

In the High Court of New Zealand
Auckland Registry
I Te Kōti Matua o Aotearoa
Te Rohe o Tāmaki Makaurau

CIV-2023-404-846

in the matter of: a scheme of arrangement under part 15 of the
Companies Act 1993

between: **Embark Education Group Limited**
Applicant

Order of Justice Campbell for service and initial orders

Dated: 11 May 2023



DUPLICATE

Reference: L L Fraser (laura.fraser@chapmantripp.com)
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ORDER OF JUSTICE CAMPBELL FOR SERVICE AND INITIAL ORDERS

To the Applicant

The interlocutory application made by the Applicant, Embark Education Group Limited (**Embark**) on 2 May 2023 was determined by Justice Campbell on 11 May 2023.

The determination was following a hearing held on 10 May 2023 at which K Grant and M Hay appeared for the applicant. The Court received the interlocutory application (without notice) for directions as to service and initial orders under Part 15 of the Companies Act dated 2 May 2023, the affidavit of Christopher John Scott dated 2 May 2023, and the memorandum of counsel dated 2 May 2023.

The following orders were made:

A Service and representation

- 1 That service of the interlocutory application upon all persons affected be dispensed with.
- 2 That personal service of the originating application dated 2 May 2023 on affected persons be dispensed with, and instead, the other affected parties are served in accordance with the orders below.
- 3 Leave is granted to Embark to effect service on those affected persons outside the jurisdiction in the manner referred to below.
- 4 Embark shall provide the Takeovers Panel with all documents filed in this proceeding by electronic means.

B Notice of Scheme Meeting and Shareholder Materials

- 5 Embark shall send the following information (the **Shareholder Materials**) to each of its shareholders who are entitled under the Companies Act 1993 (the **Companies Act**) to receive notice of the meeting of shareholders described in these orders (the **Scheme Meeting**), any option holder in Embark, Embark's directors and Embark's auditors. The Shareholder Materials are to be sent at least ten working days before the Scheme Meeting and in accordance with the requirements of the Companies Act:

- 5.1 formal notice of meeting, which will be accompanied by explanatory information about the scheme of arrangement under Part 15 of the Companies Act (the **Scheme**) and a copy of the Scheme Plan;
- 5.2 a Proxy and Postal Voting Form; and
- 5.3 a virtual meeting guide,



in substantially the same form as the drafts which are referred to in and annexed to the affidavit of Christopher John Scott dated 2 May 2023 save as may be amended, revised or supplemented in accordance with paragraphs [10]-[11].

- 6 Embark shall send the Shareholder Materials to those persons specified in paragraph [5] in:
 - 6.1 electronic format to all persons who have elected to receive documents from Embark in electronic form; and
 - 6.2 by ordinary mail in hardcopy format to all other persons for which Embark has address details recorded.
- 7 Embark shall cause the Shareholder Materials to be lodged on the NZX market announcement platform and ASX market announcements platform promptly following final approval of the same by the Board.
- 8 The Shareholder Materials shall be deemed to have been received by all those to whom they were ordered to be sent 48 hours after the Shareholder Materials are sent in accordance with paragraph [6] above.
- 9 Embark shall make:
 - 9.1 electronic copies of the Shareholder Materials available at the Embark website (www.embarkeducation.com.au/investor-relations); and
 - 9.2 hard copies of the Shareholder Materials available on written request to Embark.
- 10 Embark shall be permitted to make such amendments to the Scheme as Embark may determine are in the best interests of Embark and its shareholders, as well as any inconsequential amendments to the Scheme, and the Scheme so amended will be the Scheme to be submitted to shareholders at the Scheme Meeting for approval;
- 11 Embark shall be permitted to make amendments, revisions and/or supplements to the Shareholder Materials. Should Embark make any material amendments to the Shareholder Materials after the Shareholder Materials have been sent to shareholders and any option holder of Embark, those changes will be notified to such persons as soon as reasonably practicable. Such notification may be made by way of market announcement on the NZX market announcement platform, ASX market announcements platform and on Embark's website at www.embarkeducation.com.au/investor-relations.



