday period during which Mr Mansfield and I anticipate that we may have difficulty in contacting potential purchasers of Tamarind's assets, as well as creditors.

23 If the convening period is not extended, then we will be unable to properly advise Tamarind's creditors on the options available to the company prior to the watershed meeting. As such, there would be a higher probability of liquidators being appointed to Tamarind at the end of the current convening period and following the watershed meeting. Given the prospect of production recommencing if further time is allowed and of the identification of parties interested in Tamarind's assets (or of third party funding options), we consider that liquidation at this stage would not be in the best interests of creditors of Tamarind, including employees.

24 There is a reasonable prospect that, if the convening period is extended, we will be able to advise creditors in advance of the watershed meeting that production has recommenced and of the funds available as a result. We may also be able to advise creditors as to potential purchasers of Tamarind's assets or as to the availability of third party funding to facilitate continued production beyond the current cycle. In that case, the options for Tamarind and therefore the prospects of a better recovery for the creditors will have increased.

25 If the orders sought are granted, we will endeavour to hold the watershed meeting as soon as possible within the extended convening period.

26 In my view, the proposed extension to the convening period should not prejudice creditors because:

a extending the convening period would increase the chances of production continuing until January 2020 which would result in a better return to creditors than immediate liquidation;

b creditors who continue to supply goods and services to Tamarind during the period of our administration are protected by our statutory obligation to pay for relevant amounts and have been kept informed as to the progress of the administration;

c Tamarind's landlord will continue to be paid for occupation for Tamarind's occupation of its New Plymouth premises;

d all creditors will receive notice of this application and orders (if granted) by email or post (which is consistent with service of the orders that were previously granted in respect of our application under section 280 of the Companies Act) and will have the ability to apply to vary or set aside the orders.

Appropriate that this application is made and determined on a without notice basis and proposed service on creditors

27 I believe that it is appropriate for this application to be made and determined on a without notice basis, because:

a extending the convening period for a brief period should not prejudice Tamarind's creditors;

b personal service of the application on Tamarind's known 117 creditors and seven employees would be a time-consuming and expensive, given the urgency of the application;

c If the orders sought are granted:

i within five working days a copy of this application and the Court's orders will be 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 posting notice on Borrelli Walsh's website (www.borrelliwalsh.com) on the webpage in respect of the administration of Tamarind;

d Any person (including Tamarind's creditors) will be able to apply to modify or discharge the orders, on appropriate notice to the administrators.

28 At 1.40pm on 3 December 2019, Borrelli Walsh and its solicitors received an email from the solicitor acting on behalf of DOF Management Australia Pty Ltd, one of Tamarind's creditors, A copy of the email is at **page 63** of the bundle. The email referred to this application and requested that it be made on notice as it was anticipated that the application would be opposed.

29 Mr Mansfield and I continue to hold the view that service on each of Tamarind's creditors would be impractical and is unnecessary in the circumstances. We consider that these creditors are sufficiently protected by the opportunity given to them to apply to modify or discharge the orders once granted. As a courtesy, though, we propose providing a copy of the application, when it is made, to:

a the five creditors who are members of the creditors committee elected at the first meeting of Tamarind's creditors;

b DOF Management Australia Pty Ltd; and

c COSL Offshore Management AS, a further creditor of Tamarind which has file a notice of opposition to the s280 application previously granted.

IMELDA JULIA GOZAL, S.H., M.Kn. NOTARIS KABUPATEN

METERAI TEMPEL 6000 ENAM RIBU

Imelda Julia Gozal S.H., M.K.n.
Registered by me, Waarmeking No.21/Rgst/XII/2019, on this day, 3rd of December 2019, in Indonesia.

'JAK-1'

Registered document

1250682 TAMARIND TARANAKI LIMITED

Registration Date and Time	12 November 2019 16:30:18
Document Type	Appointment of Voluntary Administrator
Presenter	Jason Aleksander KARDACHI (BORRELLI WALSH LIMITED)
	One Raffles Place
	Tower 2 #10-62
	Singapore 048616
	Singapore

Appointment of Voluntary Administrator

First Name	Jason
Middle Name	Aleksander
Surname	KARDACHI
Organisation	BORRELLI WALSH LIMITED
Address	Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong
Phone	+65 65 66030795
Public Email	jk@borrelliwalsh.com
Appointed On	11 Nov 2019
Appointed By	239I - Board of Directors

Imelda Julia Gozal S.H., M.K.n.
Registered by me, Waarmeking No.20/Rgst/XII/2019, on this day, 3rd of December 2019, in Indonesia.

Registered document

1250682 TAMARIND TARANAKI LIMITED

Registration Date and Time	12 November 2019 16:30:18
Document Type	Appointment of Voluntary Administrator
Presenter	Jason Aleksander KARDACHI (BORRELLI WALSH LIMITED) One Raffles Place Tower 2 #10-62 Singapore 048616 Singapore

Appointment of Voluntary Administrator

First Name	Mitchell
Middle Name	Wayne
Surname	MANSFIELD
Organisation	BORRELLI WALSH LIMITED
Address	Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong
Phone	+1 345 3233278
Public Email	mim@borrelliwalsh.com
Appointed On	11 Nov 2019
Appointed By	239I - Board of Directors

In the High Court of New Zealand
Auckland Registry **CIV-2019-404-**

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

Under	Part 19 of the High Court Rules and sections 239F, 239ACD, 280 and 286 of the Companies Act 1993
In the matter of	an application pursuant to sections 239F, 239ACD, 280 and 286 of the Companies Act 1993 for an order that Mitchell Wayne Mansfield and Jason Aleksander Kardachi not be disqualified from appointment as administrators, deed administrators or liquidators of Tamarind Taranaki Limited
and in the matter of	**Tamarind Taranaki Limited**
In the matter of an application by	**M W Mansfield** and **J A Kardachi** Applicants

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Affidavit of Jason Aleksander Kardachi in support of originating application without notice for orders that Mitchell Wayne Mansfield and Jason Aleksander Kardachi be permitted to act as administrators, deed administrators or liquidators

Affirmed: 4 November 2019

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Solicitor: J A McMillan
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7990209.2

Affidavit of Jason Aleksander Kardachi in support of originating application without notice for orders that Mitchell Wayne Mansfield and Jason Aleksander Kardachi be permitted to act as administrators, deed administrators or liquidators

I, **Jason Aleksander Kardachi**, of **Singapore**, chartered accountant and insolvency practitioner, affirm:

Background

1 I am a managing director of Borrelli Walsh and I am the second named applicant in this proceeding. I am also authorised to affirm this affidavit on behalf of Mitchell Mansfield, the first named applicant in this proceeding.

2 I am familiar with the matters at issue in this proceeding. Annexed to this affidavit as exhibit '**JK–1**' is a paginated bundle of documents which I will refer to by page number in my affidavit.

3 I have Bachelor of Commerce and Bachelor of Economics degrees from the University of Adelaide. I am a member of the Institute of Singapore Chartered Accountants and a member of the Institute of Chartered Accountants of Australia and New Zealand (**CAANZ**). I am also an associate member of the Insolvency Practitioners Association of Singapore and the International Association of Restructuring, Insolvency and Bankruptcy Professionals (**INSOL**). I have 25 years of corporate advisory and restructuring experience in the Asia Pacific region. During this time, I have acted as Court Appointed Liquidator, Liquidator, Scheme Manager, Receiver and Chief Restructuring Officer. A copy of my curriculum vitae appears at **page 01** of the bundle.

4 My colleague, Mitchell Mansfield, is a director of Borrelli Walsh based in the firm's Cayman Islands' office. He has a Bachelor of Commerce degree from the University of New England, Australia. He is a chartered accountant and is also a member of CAANZ and INSOL. Mr Mansfield is an official liquidator in the Cayman Islands and a registered liquidator in Australia. He has acted on behalf of public and private companies across many sectors including mining, resources, construction and manufacturing. A copy of Mr Mansfield's curriculum vitae appears at **page 06** of the bundle.

5 Borrelli Walsh is a leading international provider of restructuring, insolvency and forensic accounting services with offices throughout Asia and the Pacific. Borrelli

ai th

Walsh has led more than 20 restructuring of companies in the commodities, oil and gas and related services industry and managed approximately US$10.5billion of restructured debt in the following jurisdictions, including Australia, Bangladesh, Bermuda, BVI, Cambodia, Cayman Islands, Geneva, Hong Kong, India, Indonesia, Malaysia, Netherlands, Nigeria, PRC, Rotterdam, Sierra Leone, Singapore, Thailand, the UK and the USA.

Tamarind Taranaki Limited

6 This application relates to Tamarind Taranaki Limited (**Tamarind**). A company extract and certificate of incorporation of Tamarind are at **pages 09 and 11** of the bundle. Tamarind operates an oil rig in the Tui oil field off the Taranaki Coast.

7 While Tamarind's registered office is in New Plymouth, Tamarind is not a party to this application and will not oppose it. The conflicts of interest relevant to this application relate primarily to Mr Mansfield, Borrelli Walsh and me. We are based overseas and the most convenient registry is Auckland.

8 The Companies Office website records Tamarind as having two directors, Ian Angell and Michael Arnett. Mr Angell is resident in Malaysia and Mr Arnett is resident in Australia. Tamarind's sole shareholder is a Singaporean company, Tamarind Resources Private Limited.

9 I understand that Tamarind has approximately 111 creditors including:

i 104 third party creditors owed a total of US$192,173,631; and

ii seven employees owed a total of US$105,664.

10 Tamarind is experiencing financial distress resulting from a number of factors, including:

i the continuing decline in the oil price;

ii a recent failed drilling exercise in the Tui oil field; and

iii poor performance by Tamarind's main drilling contractor.

11 The directors of Tamarind wish to appoint administrators to Tamarind as soon as possible because they hope that the company's business can be restructured or sold and a better return achieved for creditors than would result from an immediate liquidation of the company. Mr Mansfield and I have been asked by the directors to act as administrators of Tamarind. We also expect we may need

to act as deed administrators or liquidators of the company following the subsequent watershed meeting of creditors in the administration of Tamarind.

12 Mr Mansfield and I have considered whether there are any matters that may disqualify us from being appointed administrators, deed administrators or liquidators of Tamarind pursuant to section 280 of the Companies Act 1993 (**Act**).

13 Borrelli Walsh, Mr Mansfield and I have not had any prior involvement with Tamarind before its recent financial difficulties. However, as a result of these difficulties, the Singaporean Borrelli Walsh office has been engaged by Tamarind to provide professional services. In particular, Tamarind has instructed Borrelli Walsh to assess and advise on options for the restructuring of Tamarind and I have been directly involved in providing this advice.

14 On 31 October 2019, solicitors carried out a search on the Personal Property Securities Register, on my behalf, for financing statements registered against Tamarind. A copy of the search results appears at **page 12** of the bundle. As at 31 October 2019, seven financing statements had been registered against Tamarind including, on 27 June 2019, a financing statement in the name of Madison Pacific Trust Limited (**MPTL**). The financing statement registered by MPTL relates to securities granted by Tamarind in return for financing provided by Orchard Capital Partners (**OCP**) as detailed below. Borrelli Walsh, Mr Mansfield and I have had, and continue to have, a professional relationship with OCP.

15 I have carried out internal searches in relation to the entities, other than OCP, that have registered financing statements against Tamarind. I can confirm that Borrelli Walsh, Mr Mansfield and I have not acted for any of these entities.

Provision of professional services to Tamarind

16 In October 2019, Tamarind appointed Borrelli Walsh as Independent Financial Advisor. In this role, Borrelli Walsh has provided independent investigative services to Tamarind, including a review of operations and advice on possible turnaround solutions. A copy of a letter from Borrelli Walsh to Tamarind setting out the proposed scope of work and fees appears at **page 15** of the bundle. I have been directly involved in carrying out this work but Mr Mansfield has not.

17 Borrelli Walsh's work with Tamarind has afforded me an insight into the company's position and the steps that Mr Mansfield and I would need to be taken in any administration or subsequent insolvency procedure.

Continuing business relationship with Orchard Capital Partners

18 OCP is an investment fund providing customised secured lending for small and medium sized enterprises across the Asia Pacific Region. OCP is a secured creditor of Tamarind through three investment vehicles: OL Master (Singapore Fund 1) Pte. Limited, Orchard Landmark II (Singapore Fund 1) Pte Limited and OCP Asia Fund III (SF 1) Pte. Limited.

19 Borrelli Walsh, Mr Mansfield and I have been engaged by OCP in relation to various matters since 2010. The relevant relationships are between OCP and Borrelli Walsh's offices in Hong Kong, Singapore and Australia. There have been a total of eight engagements in the last two years, of which four are ongoing. None of the engagements for OCP have related to Tamarind's affairs or the affairs of its directors or shareholders or any group companies of Tamarind. Further, none of these engagements have related to matters taking place in New Zealand.

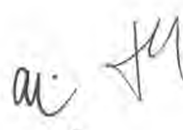
20 Neither Borrelli Walsh, Mr Mansfield or I have provided any services to OCP about Tamarind, its directors or shareholder or about any group companies of Tamarind.

Application for permission by the Court to act as administrators, deed administrators or liquidators of Tamarind

21 Mr Mansfield and I are precluded from being appointed as administrators or liquidators of Tamarind under sections 280(1)(ca) and 280(1)(cb) of the Act, due to Borrelli Walsh's provision of services to Tamarind and our and Borrelli Walsh's continuing business relationship with OCP.

22 Mr Mansfield and I will advise the Court if any further conflict arises in terms of section 280 of the Act between the date of any appointment as administrators of Tamarind and the watershed meeting of the company's administration.

23 Because of the conflicts identified above, it is necessary for Mr Mansfield and me to obtain permission from the Court under sections 239F, 239ACD, 280(1)(ca) and 280(1)(b) of the Act to act as administrators of Tamarind. It is also necessary for us to obtain permission from the Court to act as deed administrators or liquidators of Tamarind, if appointed as such at a watershed meeting of creditors in the administration of Tamarind. We respectfully seek the Court's permission to accept appointment as administrators and deed administrators or liquidators (as the case may be).



24 Mr Mansfield and I will provide a consent to act as administrators of Tamarind after the Court has granted us permission to act as administrators of the company.

25 If the Court makes an order granting us permission to act as administrators of Tamarind, then I expect that Mr Mansfield and I will be appointed as administrators of the company as soon as possible thereafter.

26 I am capable of, and will, carry out the role of administrator, deed administrator or liquidator in an appropriately professional and independent manner. Similarly, Mr Mansfield has confirmed to me that he will also carry out the role of administrator, deed administrator or liquidator in an appropriately professional and independent manner.

Appropriate that this application is made and determined on a without notice basis

27 I believe that it is appropriate for this application to be made and determined on a without notice basis, because:

a there is no real conflict about our proposed appointment as administrators, deed administrators or liquidators of Tamarind;

b personal service of the application on Tamarind's 104 known creditors and seven employees would be time-consuming and onerous, given the urgency of the application; and

c if Mr Mansfield and I are appointed as administrators of Tamarind, then creditors:

i will be served with a copy of this application and the Court's orders at the same time and in the same manner as notice of the first meeting of creditors under s239AO is given by the administrators to those creditors;

ii retain the right to challenge our appointment as administrators of Tamarind in Court; and/or

iii may vote to replace us as administrators at the first creditors' meeting of the administration of Tamarind under s239AN of the Act.

Proposed service of orders on creditors

28 If orders are made permitting Mr Mansfield and me to be appointed administrators of Tamarind, and we are subsequently appointed administrators of the company, we propose to serve a copy of this application and the orders on all known creditors of Tamarind notified of the first meeting of creditors in Tamarind's voluntary administration pursuant to s239AO(1)(a) of the Act, at the same time and in the same manner as notice under s239AO is given by the administrators to those creditors.

29 A copy of this application and the Court's orders will also to be posted on Borrelli Walsh's website.

Affirmed in the Hong Kong Special Administrative Region of the People's Republic of China
on 4 November 2019
before me:

A person duly authorised to take oaths in the Hong Kong Special Administrative Region of the People's Republic of China

LI SIU FUNG
NOTARY PUBLIC
HONG KONG SAR
Unit 1303, 13/F.,
Tower 1, Admiralty Centre,
18 Harcourt Road,
Hong Kong.

This is the exhibit marked 'JK-1' referred to in the annexed affidavit of JASON ALEKSANDER KARDACHI affirmed at the Hong Kong Special Administrative Region of the People's Republic of China this 4th day of November 2019 before me:

A person duly authorised to take oaths in the Hong Kong Special Administrative Region of the People's Republic of China

LI SIU FUNG
NOTARY PUBLIC
HONG KONG SAR
Unit 1303, 13/F.,
Tower 1, Admiralty Centre,
18 Harcourt Road,
Hong Kong.

CURRICULUM VITAE

JASON KARDACHI

Position : Managing Director

Professional Affiliations and Academic Qualifications

- Approved Liquidator, Singapore
- Associate Member of the Insolvency Practitioners Association of Singapore (IPAS)
- Member of the Institute of Singapore Chartered Accountants
- Member of the Singapore Institute of Directors
- Member of the Institute of Chartered Accountants of Australia
- Member of INSOL International
- Past President and current board member of the Turnaround Management Association, Singapore and South East Asia
- Bachelor of Commerce, University of Adelaide
- Bachelor of Economics, University of Adelaide

Career History

2010	:	Managing Director, Borrelli Walsh Pte Limited
2007	:	Managing Partner, Teak Capital Partners Pte Ltd
2006	:	Director, Head of Special Situations, HSBC
2001	:	Senior Manager, Business Recovery Services, PricewaterhouseCoopers
1994	:	Manager, Business Recovery Services, Arthur Andersen

Professional History

Jason Kardachi is a Managing Director based in the Singapore office and leads the firm's restructuring, insolvency and forensic work in Singapore and South East Asia.

Jason has led and managed complex debt restructurings and turnarounds, liquidations and receiverships and provided practical and commercial solutions to key stakeholders.

Jason is the founding member of the TMA Southeast Asia ("SEA") chapter and is the first President of the regional TMA chapter. He was recently awarded the TMA International Chapter Impact Award 2019 and is the first practitioner outside of the United States to have received an Individual award since the launch of the TMA Awards in 1993.

Before joining Borrelli Walsh, Jason was a Managing Partner of Teak Capital Partners, an advisory and investment firm focused on special situation and distressed investments across Asia Pacific.

Jason has 25 years of corporate advisory and restructuring experience in Asia Pacific, the last 19 of which have been in Hong Kong and Singapore, initially at PricewaterhouseCoopers in Business Recovery Services and then as Head of Special Situations Asia at HSBC.

Jason is a Chartered Accountant and has a Bachelor of Commerce and a Bachelor of

Economics from the University of Adelaide.

Significant Assignments

- Court appointed Liquidator of Humpuss Sea Transport Pte Limited, a substantial Singapore and Jakarta-based shipping group, following an industry downturn and the subsequent non-performance of several international charter hires. The group is facing total claims of over US$140 million from ship owners in Greece, Korea and Norway. The Liquidators obtained Chapter 15 orders in New York and recognition order by the High Court of Justice in London to stop the international legal proceedings against the company and thereafter pursued a dual strategy of reconstituting books, records and financial affairs of the company and realising the assets of the company including through litigation internationally.

- Liquidator to a Singapore-based company that provided management services to offshore accommodation vessels valued at more than US$150 million. Following enforcement by secured bondholders over the assets of the company, work involved the investigation and analysis of disputes between key stakeholders and the pursuit of related claims including those focussed on the time charter arrangements for the vessels.

- Liquidator of Dovechem, a Singapore based chemical solvent distributor with operations across Asia Pacific and turnover of more than SGD500m. Key aspects of work included detailed investigations and reconstruction of accounts to facilitate the valuation of key assets and sale.

- Liquidator of Global Brands Group, a Singapore based global branding, licensing and intellectual property business with operations in 12 countries and tier one brand assets funded by USD150m of debt. Key aspects of work included maintenance of operations whilst the sale of business units were managed and then subsequent wind down, interaction with the licensors in terminating the rights and enabling them to step into those rights and liaising with licensees to effect same, detailed investigations into the conduct of directors and management and various litigations arising out of contracts entered into by the company.

- Scheme Manager and then Liquidator of Nutune, a Singapore-based tuner manufacturer with operations in Singapore, Indonesia and PRC. Work included review of operations with subsequent wind down followed by recovery of assets sold to strategic global buyers.

- Liquidator to Singapore company, Timor Global Limited, which engaged in the trading and processing of commodities internationally under a joint venture agreement. Work focussed on undertaking detailed investigations into the conduct of the directors and tracing the flow of funds between related entities and other JV partners, which identified various legal claims available to the Liquidators.