- 12 Embark shall provide links to complete copies of the following documents on the website, www.embarkeducation.com.au/investor-relations:
- 12.1 the initial orders made by the Court, and the application for final Court orders, in respect of the Scheme;
- 12.2 relevant Embark NZX and ASX announcements; and
- 12.3 any other relevant updates to shareholders as required.
- 13 Embark shall provide a copy of the relevant Shareholder Materials on written request to any other person who becomes a registered shareholder of Embark before the Scheme Meeting but after the date that would have entitled that holder to receive the Shareholder Materials in accordance with these orders.
- 14 Accidental failure or omission by Embark to send the Shareholder Materials to any persons or the non-receipt of such documents by any persons will not constitute a breach of the orders nor invalidate any resolution passed or proceedings taken at the Scheme Meeting, but if any such failure or omission is brought to the attention of Embark, then it shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.
- 15 Embark is not required to send the Shareholder Materials to those shareholders for whom Embark does not have a known address (as at 18 April 2023, 35 shareholders holding 0.97% of Embark's shares). In the event that any such shareholder contacts Embark to update its address details not less than five working days before the Scheme Meeting, Embark shall send a set of the Shareholder Materials to that shareholder.

C Scheme Meeting

- 16 Embark shall hold the Scheme Meeting on a date to be determined by Embark prior to finalising the Shareholder Materials but not earlier than Tuesday, 6 June 2023, as a hybrid meeting both in person and online at www.virtualmeeting.co.nz/evo23, to seek approval of the Scheme between Embark and Embark's shareholders (subject to any amendment or variation made in accordance with these orders). If Embark considers it necessary or desirable to do so, the Scheme Meeting may be held as a virtual meeting only or on a later date, in each case to be notified by Embark to its shareholders through the NZX market announcement platform, ASX market announcements platform and on Embark's website at www.embarkeducation.com.au.

- 17 Only holders of Embark shares whose names appear in the register of shareholders as at 7.00 pm NZST on the day which is two working days before the Scheme Meeting are entitled to be



represented and vote at the Scheme Meeting or any adjournment or postponement thereof.

18 As to voting on the Scheme:

18.1 all shareholders shall vote on the Scheme as a single class;

18.2 the vote shall be conducted by poll;

18.3 the resolution shall be passed if it is approved by:

(a) a majority of 75 per cent of the votes of the shareholders, being a single interest class, entitled to vote and voting on the resolution; and

(b) a simple majority of the votes of those shareholders entitled to vote;

18.4 the Chairperson of the Scheme Meeting shall not have a casting vote;

18.5 the resolution sought by Embark may be put to the shareholders at the same time as such other resolutions as Embark may determine; and

18.6 subject to these orders, the Scheme Meeting is to be conducted in accordance with the provisions of the Companies Act and Embark's constitution.

19 As to validity of votes:

19.1 to be valid, all votes need to be:

(a) if voting prior to the shareholder meeting:

(i) made online at vote.linkmarketservices.com/EVO using the shareholder's CSN/Securityholder Number, which can be found on the Proxy and Postal Voting Form, at least 48 hours prior to the Scheme Meeting; or

(ii) made by completing and sending the Proxy and Postal Voting Form (enclosed with the Notice of Meeting) by post, email (as a scanned attachment), or delivering it by hand so that the form is received by Link Market Services, at least 48 hours prior to the Scheme Meeting;

(b) cast in person;



- (c) if voting at the virtual meeting, made online via Link Market Services' platform at www.virtualmeeting.co.nz/evo23 and following the voting process instructions in the Virtual Meeting Guide; and
- (d) if voting by proxy, by appointing a proxy online at vote.linkmarketservices.com/EVO, or on a validly completed Proxy and Postal Voting Form received by Embark's share registrar at least 48 hours prior to the Scheme Meeting;

19.2 Embark is entitled to disregard any votes received after the relevant voting deadline; but

19.3 notwithstanding Embark's constitution, Embark may waive, in its discretion, the relevant voting deadline if it deems such waiver to be in its best interests and in the best interests of Embark's shareholders as a whole.