- Liquidator to Singapore technology companies GlobalRoam Group Limited ("GlobalRoam Group") and its subsidiary GlobalRoam Pte Limited ("GlobalRoam")

which owned various patents relating to and provided communication and authentication microservices to customers that allow hybrid connections via both traditional telecommunication infrastructures and digital networks. Role involved taking steps to protect and preserve the Group's assets, establishing a reliable cash flow forecast for the business, convening creditor meetings and successfully undertaking a sale process for the business and/or assets of the Group in an efficient and cost-effective manner.

- Liquidator to Singapore company, Marujyu Technology Pte Ltd, which was in the business of reselling semiconductor chips and components. Work involved taking steps to protect and preserve the Company's assets, establishing the creditors of the company, convening creditor meetings and undertaking all other statutory duties of a Liquidator.

- Scheme Manager of a Scheme of Arrangement of a Singaporean capital raising SPV of an Indonesian property group that issued USD155 million of bonds. Role involved undertaking a financial assessment of the proposed restructuring of the bonds, including whether the commercial terms of the Scheme were fair to creditors when compared to the available alternatives such as enforcement of security. Also facilitating the swapping of the bonds for shares in a related party IDX-listed entity, as well as the issuance of warrants in the parent company PT Bakrieland Development Tbk. We obtained 100% approval of the proposed Scheme at the Creditors Meeting, in one of the first Court approved Schemes under the revised insolvency regime of Singapore's Companies Act 2016.

- Receiver over the shares of a BVI-incorporated company which had a wholly owned subsidiary Singapore company, which in turn owned 99.9% of the shares in an Indonesian property development company. Work included securing control over the assets and developing an enforcement and realisation strategy, including by changing the directors and commissioners of the BVI company, its Singapore and Indonesian subsidiaries. We have undertaken an assessment of the Indonesian properties in preparation for either an enforcement sale (following our taking physical possession) or negotiating a consensual restructuring or refinance of the loan with the relevant stakeholders.

- Receiver over shares of a shipping and bulk trading company and directors of 18 subsidiary companies across various jurisdictions by an international bank. Work involved taking control of and stabilising the businesses, managing the operations of 14 vessels (bulk carriers, LPG and chemical tankers, offshore support vessels) and 30+ ongoing cargo voyages; establishing and reviewing short and long term cash flow forecasts and needs; reviewing settlement proposals; ensuring compatibility of available options with cash flow projections and other options (e.g. litigation); assessing the risks and associated opportunities; and successfully completing a sale process.

- Chief Restructuring Officer ("CRO") and lead advisor to PT Berlian Laju Tanker Tbk, a dual-listed (Singapore and Jakarta) Indonesian company with a global chemical tanker fleet of 50 vessels operating globally from Jakarta, Hong Kong and US (Southport, Connecticut). The company has debt in excess of US$2 billion comprising

a senior secured syndicate of international banks, high yield USD bonds, convertible bonds, IDR bonds, lease, derivative and trade claims. Work undertaken included stabilising a crisis through implementation of vessel protection measures, cash flow management, restructuring an underperforming fleet by removing (through lay up or sale) unprofitable vessels and contracts including realigning trade lanes, management changes and management information generation. Establishing a long term restructuring proposal to accommodate a diverse lender and stakeholder groups in Asia, New York, London and the Netherlands including preparation of forecasts determining revised loan terms, new money requirements for working capital, cash sweep mechanisms, and equity issuance. Negotiating terms and implementing restructuring within the framework of a PKPU process in Indonesia, s210(10) in Singapore and Chapter 15 in New York.

- Appointed Chief Restructuring Officer of Global Beauty, a company providing non-medical cosmetic treatment services with over 200 centers with 3,000 staff across South East Asia including Malaysia. Work involved review of operations to identify businesses to retain, dispose or fix. This led to a sale of certain businesses in certain countries to reduce overheads and losses, managing creditors to allow for improved cash position and establishing communication channels with management for approvals for commitment and payments and to develop and monitor restructuring initiatives.

- Chief Restructuring Officer of an aluminium and steel formwork construction business with substantial operations in Malaysia and India. Work included appointment as Director to operating company to manage cash flow and improve supply chain. Restructuring included provision of new money facility and management buyout. Appointed Independent Director post-restructuring to implement business plan and facilitate an exit.

- IFA to a bank syndicate and Scheme Manager of First Engineering, Singapore based plastic injection moulder with operations in Malaysia, China and India. Following a successful debt for equity restructuring our focus was on achieving an exit of the bank's position through a targeted sale process whilst managing cash flows and operational enhancements culminating in a sale of the business to a private equity buyer.

- Appointed replacement asset manager of a portfolio of 7 (primarily distressed) investments located in China, Singapore and Malaysia valued at US$100m. Investee industries include pharmaceuticals, aquaculture, manufacturing, shipping and technology. As asset manager of the fund and directors of the investments, our work required establishing and implementing a realisation strategy for each investment through various strategies. Our work included establishing fund flows in respect of major investments, ownership entitlement, investigation of the conduct of the fund manager and establishing and recommending realisation alternatives.

- Appointed as Director of a Singapore company by an investment fund with investments in shipping and aviation in excess of SG$200 million to assist in portfolio management and realisation.

- Appointed as a Director by a senior lender to implement the restructuring of a printing

business in Singapore including key management changes and negotiations and improvement of key supplier arrangements resulting in stabilisation of business, improved performance and ultimately sale via Receiver appointment.

- Appointed to conduct a financial and operational review of a major Indonesian forestry enterprise which led to our appointment as directors to implement a sale of the investment ultimately achieving a successful exit for the secured bondholder.

- Lead advisor to PRC based top 40 company in the strategic acquisition and restructuring of two HK listed companies (combined market cap HK$750m).

- Restructure of HK based company including sale of intellectual property (HK$388m) resulting in full recovery to creditors and stay of liquidation.

- Advisor to a PRC company with revenues of US$20b on the strategic acquisition of and restructuring of two HK listed companies.

- Managed a team of 20 on the buy side advisory and due diligence of a portfolio of NPL's based in Hong Kong and China with significant real estate collateral and a book value of US$1b.

- Lead advisor in bid for Australian rail assets valued at AUD$250m including determination of bid structure, financial modelling, due diligence, sourcing finance and reporting to board.

- Restructuring and turnaround of Pope Perry, an Australian manufacturer of heavy engineering equipment, including sale of underperforming business unit, reduction in staff (25%), overheads (32%) and debt (US$10m).

- Restructuring of an Australian national retailer (US$150m sales) including management of operations, sale of non-core surplus assets, review of non-performing business units and management restructure.

- Advisor on the acquisition of an Australian commercial property portfolio purchased for US$225m for a large superannuation fund.

CURRICULUM VITAE

MITCHELL MANSFIELD

Position : Director

Professional Affiliations and Academic Qualifications

- Cayman Islands Official Liquidator
- Registered Liquidator, Australia
- Member of Recovery and Insolvency Specialists Association (RISA) – Cayman Islands
- Member of the International Association of Restructuring, Insolvency & Bankruptcy Professionals (INSOL)
- Member of the Australian Restructuring, Insolvency and Turnaround Association (ARITA)
- Member of Chartered Accountants Australia and New Zealand – Chartered Accountant
- Bachelor of Commerce, University of New England, Australia

Career History

Dec 2016	:	Director, Borrelli Walsh Pte Limited
Dec 2016	:	Standard Chartered Bank (on secondment)
May 2016	:	Sandhurst Trustees Limited (on secondment)
Jun 2013	:	National Australia Bank (on secondment)
Feb 2009	:	Senior Manager, McGrathNicol
Mar 2007	:	Business Analyst, Amway of Australia and New Zealand
Jun 2005	:	Intermediate Accountant, PKF Chartered Accountants (now BDO)
Jun 2004	:	Accountant, Hall Chadwick Chartered Accountants

Professional History

Mitchell is an appointment taking Director based in the Cayman office with over 14 years of experience across Australia, Asia, North America and the Caribbean.

Mitchell has acted on behalf of public and private companies, shareholders, funds, secured and unsecured creditors on assignments across the financial services, shipping, retail, agriculture, pharmaceutical, property, mining, resources, construction and manufacturing industries.

Prior to relocating to the Cayman office, Mitchell was based in the Singapore office, advising clients across Asia and globally.

Mitchell has extensive experience delivering bespoke solutions in respect of complex cross border restructurings, shareholder disputes and valuations, investigations and litigation.

Mitchell is a Chartered Accountant, Cayman Islands Official Liquidator and registered Liquidator in Australia.

Significant Assignments

- Appointed Receivers by a Singapore based lender over marketable securities in an Australian listed company. The company operated leisure and entertainment businesses across the Asia Pacific region, including two casinos located in Cambodia and Vietnam. Work included securing the marketable securities and working with the company to identify a suitable and strategic investor to acquire the securities and repay the Singapore based lender.

- Appointed Independent Financial Advisor by the parent company to a newly acquired Indonesia company engaged in the business of wholesale trading and distribution of electrical equipment and other related products in Indonesia. Work involved assisting the new shareholders in taking control of and understanding the operations and assets of the company, in particular the collection of outstanding overdue debts and realising inventory on hand; and to assess recommend and implement available options for the business – including restructuring, sale or winding-up of the business in order to maximize shareholder value.

- Appointed Independent Financial Advisor by a listed Norwegian company and its Singaporean subsidiaries which provide seaborne transportation and logistics of liquefied gases. The Group operates a fleet of 7 chemical tanker vessels and has debt totalling approximately US$150 million. Work involved a review of the business to understand its operations and financial position, implementing cash and working capital controls, establishing and reviewing short and long term cash flow forecasts and formulating refinancing and/or restructuring options.

- Independent Financial Adviser to the senior lender of a facility advanced to VSC International Pte Ltd totalling USD6 million. The borrower, through various related group entities, operated a fleet of chemical tankers. Work included formulating an enforcement strategy which culminating in a settlement of the amounts outstanding.

- Independent Financial Adviser to a Bahraini construction company in the restructure of approximately USD 21 million. Work included:
  - establishing operational and financial position, developing financial model and projections, reviewing short and long term liquidity forecasts;
  - confirming short and long term funding requirements, including rolling 13-week cash flow forecast;
  - assessing the recapitalisation options available to the group (including structuring funding from the new shareholders);
  - preparing recommendation to improve the company's operation such as to focus on profitable projects, restructure the creditors' claims and establish a strong management and financial control; and
  - understanding capital expenditure and materials required for the company to complete the projects.

- Independent financial advisor to pharmaceutical roll-up of eight contract development and manufacturing organizations (CDMO) facilities acquired from seven different pharmaceutical companies. Work included review and independent valuation of

individual acquisition transactions, analysis of potential claims by company against third party sellers, major customers and other significant parties, and assistance in negotiations with key creditors and constituencies. Work also included assistance to company and primary equity owner in litigation with dismissed management team, including review and analysis of third-party consultant's report, valuation and other financial analysis in support of company's litigation claims, counterclaims and defences, and preparation of expert witness report and availability for depositions and court expert testimony.

Company Extract

TAMARIND TARANAKI LIMITED
1250682
NZBN: 9429036267743

Entity Type:	NZ Limited Company
Incorporated:	30 Oct 2002
Current Status:	Registered
Constitution Filed:	Yes
Annual Return Filing Month:	February
FRA Reporting Month:	June

Ultimate holding company:	Tamarind Resources Private Limited
Type of entity:	Company
Registration number / ID:	201634047M
Country of registration:	Singapore
Registered office address:	4 Robinson Road, #05-01, The House Of Eden, Singapore, 048543, SG

Company Addresses

Registered Office
Level 6, 54 Gill Street, New Plymouth, 4310, NZ

Address for Service
Level 6, 54 Gill Street, New Plymouth, 4310, NZ

Directors

ANGELL, Ian
36-02 Cendana Condo, 1 Jalan Cendana, 50250 Kuala Lumper, Wilayah Persekutuan, MY

ARNETT, Michael Norman
54 Crescent Road, Eumundi, Qld, 4562, AU

Australian company directorship
Director of an Australian company: Yes

Australian company details

ACN:	118300217
Company name:	NRW HOLDINGS LIMITED
Registered office address:	Level 16, 300 Adelaide Street, Brisbane, Qld, 4000, AU

Company Extract

TAMARIND TARANAKI LIMITED
1250682
NZBN: 9429036267743

Shareholdings

Total Number of Shares: 52,988,555

Extensive Shareholdings: No

52,988,555 UEN201634047M
Tamarind Resources Private Limited
4 Robinson Road, #05-01, The House Of Eden, Singapore, 048543, SG

For further details relating to this company, check http://app.companiesoffice.govt.nz/co/1250682
Extract generated 29 October 2019 05:27 PM NZDT

Certificate of Incorporation

TAMARIND TARANAKI LIMITED

1250682

NZBN: 9429036267743

This is to certify that NEW ZEALAND OVERSEAS PETROLEUM LIMITED was incorporated under the Companies Act 1993 on the 30th day of October 2002
and changed its name to AWE TARANAKI LIMITED on the 1st day of July 2008
and changed its name to TAMARIND TARANAKI LIMITED on the 1st day of March 2017.

Registrar of Companies
29th day of October 2019

Certificate generated 29 October 2019 05:29 PM NZDT

Debtor Organisation Search Result

Search ID: 3698799 **Time of Search:** 31-Oct-2019 17:34:24 **Records Found:** 7

Search Criteria **Incorporation Number:** 1250682

Results are listed by date and time of PPSR registration, based on the search criteria, and do NOT establish priority.

Financing Statement Registration Number: F28J56426A70C9Y1/5

PPSR Registration Date and Time: 05-Aug-2011 10:52:26
Expiry Date and Time: 07-Jul-2021 15:36:50

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
TAMARIND NEW ZEALAND PTY LIMITED	NEW PLYMOUTH		866843	9429038041839	Company
TAMARIND TARANAKI LIMITED	NEW PLYMOUTH		1250682	9429036267743	Company
W M PETROLEUM LIMITED	NEW PLYMOUTH		921398	9429037784447	Company

Collateral All Present and After Acquired Personal Property
Intangibles

Secured Party STEWART PETROLEUM CO LIMITED

Financing Statement Registration Number: FZ743BP1B296P698/6

PPSR Registration Date and Time: 05-Aug-2011 10:55:19
Expiry Date and Time: 06-Jul-2021 14:25:30

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
STEWART PETROLEUM CO LIMITED	NEW PLYMOUTH		39918	9429040761701	Company
TAMARIND NEW ZEALAND PTY LIMITED	NEW PLYMOUTH		866843	9429038041839	Company
TAMARIND TARANAKI LIMITED	NEW PLYMOUTH		1250682	9429036267743	Company

Collateral All Present and After Acquired Personal Property
Intangibles

Secured Party W M PETROLEUM LIMITED

Debtor Organisation Search Result

Search ID: 3698799 **Time of Search:** 31-Oct-2019 17:34:24 **Records Found:** 7

Search Criteria **Incorporation Number:** 1250682

Results are listed by date and time of PPSR registration, based on the search criteria, and do NOT establish priority.

Financing Statement Registration Number: FN76659J4Z1TJ770/6

PPSR Registration Date and Time: 05-Aug-2011 10:58:02
Expiry Date and Time: 05-Jul-2021 15:28:31

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
STEWART PETROLEUM CO LIMITED	NEW PLYMOUTH		39918	9429040761701	Company
TAMARIND TARANAKI LIMITED	NEW PLYMOUTH		1250682	9429036267743	Company
W M PETROLEUM LIMITED	NEW PLYMOUTH		921398	9429037784447	Company

Collateral All Present and After Acquired Personal Property
Intangibles

Secured Party TAMARIND NEW ZEALAND PTY LIMITED

Financing Statement Registration Number: F20JD13BA4722915

PPSR Registration Date and Time: 25-Jun-2018 10:45:10
Expiry Date and Time: 25-Jun-2023 10:45:10

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
TAMARIND TARANAKI LIMITED	NEW PLYMOUTH	919:TAMA.RIND	1250682	9429036267743	Company

Collateral Goods - Other

Secured Party TEAM DOCUMENT LIMITED

Financing Statement Registration Number: FN1J58F23F259B09/1

PPSR Registration Date and Time: 28-Jun-2018 14:12:15
Expiry Date and Time: 28-Jun-2023 14:12:15

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
TAMARIND TARANAKI LIMITED	NEW PLYMOUTH	2016630	1250682	9429036267743	Company

Collateral All Present and After Acquired Personal Property
Goods - Other

Secured Party STEEL AND TUBE HOLDINGS LIMITED

Debtor Organisation Search Result

Search ID: 3698799 **Time of Search:** 31-Oct-2019 17:34:24 **Records Found:** 7

Search Criteria **Incorporation Number:** 1250682

Results are listed by date and time of PPSR registration, based on the search criteria, and do NOT establish priority.

Financing Statement Registration Number: FB7NRG2X293Y9954

PPSR Registration Date and Time: 27-Jun-2019 17:18:31
Expiry Date and Time: 25-Jun-2024 17:18:31

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
TAMARIND TARANAKI LIMITED	Singapore		1250682	9429036267743	Company

Collateral All Present and After Acquired Personal Property

Secured Party MADISON PACIFIC TRUST LIMITED

Financing Statement Registration Number: FY246K8CN4HB82P6

PPSR Registration Date and Time: 25-Oct-2019 13:15:18
Expiry Date and Time: 31-Dec-2019 13:15:18

Debtor Details

Debtor Name	City/Town	Debtor Reference	Incorporation Number	NZBN	Organisation Type
TAMARIND TARANAKI LIMITED	New Plymouth		1250682	9429036267743	Company

Collateral All Present and After Acquired Personal Property
All Present and After Acquired Personal Property Except...
Goods - Other

Secured Party KINETIC WELL SERVICES LIMITED

BORRELLI WALSH 保華

BORRELLI WALSH LIMITED
LEVEL 17, TOWER 1, ADMIRALTY CENTRE
18 HARCOURT ROAD, HONG KONG
T +852 3761 3888 | F +852 3761 3889

By email (Ian.Angell@tamarindresources.com;Wailid.Wong@tamarindresources.com) only

09 October 2019

Our ref: JK/MIM/796729

Tamarind Taranaki Limited,
Level 6, 54 Gill St. New Plymouth
4310 New Zealand

Attention: Ian Angell and Wai Lid Wong

Strictly Private and Confidential

Dear Sirs,

Tamarind Taranaki Limited – Independent Financial Advisor

1. We refer to the meeting between Ian Angell and Wai Lid Wong of Tamarind Resources Limited ("Tamarind") and Jason Kardachi and Mark O'Reilly of this office on 9 October ("Meeting"), as well as email correspondence between these parties on or around this date (together "Correspondence").

2. Our understanding of this matter is relatively limited and is based primarily on the information provided during the Correspondence and other publicly available information. We would welcome any opportunity to refine or expand the preliminary approach set out herein when more detailed information can be provided to us.

3. This letter sets out the proposed scope of work and our proposed fees.

Background

4. Tamarind Taranaki Limited (the "Company") is a wholly owned subsidiary of Tamarind. The Company is the operator of the Tui Oil Field and a 37.5% shareholder in the Tui Oil Field Joint Venture ("Tui"), with the remaining joint venture partners also being wholly owned by Tamarind.

5. The Tui oil field is located 50 kilometers off the coast of Taranaki, New Zealand. The field consists of three subsea drill centers: Tui (2 production wells), Amokura (1 production well) and Pateke (2 production wells) which are each tied back to the BW Offshore FPSO 'Umuroa' via Subsea Facilities.

6. Tamarind is a privately held oil & gas company headquartered in Kuala Lumpur, Malaysia, and is

focused on developing, operating and improving under-exploited fields in Southeast Asia and Australasia.

7. Tui has been in production since 2007 and was acquired by the Company from the former venture partners, AWE, New Zealand Oil & Gas and Pan Pacific Petroleum, in 2017.

8. In order to extend the life of the Tui field into the mid 2020s, the Company planned to drill multiple new development wells – one in each field to access bypassed oil. This development would side-track from existing well bores to access undrained oil. The Company then entered into an agreement with COSL Drilling for the drilling operations.

9. In September 2019, the Company suspended drilling operations at the Tui field, after the first of the three planned wells ("Tui-3H") came up dry.

10. The Company's primary ongoing contracts for the Tui field include:

10.1 BW Offshore ("BWO") charter (FPSO) – while a new contract has been signed on 16 September 2019, there exists a cancellation option which may be executed on or before 15 October 2019 which would terminate the contract effective 31 December 2019. BWO has a parent company guarantee against Tamarind with an approximate value of USD13 million. A proposal to restructure arrangements has been made to BWO and discussions are ongoing;

10.2 COSL contract (drilling) – No parent guarantee and can be terminated any time on payment of USD5 million, or approximately USD3.9m if the contract is first suspended. In Mid-September following the failure of the initial drilling, this suspension clause was invoked. COSL have issued a statutory demand which expires shortly;

10.3 DOF provide offshore supply vessels –they have also issued a statutory demand which expires shortly; and

10.4 HNZ provide helicopters for transportation to the offshore site.

10.5 The Company is also expecting a GST refund (as part of the amounts spent for the Tui drilling) of US$1.4 million in the coming weeks.

11. As a result of the recent failed drilling operations and other commercial factors, the Company wishes to appoint Borrelli Walsh Limited ("Borrelli Walsh") as Independent Financial Advisor ("IFA") to assist in a review of the financial position of Tui and to establish restructuring options available to the Company.

Scope of Work

12. Our primary role as IFA is to ascertain an understanding of the Company's operational and financial affairs, establish the restructuring options available and our recommendations.

13. On the basis of the limited information currently available to us, we estimate that our scope of work may comprise carrying out the matters set out below. We would welcome any opportunity to refine or expand the preliminary approach set out herein when more detailed information is available.

Review of financial & operating position

13.1 establish the Company's assets and liabilities including valuation;

13.2 review and analyse the terms and status of the debt facilities, security arrangements and current overall indebtedness;

Working capital and cash flow

13.3 establish the current liquidity status of the Company including an assessment of near-term payment obligations, including those which are critical to the operations of the Tui oil field;

13.4 understand and evaluate the current working capital position of the business, including trade and capex creditors, amounts receivable from tax authorities, prepayment agreements with Trafigura / other stakeholders and the value of inventory on hand;

Preparation of forecasts

13.5 evaluate short- and long-term funding requirements, and prepare a robust short term cash flow forecast and refine the longer term financial model for the Company;

13.6 establish capital expenditure requirements including abandonment costs, material non-operating expenses and other cash obligations; and

13.7 establish opportunities to improve profitability and reduce operating costs and overheads.

Restructuring

13.8 communicate as necessary with trade and capex creditors and other stakeholders of the Company with respect to the current situation and the work being undertaken by Borrelli Walsh;

13.9 assess the viable restructuring options based on cash flow and other projections and recommend restructuring proposal(s); and

13.10 establish the options available and recommend how to implement the restructuring proposal including whether through informal consensus, an Administration in accordance with section 239 of the NZ Companies Act 1993 act of one of more of the entities and or the appointment of Receivers.

Borrelli Walsh Team

14. Our directors are leading providers of insolvency and restructuring services throughout the Asia Pacific Region and in recent times have played key roles in many of the region's insolvencies and restructurings. They regularly undertake substantial and complex insolvency and restructuring assignments as receivers, independent financial advisors, provisional liquidators, liquidators, directors and legal representatives (in the PRC).

15. This matter will be led by our Managing Directors Cosimo Borrelli and Jason Kardachi, assisted by Director Mark O'Reilly, who will be assisted by other members of our team where necessary.

16. We have the resources available to commence the necessary work immediately.

17. Information in relation to Borrelli Walsh is available at www.borrelliwalsh.com. Please let us know if you require any further information in relation to Borrelli Walsh.

Fee Structure

18. Like many other advisory firms, our fees are based on standard hourly rates calculated by reference to the staff member's experience, seniority and responsibility and on the actual time required to complete the assignment.

19. In order to keep costs as low as possible, more junior members of the firm will be involved where appropriate. Set out below are our hourly rates for an assignment of this nature:

Borrelli Walsh	USD/hour
Director	1,040
Manager	600
Associate	320
Accountant	200

20. Our hourly rates are subject to periodic review and adjustment.

21. We propose the following fee structure:

21.1 we will calculate our fees using the above hourly rates for the necessary work ("Hourly Rates");

21.2 we will cap our fees at USD50,000 ("Fee Cap") for the scope of work described above, which we anticipate will take approximately 15 days to complete;

21.3 we will invoice you immediately, for the full amount of the Fee Cap and work will commence our work once this invoice has been paid;

21.4 should our costs as calculated using our Hourly Rates be lower than the Fee Cap, you will be refunded the difference; and

21.5 you will be invoiced separately upon completion of the work scope for any reasonable disbursements in respect of our fees ("Disbursements").

21.6 Should our scope of work substantially increase beyond that set out in paragraph 12 above, we will discuss further fee arrangements with you.

Expenses

22. You will need to make an allowance for our reasonable out of pocket expenses such as any necessary travel and accommodation.

23. Borrelli Walsh does not invoice its clients for staff travelling time, telephone calls, facsimile transmissions, photocopying, stationery or administrative staff time.

24. It is our practice to issue invoices for our expenses on a regular interim basis. All invoices are due for payment within 30 days of issue.

Indemnity

25. We do not require an indemnity in respect of our engagement as described herein.

Conflict of Interest

26. We confirm that we are not aware of any actual, potential or perceived conflict of interest (or any other matter), which prevents us from undertaking this assignment. If we become aware of such conflict, we will notify you immediately.

Confidentiality

27. The contents of this letter and the terms of engagement are confidential and should not be disclosed to any other party without our express written consent.

Data Privacy

28. Borrelli Walsh undertakes to observe the provisions of all applicable laws and regulations pertaining to personal data. Borrelli Walsh is committed to being a responsible custodian of the information you provide to us and the information we collect in the course of operating our business. Our offices and business entities share information with each other for business purposes such as internal administration,

billing, promoting our events and services, and providing you or your organisation with services. For information on how we may collect, use, process and share your personal data, please read our Privacy Policy, which can be found at www.borrelliwalsh.com/privacy-policy/.

Anti-Money Laundering

29. We will require information and documents in respect of the Company prior to commencing the engagement. A detailed information request will be made when the Company is in a position to commence the engagement. This will include (and not be limited to) accurate anti-money laundering ("AML") information.

30. Set out below is a list of information and documentation for the Company that you should provide to us:

    30.1 Certificate of Incorporation;

    30.2 Memorandum and Articles of Association (including all amendments filed);

    30.3 group structure chart (if available);

    30.4 current Register of Members;

    30.5 current Register of Directors and Officers;

    30.6 any registers of mortgages, charges and other encumbrances;

    30.7 audited financial statements, if available, or details of the assets and liabilities;

    30.8 if the member(s) are corporations, please provide the Register of Members of each member;

    30.9 if the director(s) are corporations, please provide a list of authorised signatories or the Register of Directors of each corporation; and

    30.10 KYC documents on the director(s) and ultimate beneficial shareholder(s).

Termination

31. At any time during the term of the engagement, you or Borrelli Walsh may terminate the engagement for whatever reason upon the expiry of 7 days' notice to be given in writing to the other party. Termination will not affect any accrued rights.

32. All sums payable to Borrelli Walsh in respect of this engagement will be payable to them upon their termination.

Commencement of this Engagement

33. The engagement of BW as set out in this engagement letter will commence upon the signing of the engagement letter and payment of the invoice as set out in paragraph 23.3. You may terminate this engagement immediately upon written notice.

34. Should you wish to do so or have any queries or require any further information, please contact Mr Kardachi or Mr Bance. Their contact details are set out below:

Cosimo Borrelli
Office Direct: +852 3761 3800
Mobile: +852 9492 6393
Email: cb@borrelliwalsh.com

Jason Kardachi
Office Direct: +65 6603 0795
Mobile: +65 9101 2123
Email: jk@borrelliwalsh.com

Yours faithfully

Jason Kardachi
Managing Director
Borrelli Walsh Limited

We agree and accept the terms of this engagement agreement

Name: ROBERT IAN ANGELL
Title: MANAGING DIRECTOR
Authorised Representative

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe **CIV–2019–404–2445**

Under	Part 19 of the High Court Rules and sections 239F, 239ACD, 280 and 286 of the Companies Act 1993
In the matter of	an application pursuant to sections 239F, 239ACD, 280 and 286 of the Companies Act 1993 for an order that Mitchell Wayne Mansfield and Jason Aleksander Kardachi not be disqualified from appointment as administrators, deed administrators or liquidators of Tamarind Taranaki Limited
and in the matter of	**Tamarind Taranaki Limited**, 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

Orders as to qualification of administrators

Date: 6 November 2019

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Orders as to qualification of administrators

To: **Mitchell Wayne Mansfield** and **Jason Aleksander Kardachi**.

1 The originating application made by **Mitchell Wayne Mansfield** of the Cayman Islands and **Jason Aleksander Kardachi** of Singapore, both chartered accountants and accredited insolvency practitioners, on 5 November 2019, was determined by The Honourable Justice Jagose on 6 November 2019.

2 The determination was made without a hearing.

3 The following orders were made:

a the application be permitted to be made by way of an originating application;

b notwithstanding s239F(2), ss280(1)(ca) and ss280(1)(cb) of the Companies Act 1993 (**Act**), **Mitchell Wayne Mansfield** and **Jason Aleksander Kardachi** of Borelli Walsh (**Proposed Administrators**) may be appointed as joint and several administrators of Tamarind Taranaki Limited (**Tamarind**);

c notwithstanding s239ACD(2), ss280(1)(ca) and ss280(1)(cb) of the Act, the Proposed Administrators may be appointed as joint and several deed administrators or liquidators of Tamarind, if appointed as such at a watershed meeting of creditors in the voluntary administration of Tamarind;

d in the event that the Proposed Administrators are appointed as administrators of Tamarind, then:

i this application be adjourned to a date convenient to the Court;

ii a copy of this application and orders of the Court be served on all known creditors of Tamarind notified of the first meeting of creditors in Tamarind's voluntary administration pursuant to s239AO(1)(a) of the Act, at the same time and in the same manner as notice under s239AO is given by the administrators to those creditors, with a copy of this application and the Court's orders also to be posted on Borelli Walsh's website;

iii the administrators' notice to creditors under s239AO(1)(a) of the Act shall include advice to creditors of the next mention date of this application, and advice that, if they wish to challenge the interim orders

made, they are entitled to do so by filing and serving a notice of opposition within 10 working days of service of the Court's orders to set aside the Proposed Administrators' appointment as administrators of Tamarind; and

iv the creditors of Tamarind shall have leave to apply to the Court within 10 working days of service of the Court's orders to set aside the Proposed Administrators' appointment as administrators of Tamarind; and

e the Proposed Administrators' solicitor-client costs and disbursements of this application are to be an expense incurred by the Proposed Administrators in carrying out their duties as administrators of Tamarind.

REGISTRAR OF HIGH COURT AUCKLAND N.Z. J.S.

Date: ~~5~~ 6 November 2019

(Deputy) Registrar

JOTI SINGH
Deputy Registrar
High Court
Auckland

THE SEAL OF THE HIGH COURT NEW ZEALAND

TAMARIND TARANAKI LIMITED
(ADMINISTRATORS APPOINTED)
NZBN: 9429036267743
("Company")

MINUTES OF FIRST MEETING OF CREDITORS OF THE COMPANY HELD ON 20 NOVEMBER 2019 AT 10.00AM (NEW ZEALAND TIME) AT THE DEVON HOTEL AND CONFERENCE CENTRE, 390 DEVON STREET EAST, NEW PLYMOUTH 4312, NEW ZEALAND

PRESENT

Name	**Designation / Representing**
Jason Aleksander Kardachi	Chairman of Meeting, nominated Joint and Several Administrator of the Company
Wai Lid Wong	Chief Operating Officer of Tamarind Group
Monique Sigvertson	Finance & Commercial Manager of the Company
Rebecca Hopson	Assistant Accountant of the Company
Mark O'Reilly	Administrators' Officers
Éanna Brennan	Administrators' Officers
James McMillan	Solicitor acting for administrators
Creditors	Refer to Attendance Sheet (Appendix A)
Observers	Refer to Attendance Sheet (Appendix B)

INTRODUCTION

The meeting of creditors for Tamarind Taranaki Limited (Administrators Appointed) ("Company") was being held pursuant to Section 239AN of the Companies Act 1993 ("Companies Act").

The nominated joint and several administrators of the Company, Mr. Jason Aleksander Kardachi ("Mr. Kardachi") introduced himself and informed that the other nominated joint and several administrator, Mr. Mitchell Mansfield ("Mr. Mansfield") was absent with apologies.

Mr. Kardachi took the chair of the meeting.

NOTICE OF MEETING

The Chairman advised that notice of this meeting had been sent to all known creditors of the Company on 12 November 2019 pursuant to Section 239AO(1)(a) of the Companies Act and that such notice was advertised in *New Zealand Gazette, New Zealand Herald, Dominion Post* and the *Taranaki Daily News* on 14 November 2019 pursuant to Section 239AO(1)(b) of the Companies Act.

ATTENDANCE / QUORUM

Pursuant to Schedule 5 of the Companies Act, a quorum for the meeting of creditors is present if:

- three creditors who are entitled to vote or their proxies are present or have cast postal votes; or
- if the number of creditors entitled to vote does not exceed three, the creditors who are entitled to vote, or their proxies are present or have cast postal votes.

The Chairman advised that he had received the attendance registers and the proxy forms and confirmed a quorum was present at the meeting and declared the meeting open at 10.08am (New Zealand time).

PROXIES

The Chairman informed that in receiving creditor claims and proxy forms, the Administrators reserve the right to re-examine any of the documents should a dispute arise in relation to the voting.

For the purposes of voting at the meeting, the Administrators may estimate the amount of any creditor claim that is for any reason uncertain. For the avoidance of any doubt, the creditor amounts admitted by the Administrators are for voting purposes only and shall not be construed as the Administrators confirming the validity or amount of any creditor claims – the Administrators will review and adjudicate creditor claims and notify creditors of their assessment in due course.

The Chairman shared that 36 proxies were received by the Chairman within the required timeframe and have been accepted as valid proxies.

OBSERVERS

The Chairman informed that there may be observers at the meeting. Unless any objections are received, these observers will be permitted to remain in the meeting but will not be entitled to ask questions or cast votes.

Creditors who dialed in to the meeting will be considered as observers.

PURPOSE OF THE MEETING

The Chairman explained the purposes of the first meeting of creditors were as follows:

- to provide an update on the Administrators' work to date and path forward; and

- to attend to the formal business of the meeting which is largely procedural and prescribed by statute – that is, for creditors to consider two resolutions:
  - whether to replace the administrators; and
  - appoint a creditors' committee and, if so, to appoint its members.

TABLING OF DOCUMENTS

The Chairman informed the creditors that copies of the following documents were on the table:

- a statement prepared by the directors of the Company about the Company's business, property, affairs and financial circumstances dated 18 November 2019;

- consent to act as Administrators from Jason Kardachi and Mitchell Mansfield;

- interests statement of Administrators dated 12 November – this is a statement disclosing the relationships the Administrators have with the Company, its officers, shareholders, or creditors;

- DIRRI - a requirement by the Restructuring Insolvency and Turnaround Association of New Zealand Inc. to make declaration as to the Administrators' independence, relationships and any indemnities given, or up-front payments made to the Administrators;

- proxies received; and

- details of Administrators' remuneration which is a schedule of Borrelli Walsh's hourly rates.

ADMINISTRATORS' UPDATE

The Chairman explained that Mr. Mansfield and himself were appointed administrators of the Company pursuant to a Directors' resolution under Section 239I of the Companies Act.

The Chairman also informed those present in the meeting that the purpose of the voluntary administration is to seek to maximise the prospects of the Company continuing its business or, if this is not possible, to achieve a better return for the Company's creditors than would result from an immediate liquidation of the Company.

The Chairman then shared a short overview of the Company's background and key recent developments leading to the current situation. The Chairman indicated that it may be necessary to seek from the Court an

extension to the convening period for the watershed meeting.

QUESTONS AND ANSWERS

The Chairman opened questions to the floor and requested the creditors to state their names, and if they are representing a company, the name of the company, followed by their questions.

Refer to Appendix C.

DIRECTOR'S STATEMENT OF AFFAIRS AND FINANCIAL OVERVIEW

The Chairman tabled the Directors' Statement of Company's Position dated 18 November 2019 received from Ian Angell, the director of the Company, and provided an overview of the assets and liabilities of the joint venture which includes the Company, Stewart Petroleum Co Ltd, Tamarind New Zealand Pty Ltd and W M Petroleum Ltd ("Tui Joint Venture"), including the following:

- total assets of the Tui Joint Venture have a book value of USD177,632,763.07, comprising cash, receivables, inventories, oil & gas assets and tax assets;

- total liabilities of the Tui Joint Venture held a book value of USD155,311,232.58, comprising accounts payable, payroll, intercompany loans, provisions, short term loans and abandonment & tax liabilities; and

- the net assets of the Tui Joint Venture held a book value of USD22,321,530.49.

The Company's share of the book value of the Tui Joint Venture's net assets is USD8,370,573.93, which represents 37.5% of the joint venture's net assets of USD22,321,530.49.

The Directors advised that the primary causes of the Company's current financial and operational distress include:

- a deterioration in oil prices;

- the suspension of the drilling programme after first well, Tui-3H, came up dry; and

- the operational wells being near end of life and absent a restructuring of one of the key supplier's

operating costs and further drilling/exploration investment in Amokura and Pateke, the economic viability of the reserves is estimated to end in March 2020.

The Chairman advised that the assets of the Tui Joint Venture may not be recoverable and the estimated realisable value of the total assets is computed to be USD12.2m. This leaves the Tui Joint Venture with estimated net liabilities of USD143.1m.

VOTING PROCEDURES

The Chairman informed the meeting that resolutions put to creditors are first to be resolved on a show of hands. If unanimous consensus is not reached on a resolution by show of hands, then a poll will be conducted.

A resolution is adopted if:

- the majority of the number of creditors voting (whether in person, by proxy or by post) vote in favour of the resolution; and

- the value of the debts owed by the Company to those voting in favour of the resolution is at least 75% of the total debts owed to all creditors voting.

If the number of creditors voting for and against a resolution is equal, then the chair may exercise a casting vote.

RESOLUTION A: REMOVAL OF ADMINISTRATORS

The Chairman advised that DOF Deepwater A/S (DDAS) has previously nominated David Ruscoe and Russell Moore of Grant Thornton to be replacement administrators, but their nomination was withdrawn. As such, there was no alternative administrator put forward prior to the creditors' meeting and the creditors present at the meeting did not nominate any other individuals.

As there were no other nominations, the Chairman declared that the resolution to remove the administrators would not be tabled and Mr. Kardachi and Mr. Mansfield of Borrelli Walsh would remain the Administrators of the Company.

RESOLUTION B: CREDITORS' COMMITTEE

The Chairman gave a short introduction of the duties and function of the creditors' committee as follows:

- essentially, the creditors' committee will consult with the Administrators about matters relating to the administration and to receive and consider reports by the Administrators;

- the creditors' committee would act on a "pro-bono" basis, therefore the members of the creditors' committee will not be remunerated for the performance of their duties; and

- being elected by the creditors, members of the creditors' committee represent the body of creditors and the decisions thereto.

5 creditors nominated themselves to sit on the creditors' committee.

The Chairman confirmed to the meeting that those individuals who have been nominated as members of the creditors' committee are eligible to be members of the committee.

The Chairman proposed the following resolution:

"That a creditors' committee be appointed for the administration of Tamarind Taranaki Limited."

The Chairman asked for a show of hands in favour of the resolution. Several creditors raised their hand voting 'yes' for the formation of a Creditors' Committee. The Chairman asked for a show of funds 'against' the resolutions - as no hands were raised 'against' the formation of a Creditors' Committee, the Chairman declared resolution B has been carried unanimously and the creditors will then have to vote on the nominees of the creditors' committee.

RESOLUTION C: NOMINEES FOR CREDITORS' COMMITTEE

The Chairman proposed the following resolution:

"That the creditors' committee be comprised of the following creditors:"

Creditors Committee Member	***Representing Creditor/s:***
Timothy Lindsay	*Trendsetter Vulcan Offshore, Icon Engineering Pty Ltd, AS Mosley & Co. Ltd*
Hamish Manson	*HNZ New Zealand Limited*

Mark Tudor	*BW Offshore Singapore Pte. Ltd.*
Peter Hart	*SGS New Zealand Ltd*
Nick King	*Halliburton New Zealand*

The Chairman asked for a show of hands in favour of the resolution. The majority of creditors present raised their hand voting 'yes' for the above parties to be approved as the members of the Creditors' Committee. The Chairman asked for a show of funds 'against' the resolutions - as no hands were raised, the Chairman declared resolution C has been carried.

END OF MEETING

There being no other business, the Chairman thanked those present for their attendance and declared the meeting closed at 11.08am (New Zealand time).