D Reporting the results of the Scheme Meeting

20 Embark shall notify the outcome of the Scheme Meeting by:

20.1 lodging the results on the NZX market announcement platform and the ASX market announcements platform as soon as practicable after voting at the Scheme Meeting is complete; and

20.2 serving written notice on persons entitled under paragraph [26] below to appear and be heard at the hearing of the application for final Court orders. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete.

21 Embark shall, prior to the Court's consideration of the application for final Court orders, file and serve on any party who has filed a notice or an application for leave under order 23 to 24 (as applicable):

21.1 an affidavit or affidavits:

- (a) verifying compliance with these orders;
- (b) confirming the outcome of the Scheme Meeting;
- (c) confirming that the ASX has approved the admission of Embark's new Australian entity to the official list of the ASX;
- (d) confirming the issue of a statement from the Takeovers Panel indicating that the Takeovers Panel has no



objection to an order being made under s 236(1) of the Companies Act;

- (e) confirming that the Australian Securities and Investments Commission has granted relief to deem Embark's new Australian entity to have been continuously quoted; and
- (f) confirming that the Financial Markets Authority has granted relief from the disclosure requirements that would otherwise apply under New Zealand law in relation to the issue and on sale of New Listed Parent shares to New Zealand shareholders in Embark.

E Hearing date for application for final court orders

22 The matter will be called again for a one hour hearing on 21 June 2023 at 10 am (**Final Court Hearing**) in order to hear the originating application for orders approving the Scheme (the **Application for Final Court Orders**).

F Rights of appearance and opposition

23 If the Takeovers Panel, Embark's new Australian entity, or an Embark shareholder or option holder wishes to appear and be heard on the Application for Final Court Orders, leave is not required, but any such party must file a notice of appearance or a notice of opposition (as applicable, and in either case containing an address for service), any affidavits and a memorandum of submissions on which they intend to rely no later than five working days before the hearing date set for the Application for Final Court Orders, and on the same day serve a copy on Embark.

24 If any other person who claims to have an interest in the Scheme wishes to appear and be heard on the Application for Final Court Orders, they must file an application for leave to be heard on the Application for Final Court Orders (containing an address for service), a notice of opposition, any affidavits and a memorandum of submissions upon which that person intends to rely no later than five working days before the hearing date set for the Application for Final Court Orders and on the same day serve a copy on Embark.

25 Embark shall serve on:

25.1 any shareholder or option holder wishing to be heard on the Application for Final Court Orders, copies of all documents filed in support of the Application for Final Court Orders by 5.00 pm on the date that is four working days prior to the Final Court Hearing; and

25.2 any other person claiming to have a proper interest in the Scheme, who has been granted leave to appear and be heard at the hearing of the Application for Final Court Orders, a



copy of the affidavits in support of the Application for Final Court Orders by 5.00 pm on the date that is four working days prior to the Final Court Hearing.

- 26 The only persons entitled to appear and be heard at the hearing of the Application for Final Court Orders will be:
- 26.1 Embark;
- 26.2 Embark's new Australian entity;
- 26.3 an Embark shareholder or option holder, if a notice of appearance or a notice of opposition has been filed in accordance with order 23 above;
- 26.4 the Takeovers Panel, if a notice of appearance or a notice of opposition has been filed in accordance with order 23 above; and
- 26.5 those other persons who claim to have an interest in the Scheme who file an application for leave to be heard and a notice of opposition to the Application for Final Court Orders in accordance with order 24 above, and who are subsequently granted leave to appear and be heard at the hearing of the Application for Final Court Orders.
- 27 If the hearing of the Application for Final Court Orders approving the Scheme is adjourned, only those persons who have filed and served a notice of appearance or a notice of opposition in accordance with orders 23 and 24 above need to be served with notice of the adjourned date.
- G Court file not to be searched**
- 28 That the Court file in this proceeding may not be searched, inspected or copied without leave of the Court.
- H Leave to apply for variation at short notice**
- 29 Embark is granted leave to apply to vary these orders and to apply for such further orders as may be appropriate.

Date: 11 May 2023
Signature:



Registrar/Deputy Registrar

A.T. MITCHELL

Sealed:

2023