Confirmed by

Dated this 27th day of November 2019

Chairman of Meeting
Jason Aleksander Kardachi

Enclosures:
1. Attendance Sheet of Creditors (Appendix A)
2. Attendance Sheet of Observers (Appendix B)
3. Questions and Answers (Appendix C)

Appendix A: Attendance Sheet of Creditors

(see next page)

No.	Name of Creditor	Proxy Provided - Y/N	Name of Proxy / Attorney	Signature of Person Attending
1	A.S. Mosley & Co Limited	Y	Michael Robinson	[signature]
2	Merquip Ltd			
3	Worley New Zealand Ltd	YES	ANDY HEADLY & PHIL FURR	[signature]
4	Tasman Oil Tools Ltd	YES	TIM IRVINE	[signature]
5	Fugro NZ Ltd		Alexander Waugh	[signature]
6	Trident Australia Pty Ltd			
7	Atlas Professionals			
8	Kingston Offshore Services Ltd		KURT ADAM	[signature]
9	Armourguard Security			
10	Icon Engineering Pty Ltd		Michael Robinson	[signature]
11	NRG Well Examination Limited			
12	Seismic Survey Ltd		KURT ADAM	[signature]
13	The Information Management Group			
14	Taranaki Office Products			
15	Todd Energy Limited	Y	STU BARCLOVSKI	[signature]
16	Trendsetter Vulcan Offshore, Inc		Michael Robinson	[signature]
17	HNZ New Zealand Ltd	Y	Hamish MANSON / Anthony Corino	[signature]
18	Alpha Customs Services Ltd			
19	Baker Tilly Staples Rodway Taranaki Limited			
20	Elemental Group	Y	NICK JACKSON	[signature]
21	Kinetic Well Services Ltd	Y	Aaron Green	[signature]

& vote as present

No.	Name of Creditor	Proxy Provided - Y/N	Name of Proxy / Attorney	Signature of Person Attending
22	Onyx iES Sdn. Bhd.			
23	M Hareb Excavating Limited			
24	Expro Group Australia Pty Ltd			
25	Welltec Oilfield Services Pty Ltd			
26	Petrofac Facilities Management Limited (New Zealand Branch)		JOSE PHILIPS	[signature]
27	Neo Products LLC			
28	COSL Offshore Management AS	Y	Jack Wass	[signature]
29	OneSubsea Australia Pty Ltd			
30	Schlumberger New Zealand Ltd		Marcus Olesen	[signature]
31	DOF Deepwater A/S		Scott Barker	[signature]
32	IOT Group Ltd		Peter Curti	[signature]
33	Ministry of Business Innovation and Employment			[signature]
34	Tenaris Global Services S.A.			
35	Pounamu Oilfield Services		KURT ADAM	[signature]
36	Halliburton New Zealand		[signature]	[signature]
37	DOF Management Australia Pty Ltd		Scott Barker	[signature]
38	SGS New Zealand Ltd	Y	PETER HART	[signature]
39	Industrial Lubricants and Services Limited			
40	BW Offshore Singapore Pte. Ltd.	Y	MARK TUDOR VIJAY MAHMOOD	[signature]
41	Oceaneering International GMBH			
42	Ocean Reach Advisory Pty Ltd			
43	Awe Holdings NZ Limited			

No.	Name of Creditor	Proxy Provided - Y/N	Name of Proxy / Attorney	Signature of Person Attending
44	Hayden Quinn			
45	Port Taranaki	Y	Allan [illegible]	[signature]
46	The Flag Shop Limited			
47	Titan Cranes Limited	Y	Paul Clout	[signature]
48	Maritime New Zealand			
49	Franks Oilfield Services (Aust) Pty Ltd	Y	David Ludlow	[signature]
50	OCP - OL Master (Singapore Fund 1) Pte Ltd			
51	OCP - OCP Asia Fund 3 (SF 1) Pte Ltd			
52	Orchard Landmark 2 (Singapore Fund 1) Pte Ltd			
53	Offshore Solutions Limited		Andy Neville	[signature]
54	Symons Transport	Y	Dean Fagel	[signature]
55	Symons Energy Services Ltd	Y	Dean Fagel	[signature]
56	DAN BUNKERING	Y	KOR COLTMAN	[signature]
57	OMV	Y	Sharee Hamilton Rob Kadona-Brown	[signature]
58	TUMERE THRU TUBING	Y	ANGIE OHLSON	[signature]
59	M Harcs Excavating Ltd	Y	Matthew Hart	[signature]
60	Wm. Hughes Transport	Y	Murray. Hughes.	[signature]
61	The Drug Detection Agency	Y	Jo Stevenson	[signature]
62	Geoff Otene	Y	Geoff Otene	[signature]
63	East City Rentals	Y	James Cl[illegible]	[signature]
64	P Scott Sheet Metal & Tradigas [illegible]	Y	[illegible] Scott	[signature]
65	ETL GROUP LTD.	Y	KIRK + DAVID	[signature]

No.	Name of Creditor	Proxy Provided - Y/N	Name of Proxy / Attorney	Signature of Person Attending
66	BRYON HOLLAND	Y	BRYAN HOLLAND	
67	The Metrotel	N	Melissa Anslow	
68	Atlas Professionals	Y	DAVID BISHOP	
69	DATATALK NZ LTD	Y	PETER LIND	
70	BDO WELLINGTON AUDIT LTD	Y	STEVE WHITE	
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Appendix B: Attendance Sheet of Observers

No.	Company
1	Welltec Oilfield Services Pty Ltd
2	Expro Group Australia Pty Limited
3	Neo Products, LLC
4	Tenaris Global Services S.A
5	Ocean Reach Advisory

Appendix C: Questions and Answers

Question	Answer (All Answers Provided by Administrator Jason Kardachi)
Question from Stu Barraclough of Todd Energy: Are you able to cut a deal? Is it a long way before OCP's debt is satisfied?	Yes, OCP is owed a lot of money and they have the primary economic interest here. However, it is true to say that any cash that is generated will go to the key suppliers because we are cutting deals with them to continue operating. If there is any cash left, it would go to the secured creditors. We are still in discussion with OCP – if OCP wants to keep this viable on a longer term basis, OCP would also have to make a deal with the unsecured creditors.
Question from Scott Barker (SB), acting on behalf of DOF: Does OCP have security over a range of companies including the Tui companies?	Yes.
SB: Does Borrelli Walsh have a relationship with OCP?	Yes.
SB: Please explain the extent and nature of that relationship.	Borrelli Walsh has worked for OCP in various matters and places for a number of years. Essentially, in situations like this, we go in as an independent financial advisor to assess the situation and restructuring options available for the companies where OCP is a major lender.
SB: What discussions were there with OCP about plans for Tamarind and TTL before Borrelli Walsh accepted the IFA appointment?	There was hardly anything. OCP simply introduced Borrelli Walsh to the Company and we were then engaged by the Company (not OCP).
SB: Any understanding with OCP as to outcome?	No.

Question	Answer (All Answers Provided by Administrator Jason Kardachi)
SB: OCP can appoint a receiver over TTL's assets. Any discussions with OCP about appointing a receiver?	Yes, we discussed the possibility of a receivership appointment last night and OCP has until Monday to appoint receivers which OCP is considering doing so. However, I don't believe they will, and the reason is that any receiver will just have to get up to speed and that is going to add cost. Some of the assets available, primarily the potential tax refunds, are things that the voluntary administrators or liquidators can do. Appointing a receiver adds unnecessary cost and complexity to the situation.
SB: Before you were appointed as IFA or VA, were there any arrangements with OCP, understanding or waiver?	No, OCP has just introduced Borrelli Walsh to the Company. The Company had been running around in circles for a number of weeks, trying to work out what to do. The Company talked to Australian insolvency practitioners and McGrathNicol in New Zealand. From my understanding, they were not prepared to take the appointment.
SB: Security was granted in June 2019 to OCP?	Yes.
SB: What investigations are you going to undertake in respect of whether the Tamarind companies were solvent when OCP granted security?	From my understanding, the funding from OCP came in around June 2019. We have made enquiries about whether security is valid and the security looks like it is valid because fresh funds were advanced. There is a hardening period before security is effective unless new money is advanced, which appears to be the case here. The money was used to acquire TAG onshore assets and refinance existing lender Trafigura and working capital. The obligations of an administrator to investigate are fairly general. When we put up a proposal to creditors, we will need to compare the outcome in liquidation and consider whether there may be available claims, including whether the directors are liable for insolvent trading under New Zealand law. In any event,

Question	**Answer (All Answers Provided by Administrator Jason Kardachi)**
	our preliminary review is that any assets identified during our investigation are not likely to be material to creditors.
SB: Was new money advanced from OCP to acquire TAG assets, but not into TTL?	I believe there was some money that came into TTL.
SB: Of the $66m for which you claim TTL is liable to OCP – how much of that was new money when security was granted?	I don't have that information at this time and will need to revert.
SB: $5, $10, $15 million?	I don't have the number at this time and will need to revert.
SB: Why did Jason Peacock resign?	We haven't asked.
SB: Your fees on the IFA - three times what New Zealand practitioners would charge. Will you continue to charge international rates or New Zealand rates?	We will continue to charge international rates given that there was no New Zealand insolvency practitioner willing to do the job. The Company has tried to find one but failed.
SB: We'll see.	We are not in the business of overcharging. Our fees will be reasonable for the work that we do. We don't need approval from creditors for fees under New Zealand law. This is unlike other regimes where it would be customary for us to provide creditors with all information in respect to our fees for approval. However, we have a very strong reputation of doing cost-effective work.
SB: Have you canvassed any votes?	No.
SB: No declaration as to voting intentions?	No.

Question	Answer (All Answers Provided by Administrator Jason Kardachi)
SB: You have personal liability for clean-up costs – could be NZ$110 million. That's what the Crown has told me. Do you have insurance cover if the Company doesn't cover you?	The assets won't cover the clean-up costs. We are of the view that we are not liable for clean-up costs as it is a pre-existing obligation of the Company. We have taken advice from Kensington Swan. We have professional indemnity insurance, but it would not cover this. The third party report estimated clean-up costs to be USD58 million and the Crown has submitted a claim for USD100 million.
SB: Do the directors of the company have any D&O insurance?	Yes.
SB: What are the limits of that insurance?	I am not aware, but we legally would not be able to disclose this anyway in accordance with the confidentiality obligations in the policy.
SB: Have you offered any creditors any preferential deals – payment ahead of any other creditors?	We have worked hard to avoid it. Some of the key suppliers have tried to do a deal where they are paid pre-existing debt.
SB: Have you made any offers?	Yes, I have.
SB: How much – what is the justification?	To keep the FPSO here, we offered to catch up on outstanding operating cost for BWO if we can continue operations into next year and agree new terms for the production period. Through that production, the Company's obligations to BWO will reduce and the Company's bank account will increase as well. Therefore, this is beneficial to the creditors in this room.
SB: $4 million a month to keep company operating? Would you cover your costs and operate for that period?	That's the full rack rates of operating. We are trying to maintain operations and to do deals closer to $1.5 million per month. We can only commit and continue production if we are comfortable that

Question	**Answer (All Answers Provided by Administrator Jason Kardachi)**
	obligations can be met. There are personal liabilities for contracts that administrators enter into.
SB: Have you issued any non-use notices?	Not yet, we are still considering this. As soon as we issue non-use notices, a liquidation will be shortly followed because there is nothing to preserve.
Question from Nick King of Halliburton New Zealand: Are you still negotiating with BW Offshore?	Yes, we are trying our absolute best to negotiate with BWO. BWO has notified us about their intention to leave and we are trying to keep them here for as long as possible. We just received an email from the CEO of BWO asking a question about the proposal last night. This is the 4th or 5th iteration of the proposal. We will keep trying for a few more days with BWO, maybe 3 to 15 days, but it is not going to be weeks. At the very least, we want to do a lifting – that is the oil in the FPSO now. We intend to produce to the end of year for a lifting to make some money.
Question from Nick King of Halliburton New Zealand: Has that money already been allocated?	No. OCP is most likely entitled to that cash as a secured creditor.
Question from Jack Wass, counsel for COSL: What is TTL's parent company's position in relation to this?	The parent company is unable or unwilling to provide further funds. They have a limited guarantee to BWO and unlimited guarantee to the NZ Government in respect of the abandonment liability.
Question from Caroline Silk of Auld Brewer: Other Tamarind companies operating with TAG – how does parent think that those operations are going to go? They have pissed a lot of people off.	We act as administrators for TTL and its creditors, not the Tamarind Group or OCP. You are right – there can be a contagion effect amongst creditors of the Tamarind Group. However, any fall out can usually be fixed with money. Based on my limited understanding, the

Question	Answer (All Answers Provided by Administrator Jason Kardachi)
	TAG asset is a good asset which is making money and there is no cause for concern in relation to that.
Question from Stu Barraclough of Todd Energy: Limited guarantee to the Crown?	The guarantee to BWO is limited but the guarantee to the Crown is not limited.
Question from Stu Barraclough of Todd Energy: Has there been talks re making good between Crown and parent company?	Not to my knowledge. We have been actively communicating with Crown about the situation. We are not aware of any discussions that they have had with the guarantor (Tamarind Group).
Question from Michael Robinson, Barrister: Will the watershed meeting be adjourned?	If we can maintain production and operations, we will need longer to put together a proposal for creditors. Any proposal for creditors really depends on the availability of further funding which we going to have to resolve in next 10 business days or so. Alternatively, if we can't maintain operations, which is largely dependent on striking a deal with BWO, then liquidation at the watershed meeting is a likely proposal and the watershed meeting might be brought forward.
Question from Matthew Hareb of M Hareb Excavating: Did the company go into the drilling campaign with not enough money to pay creditors?	That is why we are here.

Business (/category/business)

Taranaki oil company appoints administrators

Creditors said to be owed tens of millions

.().

By **Tim Hunter (/author/tim-hunter)**
Wed, 13 Nov 2019

Tamarind Resources terminated its contract for the floating production storage and offloading vessel Umuroa last month

Administrators have been appointed to oil producer and explorer Tamarind Taranaki after directors resolved the company was insolvent or likely to become so.

Tamarind Taranaki, a subsidiary of Singapore-registered Tamarind Resources, owns 37.5% of the Tui oil field off Taranaki - but a drilling programme to find more oil came up dry in August.

Managing director Ian Angell told *NBR* last month the dry well and cost overruns had forced the company to halt its drilling programme.

“Tamarind Taranaki is currently trying to chart a path forward that would see us being able to offer all of the suppliers a chance to get paid,” he said.

It is understood the company’s creditors are owed tens of millions of dollars, with COSL, the owner of the Prospector drilling rig contracted for the Tui programme, said to be owed $US13 million.

Tamarind Taranaki’s secured lender is OCP Asia, based in Hong Kong and Singapore.

One market source said the company's secured and unsecured creditors were likely to be owed at least $US50m.

“It has come down to the numbers but the appetite among creditors to support an administration, which has nothing unless someone comes along to buy the Tui field, will be limited.”

Tamarind Resources, which owns the rest of the Tui field through other subsidiaries, terminated its contract for the floating production storage and offloading vessel Umuroa last month.

Umuroa’s owner BW Offshore said there were “uncertainties related to payment of outstanding overdue hire and payment of future hire until the termination date of December 31.”

The company said its earnings exposure could be $US23m and booked an immediate provision of $US10m.

The administrators for Tamarind Taranaki are Jason Kardachi and Mitchell Mansfield of Borelli Walsh.

Kardachi is the firm’s Singapore-based managing director. Mansfield is based in the Cayman Islands, according to the Borelli Walsh website.

Borelli Walsh has been advising Tamarind for at least a month.

Under the Companies Act the administrators must call a meeting of creditors within eight working days of their appointment and convene a watershed meeting to decide the future of the company within 20 working days.

Options at that point include liquidation or a deed of company arrangement with creditors.

Tamarind Taranaki’s most recent public financial statements for the year to June 2018 showed revenue of $US19.7m and a net loss of $US4.8m.

Net assets at balance date were $US20.2m and its oil and gas assets were valued at $US31.1m.

Tamarind Resources bought the Tui field assets in a series of transactions with AWE, NZ Oil & Gas and Pan Pacific Petroleum in 2016 and 2017.

AWE’s managing director David Biggs said at the time of the sale in December 2016 that Tamarind had experience in managing late-life assets and decommissioning oil projects.

“With Tamarind’s expertise, and further improvement in the oil price, Tui could potentially continue operating beyond 2019 which would benefit all stakeholders,” he said.

By **Tim Hunter (/author/tim-hunter)**

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BUSINESS

Oil and gas operator Tamarind Taranaki owes creditors around $190 million

20 Nov, 2019 6:23pm
4 minutes to read

The Umuroa, which produces and stores oil from the Tui oil fields. Tui's owners, Tamarind Taranaki, hit financial trouble this year when a drilling campaign was unsuccessful. Photo / Supplied

By: Hamish Rutherford
Wellington Business Editor
hamish.rutherford@nzme.co.nz @oneforthedr

Tamarind Taranaki, the troubled Malaysian-owned oil and gas operator which was placed in administration last week owes creditors around $190 million.

The owner of the Tui oil fields 50km offshore of New Plymouth, Tamarind abandoned a drilling campaign in September after the first of three planned wells was unsuccessful.

Tui, for a time the biggest producing oil field in New Zealand, is close to the end of its life, with its former owners effectively paying Tamarind to take it off their hands because decommissioning the field would cost tens of millions of dollars.

READ MORE:
• Tamarind oil company's entry to NZ exposed 'giant loophole': Energy Minister
• Taranaki oil and gas producer TAG Oil quits NZ operations
• Taranaki oil producer Tamarind 'may be insolvent', directors warn
• NZ Oil & Gas urges shareholders to accept takeover proposal

Directors of Tamarind Taranaki warned on November 11 that it "may be insolvent" as they agreed to put the company into voluntary administration, meaning creditors will have to wait to be paid.

On Wednesday Tamarind's Singaporean-based administrators Borelli Walsh met with creditors in New Plymouth.

A person with knowledge of the meeting told the Herald that attendees were told that some 78 creditors were collectively owed $190m.

Borelli Walsh managing director Jason Kardachi said the figure was "about right".

Kardachi said he provided the meeting with "an overview of the situation and what we're trying to do".

The immediate focus was to get the support of key suppliers to continue production in the short term.

If that was successful, Kardachi would then attempt to gain finance to continue the drilling campaign in the hope of extending the life of the Tui fields for several more years.

Kardachi said he was still attempting to secure the support of several key suppliers to continue production to avoid having to place Tamarind into liquidation.

"We've reached an agreement with most of them but not all, which I'm working on and I hope to [secure] in coming days, for continued operation for a yet-to-be-agreed period of time."

Creditors mostly asked about the make-up of the creditors lists and how that would affect them if trading continued.

A creditors report would be prepared for a watershed meeting which is meant to be held within a month of the start of the administration, but which was likely to be postponed as administrators would not be in a position to propose a deed of company arrangement by then.

"All we're focused on at the moment is keeping things going as long as we can. That's not a proposal," Kardachi said.

If administrators can secure the support of creditors, production of Tui would continue into the early months of 2020. Beyond that, finance would be needed to conduct a drilling campaign to extend Tui's production life.

Much of the company's debts are believed to be owed to the Crown in the form of the liability to decommission the wells.

Kardachi said it was "very unlikely" that the Crown would withdraw support in the short term.

"We're in active dialogue with the Crown in relation to that and it's in their interests for us to continue what we're doing," Kardachi said.

"We're working with them and have their support at the moment."

A spokesman for New Zealand Petroleum and Minerals confirmed that officials were at the creditors meeting in New Plymouth on Wednesday but declined to comment on the discussions.

Last week Energy and Resources Minister Megan Woods said she would be concerned if the Government had to pay more than was agreed towards the clean-up of the Tui fields, with the former owners of the field providing Tamarind with around $30m towards the clean-up.

Woods said Tamarind had entered New Zealand through a loophole in the Crown Minerals Act because it had bought the company which was the operator of Tui, meaning officials did not have scope to test its financial and technical capability.

As a result the Government quickly amended the act to prevent the situation from happening again.

Tamarind later purchased onshore Taranaki oil fields from Canadian oil company TAG .

BUSINESS

Oil vessel prepares to leave Taranaki over hefty unpaid bill owed by Tamarind Resources

27 Nov, 2019 9:26am

The Umuroa has been producing oil from the Tui oil fields, offshore of Taranaki, since 2007 however its owners say they are preparing to leave because of unpaid bills. Photo / supplied.

By: Hamish Rutherford
Wellington Business Editor
hamish.rutherford@nzme.co.nz

The owners of a vessel which has collected oil from a Taranaki oil field for more than a decade are preparing to leave as the company pursues a hefty unpaid bill.

BW Offshore said it "has started preparations for disconnection and demobilisation" of the Umuroa, a floating production storage and offloading (FPSO) facility which has gathered oil from the Tui oilfields since 2007.

The Tui fields are owned and operated by Tamarind Resources, a Malaysian oil and gas company which warned this month that one of its New Zealand subsidiaries, Tamarind Taranaki, may be insolvent .

A creditors meeting in New Plymouth last week heard the company had debts of close to $200 million although the administrators have not named a figure.

With a clean up of the ageing fields looming, the troubles of Tamarind Taranaki have raised the prospect that the clean up costs when the field is decommissioned could fall on the Government.

Although Tamarind Taranaki's parent company has a guarantee to the Crown to cover the decommissioning costs, it is unknown whether the company can cover the payment.

Industry sources have said the cost of abandoning and cleaning up the wells could cost in excess of $100 million, although part of the cost (42 per cent) would effectively fall on the Crown in any case.

In a statement to the Oslo Stock Exchange, BW Offshore said it had made a provision to write off US$10 million ($15.6m) for the three months to September 30, but warned the total exposure to its earnings before interest, tax, depreciation and amortisation could be US$23m ($35.8m).

"The assessment identified uncertainties related to payment of outstanding overdue hire and payment of future hire until the termination."

Jason Kardachi from administrator Borrelli Walsh has declined to comment on BW Offshore's plans, describing negotiations as "ongoing".

Since he was appointed Kardachi has been attempting to secure the support of Tamarind's key suppliers to try to secure continued production in the short term.

On Tuesday Kardachi said that discussions were "continuing on a relatively positive note and I hope to have agreement by the end of this week".

If support cannot be secured he has warned Tamarind Taranaki would have to be placed in liquidation.

The Ministry of Business, Innovation and Employment, which administers the manages the Government's petroleum and minerals interests, has refused to comment on its exposure to Tamarind or its position on whether it continues its continued operations.

Kardachi said on November 20 that it was "very unlikely" that the Crown would withdraw support in the short term .

"We're in active dialogue with the Crown in relation to that and it's in their interests for us to continue what we're doing," he said.

"We're working with them and have their support at the moment."

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Tamarind Taranaki told to stop pumping oil from offshore field until conditions met

Mike Watson • 09:38, Nov 28 2019

SUPPLIED

Oil company Tamarind Taranaki have been stopped from pumping hydrocarbons from wells in the Tui field to the Umuroa FPSO (picutured) after an oil leak in one of the flow lines was found recently.

Struggling oil company Tamarind Taranaki has been issued an abatement notice to stop pumping crude oil from three wells in the Tui field off the region's coast after an oil spill last week.

owing more than $190m to creditors.

The notice stopped Tamarind Taranaki extracting oil from the Pateke 3H, Pateke 4H and Amokura wells to the Umuroa floating production storage and offtake vessel, or FPSO, in the Tui field until certain conditions were met, the EPA said.

Tamarind will be able to resume production when the company complied with the abatement notice conditions, the authority said.

READ MORE:
* **Crown may foot $155m bill to decommission Taranaki oil field**
* **Taranaki-based oil and gas firm owes creditors $190m**
* **Taranaki offshore oil exploration company placed under voluntary administration**
* **Jobs at stake after Tamarind Resources end contract at offshore production facility**

Under the conditions the company must "conclusively identify the source of the hydrocarbon sheen and provide evidence to the EPA supporting the conclusion reached, assess the condition of the flowlines and associated connections of Pateke 3H, Pateke 4H and Amokura wells, and provide evidence to the EPA that confirms system integrity will be maintained on start-up."

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The authority is continuing to investigate the spill which was detected after a 20-30m long sheen about 400m from the Umuroa was discovered about 60km off shore on November 21.

The sheen, estimated by Tamarind to be about 100 litres, dispersed naturally.

Tamarind Taranaki can appeal the abatement notice and is working with the EPA to achieve compliance.

BW Offshore, which operates the Umuroa, is due to leave the Tui field in December 31 after Tamarind Taranaki decided not to renew its contract in September.

The Norwegian-based company estimates it is owed $35.8m (US$23m) by Tamarind in unpaid costs.

Tamarind pulled out of a $300m drilling programme at the Tui field in September after the first of three planned wells proved dry.

It has been estimated it could now cost the Government $155m to decommission the oil field if Tamarind can not find a way out of it's financial struggles and continue operating.

Stuff

more from stuff

Jacinda Ardern comments come back to bite Australian shock jock Alan Jones

Landlord says cards stacked against her in Tenancy Tribunal

Stephanie Illingworth

From: Scott Barker <Scott.Barker@buddlefindlay.com>
Sent: Tuesday, 3 December 2019 1:40 p.m.
To: Éanna Brennan; Mei Hui Wang; Tamarind; James McMillan
Cc: michael.robinson@shortlandchambers.co.nz; Jack Wass
Subject: application for extension of convening period [BUD-LIVE.FID882522]

Dear all,

I understand from media reporting of comments by Jason that an application for extension of the convening period is contemplated by the VAs.

If such is to be sought, kindly ensure that it is sought on notice as I anticipate that it would be opposed.

Regards
Scott

SCOTT BARKER | PARTNER | BUDDLE FINDLAY

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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 sections 239AT and 239ADO of the Companies Act 1993
In the matter of	an application pursuant to section 239AT of the Companies Act 1993 for an order 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)**
In the matter of an application by	**M W Mansfield** and **J A Kardachi** Applicants

---

Affidavit of Patrick James Nicoll Glennie in support of originating application without notice for order extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed)

Affirmed: 4 December 2019

KensingtonSwan

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Solicitor: J A McMillan / M L Broad
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8062005.1

Affidavit of Patrick James Nicoll Glennie in support of originating application without notice for order extending the convening period by which the administrators must convene the watershed meeting of Tamarind Taranaki Limited (Administrators Appointed)

I, **Patrick James Nicoll Glennie**, of **Kensington Swan**, solicitor (admitted in Scotland) acting on behalf of Mark Mansfield and Jason Kardachi, affirm:

1 I am an associate at Kensington Swan and have been advising the applicants in this proceeding.

2 I am familiar with the matters at issue in this proceeding.

3 This affidavit is affirmed further to the affidavit of Jason Kardachi dated 3 December 2019. This affidavit is necessary due to further developments since the preparation of Mr Kardachi's affidavit.

4 Since the preparation of Mr Kardachi's affidavit, there has been a further delay in the carrying out of the third party remote operated vehicle inspection of the pipes at the Tui oil field. The completion of this inspection and approval of the inspection report by the Environmental Protection Authority are necessary before production can recommence at the oil field.

5 At paragraph 17 of Mr Kardachi's affidavit, he stated that the inspection was to be carried out this week and the report was expected at the end of the week. Due to further inclement weather at the Tui oil field, the inspection is now not due to take place until 11 December 2019. The administrators of Tamarind therefore do not expect the inspection report to be ready until the end of next week (at the earliest).

PG

6 The delay in the date of the inspection means that the Environmental Protection Authority is now not likely to approve the restarting of production until, at least, 16 December 2019. This date is one week later than the expected date as set out at paragraphs 14, 17 and 20 of Mr Kardachi's affidavit and may be subject to further delay.

Patrick Glennie

Patrick Glennie

AFFIRMED at Auckland
on 4 December 2019
before me:

A Solicitor of the High Court of New Zealand

.ICHELLE LAPWORTH LL.B
Solicitor
Auckland

8062005.1

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 sections 239AT 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)**
In the matter of an application by	**M W Mansfield** and **J A Kardachi** Applicants

Memorandum of counsel in support of application for order extending convening period

Dated: 4 December 2019

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8052566.1

May it please the Court:

Introduction

1 This is an urgent application for an order extending the convening period by which the administrators must convene the watershed meeting for Tamarind Taranaki Limited (Administrators Appointed) ('**Tamarind**').

2 The grounds for this order are set out in the notice of originating application and the affidavit of Mr Kardachi in support of this application.

3 The administrators, Mitchell Mansfield and Jason Kardachi of Borrelli Walsh, are required to convene the watershed meeting by Monday, 9 December 2019.[1] They seek an order extending the time for convening the watershed meeting to 17 February 2020, to allow them to provide a meaningful report to Tamarind's creditors.

4 The administrators have been engaged in discussions with key creditors and suppliers of Tamarind aimed at ensuring that Tamarind can continue to produce oil until, at least, the end of the current production cycle. The administrators anticipate that an agreement will shortly be reached as to the terms on which production can continue.[2] If production can continue, it will improve the returns for Tamarind's creditors. It will also allow the administrators to approach potential purchasers of Tamarind's assets to ascertain interest.

5 Currently, the administrators are waiting for approval from the Environmental Protection Authority (the '**EPA**') before Tamarind can recommence oil production.[3] Approval is expected on 16 December 2019, at the earliest, and may be delayed.[4]

6 Whether, and when, approval is provided by the EPA is critical to whether continuing production is viable or whether liquidators should be appointed to Tamarind. The timing and terms of the EPA's decision will have a material effect on the report and advice that the administrators require to circulate to creditors at the end of the convening period.

7 If the administrators are required to report and advise without knowing whether and, if so, on what terms, approval has been granted, their report and advice will not be as meaningful to creditors as it could be. Extending the time for the

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[1] Section 239AT of the Companies Act 1993.
[2] Kardachi affidavit, [14].
[3] Kardachi affidavit, [16].
[4] Kardachi affidavit, [17] and Glennie affidavit, [6].

convening period is likely to result in Tamarind's creditors being able to make a more informed decision as to its future. It will also increase the chances that the administrators can put forward a proposal for the sale of Tamarind's assets or for continued operation at the oil field as a result of additional third party funding.

The relevant law

8 Section 239AS of the Companies Act 1993 (**Act**) states that:

239AS What watershed meeting is

The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

9 Section 239AT of the Act states that:

239AT Administrator must convene watershed meeting

(1) The administrator must convene the watershed meeting within the convening period.

(2) The **convening period** is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The Court may, on the administrator's application, extend the convening period.

(4) The application to extend may be made before or after the convening period has expired.

10 Section 239AV of the Act states that:

239AV When watershed meeting must be held

The watershed meeting must be held within 5 working days after the end of the convening period or extended convening period, as the case may be.

11 Section 239ADO of the Act relevantly states:

239ADO Court's general power

(1) The Court may make any order that it thinks appropriate about how this Part is to operate in relation to a particular company.

[...]

(3) The Court's orders may be made subject to conditions.

(4) The Court may make an order under this section on the application of –

[...]

(c) the administrator;

12 Subsection 239AT(3) does not list the factors that should be taken into account when deciding upon an application to extend the convening period, but the Court has considered the appropriate test on a number of occasions.[5] The Court has observed that it has "*an unfettered discretion to extend the convening period*".[6] The key principles to emerge from these cases are helpfully set out in *Re Grenfell*:[7]

(a) the power to extend the convening period should be exercised in light of the objects of the voluntary administration regime at s239A – in particular, the objects are to maximise the chances of the company continuing in existence, or, if that is not possible, to achieve a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company;

(b) the nature and extent of the work required to fulfil the administrators' obligations will depend on the nature and complexity of the company that is the subject of the administration;

(c) the Court must strike an appropriate balance between the interests of the creditors that the administration proceeds in a relatively speedy and summary manner and the requirement that undue speed does not prejudice sensible and constructive actions directed towards maximising the return for creditors and shareholders; and

(d) whether an extension should be granted is fact specific but the following factors are likely to be relevant:

(i) the size and scope of the business;

(ii) whether the company partakes in substantial offshore activities;

(iii) whether there are a large number of employees with complex entitlements;

(iv) whether there is a complex corporate structure and inter-company loans;

(iv) any complex transactions entered into by the company;

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[5] Including, *Re Nylex (New Zealand) Ltd* HC Auckland CIV-2009-404-1217, *Re M Webster Holdings (NZ) Ltd* [2017] NZHC 297, *Re Pumpkin Patch Ltd* [2016] NZHC 2771, *Re McElhinney* [2019] NZHC 23 and *Re Fiber Fresh Feeds Ltd (in rec and administration)* [2019] NZHC 1565.

[6] *Re Jackson* [2018] NZHC 477 at [16].

[7] *Re Grenfell* [2016] NZHC 36 at [6] to [15].

(v) whether the administrators lack access to corporate financial records;

(vi) the time needed to execute an orderly process of disposal of assets;

(vii) the time needed for a thorough assessment of a proposal for a deed of company arrangement;

(viii) whether the extension sought will allow the sale of the business as a going concern; and

(ix) more generally, whether additional time is likely to enhance the return for unsecured creditors.

13 In *Re Jackson*, the Court observed that:

> ...the circumstances of an administration will not infrequently encounter issues that are not capable of prompt resolution and which require further time to stabilise and rationalise the business, continue trading in appropriate cases, realised assets, and conduct a range of negotiations in order to achieve either the continued existence of the business or a better outcome for its creditors and shareholders. Where sound commercial and practical reasons are shown to support a realistic prospect of a better outcome being derived following an extension of time, it will be appropriate for the Court to exercise the discretion to grant an extension.

14 The Court has considered what length of extension is appropriate where an extension is granted. The extensions granted have varied according to the circumstances of each case, but range from as short as 20 working days (by request) to as long as 18 months.[8]

15 The purpose of s239ADO is to provide the Court with the power to make orders that alter the way in which Part 15A operates, so as to ensure that the objectives of the voluntary administration regime can be achieved in the case of a particular company.[9]

16 Rule 19.2(c) of the High Court Rules 2016 states that applications to the Court under Part 15A of the Act must be made by way of originating application.

17 In *Re Jackson*, the Court approved an originating application made without notice on the basis that the administrators had provided sufficient evidence that it was unlikely that the creditors and employees of the company would be adversely

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[8] *Re Grenfell* at [15] and also see *Re Fiber Fresh Feeds Ltd (in rec and administration)* at [27], *Re Postie Plus Group* [2014] NZHC 1337 at [22] and [30] and *Re Drikolor New Zealand Limited* Unreported 14/11/09, Edwards J HC Auckland CIV-2019-404-002183.

[9] *Insolvency Law & Practice* (online loose-leaf ed, Thomson Reuters) at [CA239ADO.01].

affected by the extension.[10] In that case, like the present application, the creditors had been informed at the first meeting of creditors that an application for an extension was likely, but the same approach has been followed in a number of cases where creditors had not been notified.[11]

Background

18 On 11 November 2019, Mitchell Mansfield and Jason Kardachi of Borrelli Walsh were appointed administrators of Tamarind.[12] Tamarind operates the Tui oil field off the Taranaki coast.[13] As at the date on which administrators were appointed, Tamarind had 117 creditors owed a total of US$231,647,512.57. Of this sum, US$66,940,821.85 is owed to Orchard Capital Partners, which was granted a general security by Tamarind over all of its assets (subject to confirmation of the validity of the security). A further US$812,480.17 is owed to seven employees of Tamarind, of which US$152,200.20 is preferential debt.[14]

19 The administrators have taken the usual steps to investigate Tamarind's affairs and explore whether it is possible for the company to continue to trade or for there to be a sale of the company's assets or business.[15]

20 The administrators consider that, if favourable terms can be agreed, continuing production at the Tui oil field until, at least, the end of the current production cycle in January 2020 will lead to an increased return for creditors.[16] Continuing production until the end of the current cycle will also make it more likely that a sale of Tamarind's assets or business can be agreed or that the company can secure third party funding allowing it to continue to operate profitably for a longer period.[17]

21 The administrators have held a number of discussions with BW Offshore Singapore Pte Ltd ('**BWO**'), the owner of the floating production storage and offloading vessel stationed at the Tui oil field, to agree an amendment to the existing contract under which the vessel will continue to operate at the oil field.[18] The administrators expect that terms will shortly be agreed for the vessel to continue to operate until January 2020.[19]

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[10] *Re Jackson* [2018] NZHC 477 at [12] and also see *Renaissance Brewing Ltd v Shepherd* [2017] NZHC 2744 at [21].
[11] Including *Re Kumfs Group Ltd* [2019] NZHC 2552 at [7].
[12] Kardachi affidavit, [3] and exhibit 'JAK-1' at pages 1 and 2.
[13] Kardachi affidavit, [3].
[14] Kardachi affidavit, [4].
[15] Kardachi affidavit, [7].
[16] Kardachi affidavit, [11].
[17] Kardachi affidavit, [12].
[18] Kardachi affidavit, [13].
[19] Kardachi affidavit, [14].

22 While these discussions were ongoing, a relatively minor leak of oil led to the discovery of a cut in one of the pipes between the seabed and the storage and offloading vessel. As a result of the discovery, production was been put on hold.[20]

23 The administrators put production on hold and instructed a full inspection of the remaining pipes. The administrators also liaised with the EPA and other regulatory authorities. The EPA issued an abatement notice confirming that it requires to review the inspection report before production can recommence.[21]

24 The administrators initially hoped that this process could be completed in time for production to restart by 1 December 2019. The weather conditions, though, have delayed the carrying out of the inspection.[22]

25 Following the initial delay, the independent survey was expected to be carried out this week with the report expected at the end of the week. On that basis, the earliest that the administrators expected the EPA to complete its review of the report and grant approval for production to restart was 9 December 2019.[23] Further inclement weather conditions have led to an additional delay in carrying out the inspection. The inspection is now due to take place on 11 December 2019 and the report is expected at the end of next week (at the earliest).[24] The EPA is therefore not expected to complete its review and grant approval for production to restart until 16 December 2019 (at the earliest).[25]

26 Meanwhile, the administrators are required to convene a watershed meeting of Tamarind's creditors within the convening period, which currently ends on Monday, 9 December 2019. On the same date, the administrators must circulate a report about Tamarind's business, property, affairs and financial circumstances to creditors. The administrators must also provide a statement to creditors setting out, among other things, whether it would be in the creditors' interests for Tamarind to execute a deed of company arrangement or be placed in liquidation.

27 The watershed meeting must be held within five working days after the end of the convening period (that is, by Monday, 16 December 2019). At the watershed meeting, Tamarind's creditors will decide on the future of the company.[26]

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[20] Kardachi affidavit, [15].
[21] Kardachi affidavit, [16].
[22] Kardachi affidavit, [17].
[23] Kardachi affidavit, [17].
[24] Glennie affidavit, [5].
[25] Glennie affidavit, [6].
[26] Kardachi affidavit, [9].

The reason for this application – more time needed to confirm whether, and when, production will restart and to identify potential purchasers or sources of funding.

28 The administrators consider that, to maximise the return for Tamarind's creditors, a short extension to the convening period is required to 17 February 2020.[27]

29 The administrators consider that, provided favourable terms can be agreed, the best way to enhance the recovery for Tamarind's creditors is to continue production at the Tui oil field.[28] Continuing production on profitable terms will also allow the administrators time to try to arrange a sale of Tamarind's assets or obtain further funding.

30 The administrators expect shortly to agree terms with BWO under which continued production will be profitable for Tamarind and will lead to an increase in the funds available to creditors.[29]

31 The viability of continued production, though, depends on Tamarind being able to restart production shortly. Until the administrators know when production can recommence and have had an opportunity to approach potential purchasers of Tamarind's assets or funders, it will be difficult for them to provide a meaningful report to creditors.

32 The administrators expect to have further information as to when production will recommence on, or shortly after, 16 December 2019. Once they have this information, the administrators will be able more usefully to ascertain interest in purchasing Tamarind's assets as well as the availability of third party funding and then update and advise Tamarind's creditors in respect of the position of the company and the options available to it.

33 If the convening period is not extended, the administrators will have to report based on incomplete information and may be required to take a conservative approach in respect of the prospects of continued production. As such, there would be a higher probability of liquidators being appointed to Tamarind at the end of the current convening period and following the watershed meeting.[30] At this stage, the administrators consider that liquidation would not be in the best interests of creditors of Tamarind, including its present and former employees.[31]

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[27] Kardachi affidavit, [10].
[28] Kardachi affidavit, [11].
[29] Kardachi affidavit, [14].
[30] Kardachi affidavit, [23].
[31] Kardachi affidavit, [23].

34 There is a need for a short extension to allow the administrators to receive and consider information that is pertinent to their report to creditors and their advice as to the best way to achieve an improved outcome for creditors. There are sound commercial and practical reasons to support the prospect of a better outcome being achieved following an extension of time as more informed decisions will be able to be made.

35 If the orders sought are granted, the administrators will endeavour to hold the watershed meeting as soon as possible within the extended convening period.[32]

Proposed extension of convening period will not prejudice creditors

36 The brief extension to the convening period sought by the administrators will not prejudice creditors because:

a the administrators estimate that, if the extension is granted and it allows production to restart, it will increase the chances of production continuing, and, in turn, increase the prospect of sale of Tamarind's assets and/or ongoing funding and the amount of money available for distribution to creditors;[33]

b creditors who are suppliers of goods and/or services to Tamarind are protected by the administrators' statutory obligation to pay for relevant amounts and Tamarind's landlord will continue to be paid for occupation for Tamarind's occupation of its premises;[34]

c all creditors will receive notice of this application and orders (if granted) by email or post (which is consistent with service of the orders that were previously granted in respect of our application under section 280 of the Companies Act) and will have the ability to apply to vary or set aside the orders.[35]

Appropriate that this application is made and determined on a without notice basis

37 In *Re Jackson*, a similar proceeding to the present application, Davison J was prepared to consider and determine the matter on a without notice basis because:[36]

---

[32] Kardachi affidavit, [25].
[33] Kardachi affidavit, [26a].
[34] Kardachi affidavit, [26b] and section s239ADH of the Companies Act 1993.
[35] Kardachi affidavit, [26d].
[36] *Re Jackson* [2018] NZHC 477 at [12].

> ...provision of notice...to creditors and employees would involve delay and expense in circumstances where unnecessary expenditure is to be avoided, and that it is unlikely that any of the employees or creditors will be adversely affected by an extension of time for the convening period. In fact, to the contrary, an extension of the convening period is most likely to improve or enhance the interests of the creditors and employees.

38 It is also appropriate for this application to be made and determined on a without notice basis, because:[37]

a extending the convening period for a brief period should not prejudice Tamarind's creditors;

b personal service of the application on Tamarind's known 117 creditors and seven employees would be time-consuming and expensive, given the urgency of the application;

c if the orders sought are granted:

i within five working days a copy of this application and the Court's orders will be 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

C posting notice on Borrelli Walsh's website (www.borrelliwalsh.com) on the webpage in respect of the administration of Tamarind; and

ii any person (including Tamarind's creditors) will be able to apply to modify or discharge the orders, on appropriate notice to the administrators.

39 On 3 December 2019, the administrators and their solicitors received an email from the solicitor acting on behalf of DOF Management Australia Pty Ltd, one of Tamarind's creditors.[38] The email referred to reports that the administrators would make an application for the extension of the convening period and asked that it be made on a with notice basis as it was anticipated that the application would be opposed.

---

[37] Kardachi affidavit, [27].
[38] Kardachi affidavit, [28].

40 The email does not change the reasoning set out at paragraph 38 above. In particular, it is not practical to serve each of Tamarind's known 117 creditors given the urgency of the application. However, as a matter of courtesy, the administrators will provide a copy of the application once it is made to the following parties:

a the five creditors who are members of the creditors committee elected at the first meeting of Tamarind's creditors;

b DOF Management Australia Pty Ltd; and

c COSL Offshore Management AS, a further creditor of Tamarind which has file a notice of opposition to the s280 application previously granted. [39]

41 Providing a copy of the application to these creditors is not required but, in the circumstances, is done as a matter of courtesy and to enable these creditors to engage with the application.

Procedure for service

42 If the Court makes the orders sought, then it is appropriate that the application and the Court's orders be served on Tamarind's creditors 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

c posting notice on Borrelli Walsh's website (www.borrelliwalsh.com) on the webpage in respect of the Tamarind administration.

43 A similar approach has been considered to be an "*practical, effective and efficient*" means of giving notice of the application and orders to creditors.[40]

Costs

44 The administrators respectfully request that the actual costs and disbursements of this application be met as an expense of the administration (paid from Tamarind's funds in the same priority as the administrators' fees).

---

[39] Kardachi affidavit, [29].
[40] *Re Jackson* [2019] NZHC 477 at [25].

Counsel's details

45 Counsel for the administrators, James McMillan, is available to appear in support of this application by telephone conference, or in person. Counsel can be contacted by telephone on: (09) 375 1154 or 0274 322 570.

Dated: 4 December 2019

J A McMillan
Counsel for applicants

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 sections 239AT 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)**
In the matter of an application by	**M W Mansfield** and **J A Kardachi** Applicants

---

Applicant's bundle of authorities

Dated: 4 December 2019

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8052571.1

Legislation

TAB NO.	DESCRIPTION
1	Companies Act 1993, ss 239AS, 239AT, 239AV and 239ADO.

Cases

TAB NO.	DESCRIPTION
2	*Re Grenfell* [2016] NZHC 36.
3	*Re Jackson* [2018] NZHC 477.
4	*Re Postie Plus Group* [2014] NZHC 1337.

Commentary

TAB NO.	DESCRIPTION
5	*Insolvency Law & Practice* (online loose-leaf ed, Thomson Reuters) at [CA239ADO.01].

Reprint
as at 24 October 2019

Companies Act 1993

Public Act	1993 No 105
Date of assent	28 September 1993
Commencement	see section 1(2)

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Subpart 8—Watershed meeting

Subpart 8: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AS What watershed meeting is

The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

Section 239AS: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AT Administrator must convene watershed meeting

(1) The administrator must convene the watershed meeting within the convening period.

(2) The **convening period** is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The court may, on the administrator's application, extend the convening period.

(4) The application to extend may be made before or after the convening period has expired.

Section 239AT: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AU Notice of watershed meeting

(1) The administrator must convene the watershed meeting by—

(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

(b) advertising the meeting in accordance with section 3(1)(b).

(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

(3) The following documents must accompany the notice of the watershed meeting that is sent to the company's creditors:

(a) a report by the administrator about—

(i) the company's business, property, affairs, and financial circumstances; and

(ii) any other matter material to the creditors' decisions to be considered at the meeting; and

(b) a statement setting out the administrator's opinion, with reasons for that opinion, about each of the following matters:

(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement:

(ii) whether it would be in the creditors' interests for the administration to end:

(iii) whether it would be in the creditors' interests for the company to be placed in liquidation; and

(c) if a deed of company arrangement is proposed, a statement setting out the details of the proposed deed.

Compare: Corporations Act 2001 s 439A(3), (4) (Aust)

Section 239AU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AV When watershed meeting must be held

The watershed meeting must be held within 5 working days after the end of the convening period or extended convening period, as the case may be.

Compare: Corporations Act 2001 s 439A(2) (Aust)

Section 239AV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AW Directors must attend watershed meeting

(1) The directors of the company must attend the watershed meeting, including any occasion to which the meeting is adjourned, but cannot be required to answer questions at the meeting.

(2) A director need not attend the watershed meeting if—

(a) the director has a valid reason for not attending; or

(b) the administrator or the creditors by resolution have excused the director from attending.

(3) A director attending the watershed meeting must leave for all or part of the remainder of the meeting if required by a resolution of the creditors to do so.

(4) A director who contravenes subsection (1) commits an offence, unless subsection (2) applies, and is liable on conviction to the penalty set out in section 373(1).

Section 239AW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AX Disclosure of voting arrangements

The administrator and the directors of the company under administration must, before the meeting votes on any resolution, inform the meeting of any voting arrangement of which the administrator or a director, as the case may be, is aware that requires 1 or more creditors to vote in a particular way on any resolution that will or may be voted on by the meeting.

Section 239AX: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADM Administrator's right of indemnity has priority over other debts

Subject to section 312, the administrator's right of indemnity under this subpart has priority over—

(a) all the company's unsecured debts; and

(b) debts of the company secured by a charge of the kind described in clause 2(1)(b) of Schedule 7.

Compare: Corporations Act 2001 s 443E (Aust)

Section 239ADM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADN Lien to secure indemnity

(1) The administrator has a lien on the company's property to secure a right of indemnity under this subpart.

(2) A lien under subsection (1) has priority over a charge to the same extent as the right of indemnity has priority over debts secured by the relevant charge.

Compare: Corporations Act 2001 s 443F (Aust)

Section 239ADN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 17—Powers of court

Subpart 17: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADO Court's general power

(1) The court may make any order that it thinks appropriate about how this Part is to operate in relation to a particular company.

(2) For example, the court may terminate the administration under subsection (1) if the court is satisfied that the administration should end—

(a) because the company is solvent; or

(b) because the provisions of this Part are being abused; or

(c) for some other reason.

(3) The court's order may be made subject to conditions.

(4) The court may make an order under this section on the application of—

(a) the company or a shareholder of the company; or

(b) a creditor of the company; or

(c) the administrator; or

(d) the deed administrator; or

(da) the FMA (if the company is a financial markets participant); or

(e) the Registrar; or

(f) any other interested person.

Compare: Corporations Act 2001 s 447A (Aust)

Section 239ADO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADO(4)(da): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ADP Orders to protect creditors during administration

(1) On the application of the Registrar or, if the company is a financial markets participant, the FMA, the court may make any order that it thinks necessary to protect the interests of the company's creditors while the company is in administration.

(2) On the application of a creditor of a company, the court may make any order that it thinks necessary to protect the interests of that creditor while the company is in administration.

(3) An order may be made subject to conditions.

Compare: Corporations Act 2001 s 447B (Aust)

Section 239ADP: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADP(1): replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ADQ Court may rule on validity of administrator's appointment

(1) If there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or deed administrator, any of the following persons may apply to the court for a ruling on the validity of the appointment:

(a) the person appointed; or

(b) the company in question; or

(c) any of the company's creditors.

(2) In ruling that the appointment is invalid, the court is not limited to the grounds specified in the application.

Compare: Corporations Act 2001 s 447C (Aust)

Section 239ADQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADR Administrator may seek directions

(1) The administrator or the deed administrator may apply to the court for directions in relation to the performance or exercise of any of the administrator's functions and powers.

(2) The deed administrator may apply to the court for directions in relation to the operation of, or giving effect to, the deed.

Compare: Corporations Act 2001 s 447D (Aust)

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2016-404-000105
[2016] NZHC 36

UNDER	Part 15A of the Companies Act 1993 and Part 19 of the High Court Rules
IN THE MATTER	of an application pursuant to s 239AT of the Companies Act 1993 for an order extending the convening period in the voluntary administration of DSE (NZ) LIMITED (in receivership and voluntary administration)
	ANDREW JOHN GRENFELL, KARE JOHNSTONE, JOSEPH DAVID HAYES and JASON PRESTON as administrators of DSE (NZ) LIMITED (IN RECEIVERSHIP AND VOLUNTARY ADMINISTRATION) Applicants

Hearing:	28 January 2016
Appearances:	S C D Gollin and M D Pascariu for Applicants G P Blanchard for Interested Party
Judgment:	29 January 2016

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 29 January 2016 at 4.00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date………………………..

[1] DSE (NZ) Limited, which previously traded as Dick Smith, is in voluntary administration and receivership.[1] The Administrators must convene a "watershed meeting" by 2 February 2016 unless the period for doing so is extended by this Court.[2] On 28 January 2016 I granted the Administrators' applications for (1) leave to apply without notice to extend the convening period and (2) an order extending the convening period to 2 August 2016.

[2] The application was served on three creditors on a Pickwick basis and one, Argosy Property (No 1) Ltd, appeared to oppose the applications. The orders made included an express reservation of Argosy's right to apply to set aside or vary them.

[3] My decision was given on the basis that reasons would follow. These are my reasons.

Extension of the convening period under s 239AT of the Companies Act 1993

[4] Section 239AT(1) of the Companies Act 1993 requires an administrator to convene a "watershed meeting" within the "convening period", which is the period of 20 working days after the date of the administrator's appointment and includes any period for which it is extended.

[5] A watershed meeting is:[3]

> … the creditors' meeting called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

[6] Under s 239AT(3) the Court may extend the convening period on the administrator's application. The section is silent as to what considerations should be taken into account in allowing an application to extend time. However, I agree with Heath J's observation in *Nylex (NZ) Ltd v Nylex Engineering Systems Ltd* that the

---

[1] Receivers were appointed on 4 December 2015 and administrators appointed on 5 January 2016 with the leave of this Court pursuant to ss 239F and 280 of the Companies Act 1993.
[2] Companies Act 1993, s 239AT(2).
[3] Companies Act 1993, s 239B.

power should be exercised in the light of the purpose of the voluntary administration regime and the duties imposed on administrators.[4]

[7] The objects of voluntary administration are identified at s 239A:

> … to provide for the business, property and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that –
>
> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
>
> (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

[8] Achieving these objectives requires the administrator to investigate the company's affairs,[5] report any suspected misconduct by directors, officers or shareholders,[6] call the first creditors' meeting, the watershed meeting and other creditors' meetings as required.[7]

[9] In relation to the watershed meeting, the administrator must provide notice of that meeting to as many of the company's creditors as reasonably practicable, advertise the meeting and ensure that notice of the watershed meeting is accompanied by his or her report about the company's business, property, affairs and financial circumstances and any other matter material to the creditors' decisions to be considered at the meeting with a statement setting out the administrator's opinion, with reasons, about the matters to be decided at the meeting, namely whether it would be in the creditors' interests for the company to execute a deed of company arrangement or for the administration to end or for the company to be placed in liquidation.[8] Self-evidently, the nature and extent of the work required to fulfil these obligations will depend on the nature and complexity of the company that is the subject of the administration. The provision for extending the convening period for the watershed meeting recognises this fact.

---

4 *Nylex (New Zealand) Ltd v Nylex Engineering Systems Ltd* HC Auckland CIV-2009-404-1217, 11 March 2009 at [13].

5 Section 239AE.

6 Section 239AI.

7 Section 239AJ.

8 Section 239AU.

[10] Voluntary administration can, however, operate adversely on creditors. There are barriers to the enforcement of charges over property during the administration of a company[9] and to the taking of possession of property used or occupied by the company.[10] The granting of an extension requires consideration of both aspects.

[11] The approach required to an application to extend the convening period has been articulated in previous cases in both Australia (where the regime is very similar) and New Zealand. In *Re Diamond Press Australia Pty Ltd* Barrett J described the approach as requiring:[11]

> … an appropriate balance between, on the one hand, the expectation that administration will be a relatively speedy and summary matter and on the other, the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders.

[12] In *Re Harrisons Pharmacy Pty Ltd* (administrators appointed) Farrell J took that same approach:[12]

> The approach to be taken by the Court in applications of this type is well settled. The power to extend the time for convening the second meeting is one that should not be exercised as of course: *ABC Learning Centres Ltd, in the matter of ABC Learning Centres Ltd; application by Walker (No 5)* [2008] FCA 1947 at [8] per Emmett J. The Court must strike an appropriate balance between the expectation that administration will be a relatively speedy and summary matter and the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders: *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10].

[13] Heath J followed this approach in *Nylex*, as did Asher J in *Postie Plus Group Ltd v Bridgman & McCloy*.[13] I, too, consider it to be the right approach.

[14] The appropriateness of an extension is, self-evidently, a fact specific determination. However, factors likely to be relevant were identified in *Re Riviera Group Pty Ltd*:[14]

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9 Section 239ABC.
10 Section 239ABD.
11 *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10].
12 *Re Harrisons Pharmacy Pty Ltd* [2013] FCA458 (2013) at [11].
13 *Postie Plus Group Ltd v Bridgman & McCloy* [2014] NZHC 1337.
14 *Re Riviera Group Pty Ltd* [2009] NSWSC 585, (2009) 72 ACSR 352 at [13], followed in *Re WGL Retail Holdings Ltd* [2011] NZCCLR 22 at [9].

(a) Size and scope of the business.

(b) Substantial offshore activities.

(c) Large number of employees with complex entitlements.

(d) Complex corporate structure and inter-company loans.

(e) Complex transactions entered into by the company (for example securities lending or derivative transactions).

(f) Lack of access to corporate financial records.

(g) The time needed to execute an orderly process of disposal of assets.

(h) The time needed for a thorough assessment of a proposal for a deed of company arrangement.

(i) Where the extension will allow the sale of the business as a going concern.

(j) More generally, where additional time is likely to enhance the return for unsecured creditors.

[15] Although the extension of the convening period is not granted as a matter of course, in some cases the scale and complexity of the issues confronting administrators are such that the question is not so much whether an extension should be granted but what the length of that extension should be.[15] A review of recently decided cases suggests that six months (the period sought and granted in this case) is regarded as a significant period in this context. That period has been described as being "at the top of the range"[16] and "a long time".[17] In *Postie Plus*, Asher J noted that in previous cases extensions of the convening period had ranged over four-and-

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15 Mr Blanchard, for Argosy, acknowledged that the present case was one where some extension was warranted, though he put the appropriate period at a matter of weeks rather than months.

16 *Re WGL Retail Holdings Ltd*, above n 13, at [26].

17 *Re Harrisons Pharmacy Pty Ltd*, above n 11, at [43].

a-half months,[18] six months[19] and 180 days[20] before granting an extension of 61 days.[21] In at least one case, however, a much longer extension of 18 months was granted.[22]

Reasons for extending the convening period

[16] The reasons for the applications appeared from affidavits filed by one of the Administrators, Kare Johnstone, and one of the Receivers, Ryan Eagles. The first was the size and complexity of DSE coupled with the issues arising from its place as part of the Dick Smith group.

[17] DSE is part of the Dick Smith group of companies. Its ultimate owner is Dick Smith Holdings Ltd (administrators appointed) (receivers and managers appointed) ACN166 237 841. The group is one of the largest electronic retailers in New Zealand and Australia. It had annual sales of approximately AU$1.3 billion in the financial year to 28 June 2015. The New Zealand operation is closely connected with that in Australia. Head office functions, finance, IT and ordering are all dealt with from the group's head office in Sydney. Companies within the group, including DSE, have cross-guaranteed the group's secured borrowings of AU$135m. In Australia the group employs over 3,200 staff (full-time, part-time and casual) in 393 stores. In New Zealand DSE employs approximately 500 staff in 62 stores and one distribution centre (this being owned by Argosy).

[18] These circumstances mean that the Administrators do not have sufficient time to obtain and analyse the information needed for a recommendation to creditors at the watershed meeting. At this stage the directors have not yet been able to provide a statement of company position in accordance with s 239AF and have requested an extension to 19 February 2016.

[19] The second reason is that the return to the creditors will be maximised if a sale of the group as a going concern can be achieved. But this will be a complex and

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18 *Re Nylex (New Zealand) Ltd v Nylex Engineering Systems Ltd*, above n 4.
19 *Re WGL Retail Holdings Ltd*, above n 13.
20 *Re Gourmet Food Holdings NZ Ltd* [2012] NZHC 3606.
21 *Postie Plus Group Ltd v Bridgman & McCloy*, above n 12, at [22].
22 *Re ABC Learning Centres Ltd* [2008] FCA 1947.

time-consuming task. As well as trading under "Dick Smith" bannered stores, the Dick Smith group trades under "Move" bannered stores which stock brands not offered in Dick Smith branded stores, "Move by Dick Smith" which is an airport duty free business, and "David Jones Electronics Powered by Dick Smith", under an exclusive retail brand management agreement with David Jones. The complex and varied nature of these businesses and the leases and supply contracts associated with them means that any sale process will be lengthy.

[20] The receivers have proposed a timetable for the sale process that would see final binding offers provided by 26 February 2016 and an anticipated settlement period of up to 90 days. This may take three months or so. If a sale can be achieved the Administrators would need time to analyse the implications of any proposed sale; a deed of company arrangement may be proposed, which would require time to be negotiated and considered before being put to creditors.

[21] Thirdly, the inter-connectedness between DSE and the Australian companies means that DSE's administration will be more efficient if it can be co-ordinated with the administration of the Australian companies, including common periods for convening watershed meetings. An application to vary the convening period relating to the Australia companies was made on the same day as the application before this Court was heard.

[22] Fourthly, the moratorium that arises under voluntary administration will assist DSE's business to continue trading, putting it in the best possible position for sale as a going concern, and the fact that the receivers are presently required to continue meeting lease obligations[23] means that there is little prejudice to creditors as a result of an extension being granted.

[23] In these circumstances, it is not possible for the Administrators to provide any meaningful recommendation or proposal to creditors as required by s 239AU(3). Extension of the convening period was inevitable on that basis. The fact that sale of the group's business is likely to produce the best outcome for creditors and will take several months means that the extension of six months was appropriate.

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[23] *Re DSE (NZ) Ltd* [2016] NZHC 10.

[24] I reached this view notwithstanding Argosy's objection that where receivers are in control of a company's assets and are moving to sell the business it is wrong in principle to grant an extension of the convening period because that would effectively confer the benefit of the moratorium on the receivers who would not otherwise be entitled to such a benefit under the Receiverships Act 1993. Mr Blanchard, for Argosy, accepted that without a report from the directors, the Administrators were not in a position to convene a watershed meeting yet so that, at the least, an extension of 3 – 4 weeks would be needed. However, he resisted any further extension and urged that the Administrators should proceed expeditiously to a watershed meeting at which creditors can make a determination as to whether the voluntary administration should come to an end or the company should be liquidated.

[25] Mr Blanchard acknowledged that the issue he was raising had not been considered in any of the Australian or New Zealand cases in which companies had both receivers and administrators appointed but pointed out that the earlier cases involved unopposed applications and submitted that it was a serious point of principle that ought to be fully argued. I was concerned that if, ultimately, the point was decided against Argosy the Administrators and creditors could be significantly disadvantaged by a refusal to grant an extension that was otherwise justified. Although the point appears not to have been argued, the courts in all of the recent cases have, nevertheless, regarded an extension of the convening period as available where both receivers and administrators had been appointed. Further, there was no apparent prejudice to Argosy since the receivers are still liable to meet lease payments and, as Mr Gollin for the Administrators pointed out, any creditor particularly affected could seek relief under s 239ABD[24] or apply to set aside or vary the orders made.

P Courtney J

[24] Another landlord creditor has availed itself of this course and reached an agreement with the Adminstrators allowing it take steps that would otherwise be precluded by the moratorium.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2018-404-457
[2018] NZHC 477

UNDER	Sections 239AT and 239 ADO of the Companies Act 1993 and Part 19 of the High Court Rules 2016
IN THE MATTER	of MECCANO 2016 LIMITED (ADMINISTRATORS APPOINTED)
AND	Of an application by NEALE JACKSON AND GRANT ROBERT GRAHAM Applicants

Hearing: On the papers

Counsel: M Kersey & S P Pope for Applicants

Judgment: 20 March 2018

JUDGMENT OF PAUL DAVISON J

This judgment was delivered by me on 20 March 2018 at 3pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
Russell McVeagh, Auckland

Background

[1] This is an application by the administrators of Meccano 2016 Ltd (Meccano) for an order extending the period within which they must convene the watershed meeting of creditors of the company to decide the future of the company.

[2] On 21 February 2018 Mr Grant Graham and Mr Neale Jackson, both chartered accountants and partners in the firm KordaMentha, were appointed joint and several administrators of Meccano pursuant to s 239I of the Companies Act 1993 (the Act).

[3] Mr Graham and Mr Jackson (the administrators) apply for orders pursuant to s 239AT of the Act extending the convening period within which they must hold the watershed meeting of creditors. They apply for an extension of two months from 21 March 2018 to 23 May 2018. They further seek an order enabling them to convene the watershed meeting by notice of meeting before the convening period as extended has expired, if they either conclude a sale of the business or otherwise form necessary opinions before expiration of the extended convening period. The administrators also seek an order regarding the manner of them advising creditors of their application to extend the convening period, and directing that a copy of any orders made be served on all creditors of Meccano and published on KordaMentha's website. Finally, they seek an order reserving leave for any creditor of Meccano to apply to vary or set aside the orders prior to the next hearing date of this application.

[4] Meccano is a New Zealand-based clothing designer, producer and retailer. Prior to the administrator's appointment, Meccano operated 12 leased retail clothing stores and one on-line store. The business employed approximately 56 staff members at its stores and head office and had approximately 94 creditors to whom it owed a total of approximately $1,432,000.

[5] Since their appointment as administrators, the applicants have taken steps to stabilise the business and have continued to trade whilst determining whether it will be possible to achieve a sale of the business as a going concern. While they have been endeavouring to sell the business as a going concern, to date there has been little interest and no progress has been made with achieving a sale. The applicants have nevertheless continued to achieve the objects of their appointment under the Act by

executing a structured stock liquidation process, and have developed a plan to periodically consolidate Meccano's store network to match its stock levels. The applicants terminated the employment of all Meccano's employees within 14 days of the administrator's appointment in order to limit the administrator's personal liability and have commenced a process of re-employing a number of those employees on fixed term arrangements. The applicants have also negotiated with landlords of Meccano's leased premises, and as at the date of the application had served non-use notices on six landlords whilst still negotiating with six other landlords regarding assignments of leases in order to provide additional value to creditors.

[6] The applicants held the first meeting of creditors at the offices of KordaMentha on 5 March 2018. At this meeting a creditor's committee was established and the creditors were informed that the applicants intended to make an application to extend the convening period of 20 working days within which the watershed meeting was required to be held by two months, so as to enable further progress with their administration to occur and in order to enhance the prospects of improving realisations of stock and assets and increasing recovery for creditors.

[7] In his affidavit sworn in support of the application Mr Jackson explains:

> Mr Graham and I intend to continue to trade the Meccano business and continue our stock liquidation and store consolidation processes until we have obtained sufficient information to form a view as to the realistic options available to Meccano's creditors. In short, the stability provided by being able to trade from leased premises is likely to maximise recoveries from the inventory assets of Meccano".
>
> Whilst we have formed the view that … a going concern sale for the business is not possible, we are taking steps (and intend to continue to take steps) to maximise value for Meccano's creditors by:
>
> (a) continuing to seek expressions of interest for aspects of the business, such as the Meccano brand and the goodwill that it has generated;
>
> (b) negotiating with landlords of various of Meccano's leased premises to try and assign or transfer leases to third parties. In some cases, this may realise a cash return for Meccano and in others, this should limit Meccano's ongoing liability under those leases;
>
> (c) considering, in conjunction with our investigations into the business, whether there is any value in proposing a [deed of company arrangement] to creditors at the watershed meeting. We require further time to:

(i) consider the value in proposing a [deed of creditors arrangement];

(ii) then potentially formulate a statement setting out the contents and form of the proposed [deed of creditors arrangement], which we must provide to creditors by notice prior to the watershed meeting (see s 239AU of the Act); and

(d) investigating claims by potential secured creditors of Meccano to determine whether there are any matters of priority over certain assets that need to be resolved.

[8] Mr Jackson further explains that the extension of the 20 working day watershed meeting convening period will enable the applicants to have sufficient time to continue an efficient stock liquidation strategy and inform creditors of the most suitable strategy to maximise returns for them. He says that if the convening period is not extended, there is a higher probability of Meccano being placed into liquidation at the end of the current convening period, which would not be in the best interests of creditors, employees, landlords and suppliers of Meccano.

[9] Mr Jackson says that in his view the proposed extension of the watershed meeting convening period by two months would not prejudice any of the following groups: creditors; those employees who are currently employed on fixed-term arrangements and who will benefit from continued trading; or landlords, whose premises are occupied and who are being paid for Meccano occupation or with whom assignment of leases are underway.

Without notice application

[10] The application is made on a without notice basis without service having been effected upon creditors or employees.

[11] I note Mr Jackson's explanation in his affidavit that the applicants informed creditors attending the meeting on 5 March 2018 of their intention to apply for an extension of the convening period without objection being raised by the creditors.

[12] The convening period is due to expire on 21 March and the present application is made on a without notice urgent basis. I am satisfied that the provision of notice of the present application to creditors and employees would involve delay and expense

in circumstances where unnecessary expenditure is to be avoided, and that it is unlikely that any of the employees or creditors will be adversely affected by an extension of time for the convening period. In fact, to the contrary, an extension of the convening period is most likely to improve or enhance the interests of the creditors and employees. For those reasons I am prepared to consider and determine this application on a without notice basis.

Applicable law

[13] Section 239AS of the Act defines a watershed meeting as follows:

> **239AS What watershed meeting is**
>
> The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

[14] Section 239AT of the Act provides that an administrator must convene the watershed meeting within the convening period. The section provides as follows:

> **239AT Administrator must convene watershed meeting**
>
> (1) The administrator must convene the watershed meeting within the convening period.
>
> (2) The **convening period** is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).
>
> (3) The Court may, on the administrator's application, extend the convening period.
>
> (4) The application to extend may be made before or after the convening period has expired.

[15] The convening period provided for of 20 working days after the date upon which the administrator is appointed may be extended on application by an administrator made either before or after the convening period has expired.

[16] Although the Court has an unfettered discretion to extend the convening period, the discretion is to be exercised having regard to the objects of voluntary administration as set out in s 239A which provides:

239A Objects of this Part

> The objects of this Part are to provide for the business, property, and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that—
>
> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
>
> (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

[17] In *Re Gourmet Food Holdings New Zealand Ltd*,[1] Katz J set out the non-exhaustive list of reasons for extensions identified by Austin J in *Re Riviera Group Pty Ltd*[2] in relation to the Australian statutory equivalent of s 239AT.[3] The circumstances justifying an extension of the convening period identified by Austin J included the time needed to execute an orderly process of the disposal of assets; the time needed for thorough assessment of a proposal for a deed of company arrangement; time required to allow the sale of a business as a going concern; and more generally the time being likely to enhance the return for unsecured creditors.

[18] In *Re Diamond Press Australia Pty Ltd*, Barrett J observed:[4]

> The function of the Court on an application such as this is, as I see it, to strike an appropriate balance between, on the one hand, the expectation that administration will be a relatively speedy and summary matter and, on the other, the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders.

[19] Applications for an extension of the convening period are not granted as a matter of course. Before the Court will exercise the discretion conferred by s 239AT(3), an administrator must show that an extension is consistent with achieving the objects of Part 15A, meaning that it will either maximise the chances of the company continuing in existence, or if that is not possible will be likely to achieve a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company. The power conferred on administrators to

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1 *Re Gourmet Food Holdings Ltd* [2012] NZHC 3606.
2 *Re Riviera Group Pty Ltd* [2009] NSWSC 585, (2009) 72 ACSR 352.
3 Corporations Act 2001 (Cth), ss 439A(5)(a) and 439A(6).
4 *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313 at [10].

apply to extend the convening period and the Court's discretion to grant an extension recognise that the circumstances of an adminstration will not infrequently encounter issues that are not capable of prompt resolution and which require further time to stabilise and rationalise the business, continue trading in appropriate cases, realise assets, and conduct a range of negotiations in order to achieve either the continued existence of the business or a better outcome for its creditors and shareholders. Where sound commercial and practical reasons are shown to support a realistic prospect of a better outcome being derived following an extension of time, it will be appropriate for the Court exercise the discretion to grant an extension.

[20] As illustrated by the list of situations identified by Austin J in *Re Riviera Group Pty Ltd*, there is a wide range of circumstances and situations where an extension may be necessary in order to promote the achieving of the objectives of voluntary administration. In each case, however, the essential feature is that further time is necessary to enable steps to be taken or matters to be resolved in a manner that will be in the interests of the company's creditors or shareholders, as contrasted to the likely financial consequences of a liquidation.

The present case

[21] Here the additional time sought of two months is reasonable, and will provide further time for orderly progress to be made and for the watershed meeting to be convened at a time when the administrators are able to provide creditors with a better informed assessment of the business and the prospects of them achieving further recoveries from sales of stock and assets, and whether to recommend that the company execute a deed of company arrangement or alternatively that the administration should end and a liquidator be appointed.[5]

[22] Having regard to the explanation provided by Mr Jackson of the situation and the steps he and Mr Graham are taking, I am satisfied that the applicants are acting in a prudent and responsible manner consistent with achieving the objects of their administration of Meccano so as to maximise the chances of the company providing a

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[5] Companies Act 1993, s 239ABA.

better return for creditors and shareholders than would result from an immediate liquidation.

[23] The applicants also seek an order authorising the convening of a watershed meeting by notice of meeting before the convening period (as extended) has expired, should they be able to conclude a sale of the business or parts thereof or otherwise form the necessary opinions before the completion of the extended convening period.

[24] Once the convening period is extended, a watershed meeting may be convened and notice thereof given by the applicants for any date within the extended period provided that the requisite prior notice of five working days before the meeting is given, and provided that the notice of meeting otherwise complies with the requirements of s 239AU.

[25] The applicants seek an order that the present application and a copy of the orders made herein be forwarded to all creditors of the company via their email addresses where such email addresses are known, or by postal mail where email addresses are not known. The applicants further propose posting a copy of the present application and the orders on KordaMentha's website where that information will be accessible to the public. I consider that those are practical, effective and efficient means by which notice of the present application and orders can be given to creditors.

Conclusions

[26] For these reasons I am satisfied that it is appropriate for an order to be made extending the convening period by two months from 21 March 2018 to 23 May 2018 and I make an order that the applicants are able to convene the watershed meeting by notice of meeting before the extended convening period has expired should the applicants be able to conclude a sale of the business or parts thereof or otherwise form the necessary opinions relating to their administration of the company.

[27] I further order that notice of the present application being made and a copy of these orders shall be served upon all known creditors of Meccano by sending them copies of the application and the orders made herein to creditors by email where an address has been provided to Meccano, or by post to the postal address provided by

creditors in those instances where an email address has not been provided. I further direct that a copy of the present application and of this judgment be posted on KordaMentha's website for public access.

[28] Finally, I reserve leave for any creditor of Meccano to apply to vary or set aside these orders.

Paul Davison J

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2014-404-001392
[2014] NZHC 1337

IN THE MATTER	of Part 15A of the Companies Act 1993
IN THE MATTER	of POSTIE PLUS GROUP LIMITED (ADMINISTRATORS APPOINTED)
BETWEEN	DAVID JOHN BRIDGMAN and COLIN THOMAS McCLOY Applicants
AND	

Hearing: On the papers

Counsel: LA O'Gorman for Applicants

Judgment: 13 June 2014

JUDGMENT OF ASHER J

This judgment was delivered by me on Friday, 13 June 2014 at 4.30 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
Buddle Findlay, Auckland.

Background to this application

[1] On 3 June 2014 David John Bridgman and Colin Thomas McCloy, insolvency practitioners and partners in the firm of PricewaterhouseCoopers, were appointed as administrators of Postie Plus Group Ltd (Postie Plus). They apply for an extension of the time periods under ss 239AT and 239Y of the Companies Act 1993 on a without notice basis. The extensions are 61 days (to 1 September 2014) and 82 days (to 1 September 2014) respectively. Mr McCloy has filed an affidavit in support of the application.

[2] Postie Plus is a retail business specialising in men's, women's and children's apparel and health and beauty products. It has over 100 years of history and is one of the country's largest retail chains. It operates over 80 stores throughout New Zealand and employs approximately 650 staff nationwide. It is listed in the New Zealand Stock Exchange. Trading in the shares of Postie Plus is currently suspended.

[3] On 4 June 2014 the administrators entered into a heads of agreement with potential purchasers of Postie Plus. A statement was released to the media announcing the intended purchase. The parties will endeavour to complete on or about 2 July 2014.

[4] As administrators of Postie Plus, Messrs Bridgman and McCloy ("the administrators") must convene a watershed meeting within the "convening period" for Postie Plus.[1] The convening period is stated in s 239AT(3) to be the period of 20 working days after the date on which administrators are appointed.

[5] Given the large number of employees and sites, and the fact that there are 20 secured creditors and about 230 unsecured creditors, the administration of Postie Plus is complex. The administrators are concerned that the requirements to provide notices and reports for the watershed meeting by 1 July 2014 would significantly distract them from their immediate goal of completing a sale of the business. Mr McCloy asserts that the sale of the business will be the best outcome for creditors

[1] Companies Act 1993, s 239AT(1).

and employees of Postie Plus, and that the next four weeks will be critical if they are to complete such a sale. For example, there is the potential for some creditor liability to be assumed by the potential purchaser given that the business has been sold as a going concern. Further, there is the possibility that the estimated timeframe for completion of the sale will be delayed.

[6] If the sale is not completed by the time of the watershed meeting it would be impractical for the creditors at the watershed meeting to consider Postie Plus's affairs and whether it would be appropriate to end the administration. It would be far more practical for there to be more time to finalise a report and post the notice to all creditors and employees. If the sale did not go ahead there would be more time to consider alternative options and report on those.

[7] For these reasons the administrators seek the extension to the convening period to 1 September 2014. This period will allow the due diligence and negotiation process to be completed, and for informed reports to be provided.

[8] The same period of extension is sought in relation to the period of time set out in s 294Y(3) of the Companies Act in which the administrators are required to give notice of termination of contracts of employment. So if an extension is not granted the administrators will have to give notice of termination to every employee by Tuesday, 17 June 2014. At the same time formal offers of re-employment would have to be made to each employee, with the necessary documentation.

[9] Mr McCloy deposes that this would be difficult to achieve within the 14 day period given the number of employees involved. It would also add further disruption to the sale process. Further, if a sale is confirmed it would be a pointless and wasteful exercise to carry out these steps when Postie Plus would be required to terminate their employment again in a transfer of business scenario a short time later.

[10] The administrators have advised the employees of their intention to seek an extension of the 14 day period by a letter of 4 June 2014. To date there has been no notice of any opposition to the extension.

[11] I consider the application against this background.

Without notice application

[12] The issue is whether it is appropriate to determine these applications without notice, and in particular without service on creditors and employees.

[13] I am satisfied that it would be a considerable expense and cause delay to carry out such service. Further, it is unlikely that any of the employees or creditors would be adversely affected by the extensions of time sought for reasons that I will elaborate on below.

[14] The administrators undertake to notify the creditors of Postie Plus by advertisements and by notification on a webpage on the PricewaterhouseCoopers website. I am informed that the Bank of New Zealand, the first ranking secured creditor, supports the application.

[15] Given these practical realities, and the urgency of the situation, I am prepared to consider the application on a without notice basis.

Application for the extension of the convening period

[16] The object of voluntary administration in Part 15A is set out in s 239A of the Act:

> **239A Objects of this Part**
>
> The objects of this Part are to provide for the business, property, and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that—
>
> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
>
> (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

[17] While Postie Plus is in administration there is a statutory moratorium imposed by subpart 9 of Part 15A against enforcement action from creditors. This maximises the chances of Postie Plus remaining in business.

[18] Administrators may however need additional time to carry out their tasks. In recognition of this the legislature has provided for extensions of the convening period for the watershed meeting,[2] and for an extension of the time period within which notice of termination of contracts of employment is required to be given.[3]

[19] Orders for the extension of time are not made as a matter of course and are the exception rather than the rule.[4] However, they will be more frequently granted where the company structure is complex. Any application for an extension has to be supported by detailed information about the affairs of the company so far as they are known, and the reasons for the extension must be clearly stated.

[20] In deciding whether to grant an extension, the Court's function has been described by Barrett J in *Re Diamond Press Australia Pty Ltd* as:[5]

> [striking] an appropriate balance between, on the one hand, the expectation that administration will be a relatively speedy and summary matter and, on the other, the requirement that undue speed should not be allowed to prejudice sensible and constructive actions directed towards maximising the return for creditors and any return for shareholders.

[21] A Court must be wary of the possibility of the administration processes bing exploited by a company that seeks to delay enforcement action by creditors. However, when the statutory moratorium is properly imposed it can maximise a company's chances of remaining in business and improve creditors' chances of recovery. As Heath J commented in *Re Nylex (New Zealand) Ltd*:[6]

> … in a case where complexity reigns and an Administrator cannot, in the time prescribed, conduct a proper investigation to form opinions to put to creditors at a watershed meeting, it is appropriate (and indeed necessary) to extend the convening period so that the Administrator can perform his or her

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2 Companies Act 1993, s 239AT(3).
3 Companies Act 1993, s 239Y(4).
4 *Re All Build Construction Co Pty Ltd*; *ex parte Featherby* [2000] WASC 227.
5 *Re Diamond Press Australia Pty Ltd* [2001] NSWSC 313.
6 *Re Nylex (New Zealand) Ltd* HC Auckland CIV-2009-404-1217, 11 March 2009 at [19].

> functions properly and creditors, at the watershed meeting, can make informed decisions.

[22] Extensions of the convening period of four and a half months,[7] six months[8] and 180 days[9] have been made.

[23] I consider it appropriate to grant an extension of the convening period for the following reasons:

(a) The administration is complex and involves a large number of employees, multiple sites and multiple secured and unsecured creditors. It is understandable that the administrators wish to focus on the all important issue of a constructive sale of the business at this point. A sale is likely to be the best outcome for creditors and employees.

(b) It is possible that a sale may not be completed at the time when the watershed meeting would be held within the statutory timeframe. If that was so it would be difficult for the creditors to consider the best commercial way forward for Postie Plus. If there was a sale there would be little time to finalise a report and for that to be considered by creditors and employees.

(c) The alternative to sale would be a restructure of the business, that would take time to formulate.

[24] I am prepared to grant the extension sought of the convening period.

Extension of the time for terminating contracts of employment

[25] The principles applied in considering an extension of the 14 day period of notice of termination to employees are closely related to those relating to an extension of the convening period. The Court will be concerned to facilitate a

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7 *Re Nylex*, above n 6.
8 *Re WGL Retail Holdings Ltd* [2011] NZCCLR 22.
9 *Re Gourmet Food Holdings New Zealand Ltd* [2012] NZHC 3606.

constructive outcome of the administration which will ensure that the business survives and contracts of employment can be maintained to the advantage of both employees and creditors. In complex administrations a Court will be concerned to ensure that the administrators will have time to identify all employment contracts and make informed decisions concerning those contracts. They will then have to communicate any discussions to the relevant employees.

[26] The administrators depose that if the extension of the 14 day period is not granted they will give notice of termination to every employee by Tuesday, 17 June 2014. At the same time formal offers of re-employment would have to be made to each person with the necessary documentation being prepared, checked and executed.

[27] The administrators believe the task of carrying out these tasks within 14 days would be difficult to achieve, and could further disrupt the sale process. Further, if a sale was confirmed the termination would have been a pointless and wasteful exercise, when Postie Plus would be required to terminate employment in a transfer of business scenario a short time later.

[28] There is some indication that the extension is not against the interests of employees that can be taken from the lack of any expressed opposition, despite the fact that notice has been given of the proposal.

[29] For these reasons I am prepared to grant the extension of the notice of termination period.

Other factors

It is relevant to a decision to grant extensions that the proposed orders will be advertised with leave to apply in the application. Leave will be granted for any person who can demonstrate a sufficient interest to apply to modify or discharge the orders.

Result

[30] I make the following orders:

(a) the applicants are granted leave to commence this proceeding without notice;

(b) the period defined in s 239AT(2) of the Companies Act is extended by 61 days up to and including 1 September 2014, under s 239AT(3) of the Act;

(c) the period defined in s 239Y(3) of the Act is extended by 82 days up to and including 1 September 2014, under s 239Y(4) of the Act;

(d) within seven days of the date of these orders, notice of these orders is to be:

(i) Made available on PricewaterhouseCoopers' website: http://www.pwc.co.nz/postie-plus/;

(ii) Advertised once in the New Zealand Herald, The Dominion, The Press and the Otago Daily Times;

(e) leave to apply is granted to any person who can demonstrate a sufficient interest to modify or discharge either the above orders upon appropriate notice being given to the applicants; and

(f) the applicants' solicitor/client costs of this application will be an expense incurred by the applicants in carrying out their duties as administrators of Postie Plus.

…………………………….

Asher J

Westlaw NZ Delivery Summary

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Request made on:	Thursday, 14 November, 2019 at 12:15 NZDT
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239ADO Court's general power

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LEGISLATION

CURRENT VERSION (APPLIES FROM 1 MAY 2011)

239ADO Court's general power

(1) The Court may make any order that it thinks appropriate about how this Part is to operate in relation to a particular company.

(2) For example, the Court may terminate the administration under subsection (1) if the Court is satisfied that the administration should end—

(a) because the company is solvent; or

(b) because the provisions of this Part are being abused; or

(c) for some other reason.

(3) The Court's order may be made subject to conditions.

(4) The Court may make an order under this section on the application of—

(a) the company or a shareholder of the company; or

(b) a creditor of the company; or

(c) the administrator; or

(d) the deed administrator; or

[(da) the FMA (if the company is a financial markets participant); or**]**

(e) the Registrar; or

(f) any other interested person.

Compare: Corporations Act 2001 (Australia) s 447A

COMMENTARY

Synopsis

The Court has the power to make such order as it thinks fit as to how Part 15A is to operate in relation to a particular company. The company, a shareholder, a creditor, the administrator, the deed administrator, the Registrar or any other interested person may request the Court that it make an order in s 239ADO. The provisions of s 239ADO are virtually identical to those of s 447A, s 239ADO's Part 5.3A equivalent.

Cross references

s 2 "company", "Court", "Registrar", "shareholder"
s 96 meaning of "shareholder"
s 239A objects of this part

s 239B "administrator", "deed administrator"
s 239C "company", "creditor", "insolvent"
s 239E when administration ends
s 239I appointment by company
s 239AU notice of watershed meeting
s 239AZ adjournment of watershed meeting
s 239ACS who is bound by deed
s 239ADR administrator may seek directions

CA239ADO.01 Nature of the power

The purpose of the section is to provide the Court with the power to make orders that alter the way in which Part 15A operates (*Brash Holdings Ltd v Katile Pty Ltd* (1994) 12 ACLC 472) so as to ensure that the objectives of Part 15A are maintained in the case of a particular company: *Australasian Memory Pty Ltd v Brien* (2000) 172 ALR 28 (HCA). Subsection (2) provides an example of one use of s 239ADO — termination of the administration because the administration procedure is being abused (such as where the board has put the company in administration for purposes at variance with the s 239A statutory objectives) or because the company is solvent. In Australia the Part 5.3A equivalent of s 239ADO has been used (among other things) to cure failures to comply with time periods (even where the time period concerned is mandatory) or to amend a deed of company arrangement (even though there are specific provisions in Part 15A dealing with deed variations) or to validate an improper appointment of an administrator.

(1) Case examples — validation of improper appointments

(a) *Panasystems Pty Ltd v Voodoo Tech Pty Ltd*

In *Panasystems Pty Ltd v Voodoo Tech Pty Ltd* (2003) 21 ACLC 842, the administrator's appointment was ruled invalid because the relevant board resolution made no reference to the actual or prospective insolvency of the company (see s 239I) but only that the company was in "serious financial difficulties". The Court was however, prepared to validate the appointment under the Part 5.3A equivalent of s 239ADO. It was accepted by all that the company was in fact insolvent when the resolution passed. That was the directors understanding even if the board minute did not express this. Also, there was no prejudice that could be identified in continuing the administration.

(b) *McVeigh v Merlo*

In *McVeigh v Merlo* [2004] VSC 107, a defect that occurred in the appointment of an administrator due to a lack of quorum at the relevant board meeting was "fixed" by the Court by validating the relevant directors resolution.

(c) *Re Pasdonnay Pty Ltd*

In *Re Pasdonnay Pty Ltd* [2005] FCA 335, the sole director of a company communicated his intention to a company consultant that he would put the company into voluntary administration if a settlement in certain ongoing legal proceedings could not be reached by a specified date. The necessary company resolution was signed by the director. The director then fell ill and was in hospital at the time the deadline passed for settlement of the litigation. The consultant arranged to meet with the proposed administrators on the following Monday. The director died on the weekend. The subsequent appointment that was facilitated by the consultant was ruled invalid. The intentions of a director cannot survive his or her death. However, the appointment was validated. The administration was well advanced, it was likely that the business would be sold as a going concern and it was therefore in the interest of the shareholders and creditors that the administration should continue.

(d) *Albarran v Pascoe*

In *Albarran v Pascoe* [2006] NSWSC 418, an administrator had been appointed by board resolution under the Part 5.3A equivalent of s 239I. The two persons acting as directors of the company were found to be not capable of acting in that capacity due to their status as undischarged bankrupts. The Court was, however, prepared to validate the appointment. In making its determination the Court noted that the company's creditors had been made aware of the validation application and had made no objection. The validation ruling enabled the administrator to proceed with plans for the sale of the company's business.

(2) Extension of time limits

(a) *Cawthorn v Keira Constructions Pty Ltd*

In *Cawthorn v Keira Constructions Pty Ltd* (1994) 33 NSWLR 607, the principal assets of the company comprised a number of licences granted by the Government of Vietnam. It became clear during the negotiations with the Vietnamese government that there were further licences that had not been initially identified. The creditors of the company considered that it would be appropriate for the administrator to carry on discussions with Vietnamese government officials beyond the 60 day maximum period for the adjournment of the watershed meeting allowed for by the Part 5.3A equivalent of s 239AZ (the maximum period for an adjournment of a watershed meeting under Part 15A is in fact 30 working days). A resolution had been passed asking the administrator to apply to Court for an extension of time to enable a thorough examination to take place as to the viability of a sale of the licences. Failure to obtain such an extension would have meant that the administration would be terminated. The Court concluded that it had in the appropriate case, power to order an extension of time under the Part 5.3A equivalent of s 239ADO. While the 60 day limit allowed for adjournment of the watershed meeting was necessary to avoid unnecessarily prolonged administrations (such as could arise in the US under its Chapter 11 bankruptcy procedure) the legislation conferred wide ranging plenary powers on the Courts to ensure the objective of the exercise was fulfilled (that is whether it is in the creditor's interests to have some form of administration short of winding up). In deciding whether to exercise these plenary powers it was necessary however for the Courts to take account of the rights of the various groupings affected by the voluntary administration, and the very great public interest in not permitting a voluntary administration to go on for too long. In this case the Court decided that an extension of time beyond the 60 day adjournment period was justified. The reason for the extension was to see whether a formal deed administration would be more successful, that a winding-up of the company. The delay sought was not being used as a delaying tactic to keep creditors at bay.

(b) *Re Double V Marketing Pty Ltd*

In *Re Double V Marketing Pty Ltd* (1995) 16 ACSR 498, the Court made an order providing for adjournment of the watershed meeting beyond the 60-day maximum allowed for in the Part 5.3A equivalent of s 239AZ. Complex legal issues arising over a dispute over trading stock and whether the company's custom's agent had a valid lien over that stock had meant that the administrator was not in a position to provide his report and statement to the meeting as required by the Part 5.3A equivalent of s 239AU(3). In addition the directors had advised that they needed an additional 14 days in which to finalise their proposal and recommendation to creditors. Furthermore the proposal for an adjournment to a date beyond the 60-day period had been put to an earlier meeting of creditors. The majority had voted in favour of that adjournment, subject to the Court's approval. There was no evidence of any prejudice to any creditor.

(c) *Australasian Memory Pty Ltd v Brien*

In *Australasian Memory Pty Ltd v Brien* (2000) 172 ALR 28 (HCA), at p 35, the High Court of Australia commented on the application of the Part 5.3A equivalent of s 239ADO to the extension of statutory time limits in this way:

> "Section 447A is an integral part of the legislative scheme provided for by Pt 5.3A. In its terms, it enables the making of orders which alter the way in which 'this Part is to operate in relation to a particular company'. That is, it permits the making of orders which would alter how s 439A is to apply. It is not right to seek to characterise s 447A as some general source of power to which resort cannot be had because to do so would 'circumvent' the statutory limitations upon the exercise of the power that is given by s 439A(6) to extend the convening period. So to characterise s 447A is to give to all of the other provisions of Pt 5.3A a fixed and unchanging operation in relation to all companies. Yet the evident legislative intention of s 447A is to permit alterations to the way in which Pt 5.3A is to operate".

(3) Amendments to existing deeds of company arrangement

(a) *Mulvaney v Rob Wintulick Pty Ltd*

In *Mulvaney v Rob Wintulich Pty Ltd* (1995) 18 ACSR 384, a deed of company arrangement was entered into on the mistaken assumption that shareholders would be bound to accept nominal consideration for the transfer of their shares in the company pursuant to the Part 5.3A equivalent of s 239ACS (who is bound [by deed of company arrangement]). Some of the shareholders objected. A new agreement was then made which provided for transfer of all the company shares for nominal consideration subject to the making of a further payment to one of the shareholders in settlement of a dispute between that shareholder and the

company. The administrators applied to the Court for validation of a new version of the deed of company arrangement reflecting the terms of this agreement. The Court held that as no specific ground had been identified for validation of the new deed, s 445G (the Part 5.3A equivalent of s 239ACX) could not be used to affirm the deed's validity. However, the Court was prepared to use its powers under the Part 5.3A equivalent of s 239ADO to allow the variation in the deed, notwithstanding that no resolution of the company's creditors had been passed approving the variation. The Court was prepared to exercise its discretion in this case because:

(i) The persons whose interests the variation might be thought to affect (ie the other shareholders who were not to receive any additional payment) have joined the agreement which gave rise to the variation;

(ii) A meeting of the creditors could not now be practically convened prior to the deed's operative date; and

(iii) An earlier meeting would have resulted in appreciable (and arguably unneccessary) costs being incurred by the administration and in some inconvenience to the creditors.

(b) *Re Motor Group Australia Pty Ltd*

In *Re Motor Group Australia Pty Ltd* (2005) 54 ACSR 389, there were doubts over whether motor vehicle owners with warranty entitlements that had made no claim against the company prior to its administration, were in fact creditors or mere holders of expectant claims. In these circumstances, the Court exercised its powers under the Part 5.3A equivalent of s 239ADO to order that those warranty holders were bound to the deed, without making any final determination as to their status as creditors. The order was made on the basis that the deed would achieve a better result for the company's creditors than would be the case if the company had been put into liquidation.

(4) Other cases on exercise of Court's general power

(a) *Adams Plumbing and Drainage (2010) Ltd v Hartland Construction Ltd*

Section 239I(3) provides that a company must not appoint an administrator if the company is already in liquidation. However in *Adams Plumbing and Drainage (2010) Ltd v Hartland Construction Ltd* [2012] NZHC 1095, the Court gave leave to the directors to appoint an administrator in a proceeding before the Court for the appointment of a liquidator. (The 10-working-day period given to the directors under subs (4) of s 239I to appoint an administrator following service on the company of the liquidation application had expired). The Court, citing *Australasian Memory Pty Ltd v Brien*, granted leave based on the powers conferred on the Court under s 239ADO (Court's general power). The Court noted that that the company had been affected by termination of its franchise in relation to a national franchise arrangement. The company had subsequently been in a difficult financial position and had worked with its creditors to bring about a restructuring proposal that would work. The director's application for leave was supported by creditors appearing at the hearing (including the creditor that initiated the liquidation application). The Court concluded that this was a case where voluntary administration appeared to be in the best interests of the company and its creditors.

(b) *Re Sims; in the matter of Huon Corp Pty Ltd*

In *Re Sims; in the matter of Huon Corp Pty Ltd* [2006] FCA 1201, the administrators proposed to enter into four supply agreements under which the purchasers agreed to pay a 35 per cent mark-up for the product over the normal supply price and to commit to the purchase of specified volumes over a four month period. In return, the administrators agreed to pay the purchasers a price rebate to be paid to them ahead of the claims of the company's unsecured creditors. These commercial arrangements were intended to enable the company to continue to trade for a few more months as a going concern, pending sale of the business. An application to Court was made to seek confirmation that the administrator's obligation to pay the price rebate under the proposed arrangements was a "debt" (pursuant to s 443A, the Part 5.3A equivalent of s 239H) and, therefore, subject to the statutory lien that confers priority on claims in respect of the administrator's personal liability in the performance of their functions. The Judge was not prepared to concede that the "price rebate" could be construed as a debt for the purposes of s 443A. However, the Court was prepared to exercise its powers under the Part 5.3A equivalent to s 239ADO to deem the price rebates as "debts incurred" by the administrators for the purposes of s 443A in respect of "services rendered", for which they would be personally liable, and the statutory lien would apply.

(c) *Re Ansett Australia Ltd*

In *Re Ansett Australia Ltd* (2002) 115 FCR 395, the Court was unwilling to exercise its discretion under s 239ADO to allow the notice of the watershed meeting to be made to Ansett's thousands of creditor's simply by way of news paper advertisements, two web sites and a telephone facility to enable creditors to request copies of the documentation for the meeting. While the cost of posting the notice of the meeting (plus the supporting documentation) to "as many of the company's creditors as reasonable practicable" would be substantial, that cost was not disproportionate to the object of ensuring that the company's creditors were given a proper opportunity to attend the watershed meeting and to cast their vote on an informed basis. However the Court was prepared to make an order that did not require the supporting documentation (the administrator's report and statement plus details of the proposed deed of company arrangement) to be sent with the written notice. Instead it was sufficient for the written notice to inform creditors that the relevant information required to be provided by the administrators could be obtained by telephoning the administrators and requesting copies, and that that information could also be viewed and downloaded from two web sites.

(d) *Re Pumpkin Patch Ltd*

In *Re Pumpkin Patch Ltd* [2016] NZHC 2771, the court made an order under s 239ADO(1) allowing for documents "accompanying" the notice of the watershed meeting (as per s 239AU) to be made "available" (rather than "sent") to the company's creditors by publication on the administrators' website. In doing so, the administrators were required to send each creditor a letter (separate from the watershed meeting notice) referring creditors to the administrators' website and advising that copies of the s 239AU "accompanying documents" could be sent by post or e-mail to a particular creditor on request. The Court considered that these arrangements would maximise the likelihood that creditors would have sufficient time to consider the documents before the watershed meeting. The order also preserved the option of a creditor obtaining hard copy versions of the documents if that is what the creditor preferred.

(e) *Re Kruger Engineering Pty Ltd*

In *Re Kruger Engineering Pty Ltd* [2006] NSWSC 1063, a watershed meeting was convened by the company's administrator under the Part 5.3A equivalent of s 239AU. The deed proposed was voted on and approved, but the company's sole director sought and obtained a postponement of the deadline for the deed's execution. At a further meeting of the creditors the director on advice from his own insolvency consultant argued that the objects of the approved deed would likely be unachievable. He then outlined a proposal for an alternative deed of company arrangement. The administrator then called another meeting of creditors at a later date. The notice of the meeting outlined the terms of the revised deed. At that meeting the new deed was tabled. The creditors voted on and voted for the new deed of company arrangement (both by number and by value). The director's insolvency advisor was appointed deed administrator. Later, when doubts surfaced about whether correct process had been followed (the last meeting of creditors had not been convened under the Part 5.3A equivalent of s 239AU; that having been done only for the first meeting at which the original deed of company arrangement had been voted on), it was decided to make an application to Court for an order under the Part 5.3A equivalent of s 239ADO. The relief sought was validation of the second deed of company arrangement. Notice of this application was given to each creditor with an invitation to appear if any wished to be heard by the Court. The Court decided that it had the power to make the requisite s 447A order [s 239ADO order] to validate the later deed of company arrangement and that it would so. There had already been a clear expression of the creditor's wishes at the last meeting. The new deed of company arrangement had been in operation for five months and everyone had conducted themselves on the basis that this deed was valid. Furthermore, no creditor has availed itself of the opportunity to oppose the application, when they had all been given the opportunity to do so.

CA239ADO.02 Scope of the power

In *Australasian Memory Pty Ltd v Brien* (2000) 172 ALR 28 (HCA), the High Court of Australia expressed its views on the scope of s 447A (the Part 5.3A equivalent of s 239ADO).

To begin with (at p 33):

> "orders that may be made under section 447A(1) are described as orders about how Part 5.3A is to operate '*in relation to a particular company*'. The power is not cast in terms of a power to cure defects or to remedy the consequences of some departures from [the voluntary administration] scheme. Nor is there anything on the face of section 447A(1) that suggests that it should be read down. In particular the words of the provision are wide enough to confer powers to make orders which will have effect in the future but which are occasioned by something done (or not done) under the other provisions of Part 5.3A before the application is made under section 447A(1)"

Furthermore (at pp 33 to 34):

> "it is clear from [the examples given in sub section (2) — such as the power of the Court to act if it considers that the other statutory provisions governing the voluntary administration scheme are being abused] that they assume that orders under section 447A(1) may alter the operation of [those] other provisions…[so as to] go beyond a curial determination of what is the effect of [those provisions] on a particular company… [T]he orders contemplated [by section 447A] are orders that alter how the Part **is to** operate in relation to a particular company, not how the Part **does** operate in relation to that company"

Accordingly (at p 35):

> "It is not right to seek to characterise s 447A as some general source of power to which resort cannot be had because to do so would 'circumvent' the statutory limitations [on say the Court's ability to extend the notice period for the watershed meeting]. So to characterise s 447A is to give to all of the other provisions of Pt 5.3A a fixed and unchanging operation in relation to all companies. Yet the evident legislative intention of s 447A is to permit alterations to the way in which Pt 5.3A *is to* operate".

In addition, while (at p 36):

> "it may be accepted that the expression 'how this Part *is to* operate' is an expression that looks to the future, not the past … [that] does not preclude the making of an order with future effect, but in respect of past matters or events [so long as the order takes effect only from the time of its making]"

On this basis there was nothing to limit a s 447A order to an existing administration or to a deed of company arrangement only while it is in force. Section 447A applies in relation to a *particular company*, not just in relation to a *particular administration*.

Finally, in considering the proposition that no s 447A(1) order should disturb rights that have accrued or vested the Court distinguished two different situations. The first concerned the situation where the company had come out of voluntary administration and had been returned to the control of the company's directors. The Court was not willing to say whether a s 447A order should never be made to wind back transfers of shares or other kinds of transactions upon say the reinstatement of a voluntary administration. The facts of the particular case before it, did not demand that it take a final view on issues of this type. However the Court did say that where an administration had ended and the company had entered liquidation, an order under s 447A could not be viewed as adversely affecting rights accruing since the end of the voluntary administration. On this basis the Court decided that any defects associated with the holding of a watershed meeting that resulted in the company being put into liquidation, were capable of remediation so as to validate the liquidator's appointment.

CA239ADO.03 Relationship with s 239ADR

An application should not be made under s 239ADO if the purpose of the application is to seek guidance as to how the legislative effect of Part 15A applies in specific circumstances. In that case an application should be for directions under s 239ADR. Furthermore, an application made to the Court that involves a proposal that could affect the rights of third parties, is best done by way of request for directions under s 239ADR rather than as an application for an order under s 239ADO. The giving of directions by the Court does not prevent those that might be adversely affected as a result from arguing a contrary view if the decision of the administrator, based on the directions, is disputed: *Re Zambena Pty Ltd* (1995) 13 ACLC 1020. The alternative is for the Court to adjourn the s 239ADO application to allow third parties that could be affected by the order sought, to be notified: see *Re Edward Gem Pty Ltd* (2005) 141 FCR 408.