

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

CIV-2023-404-

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

*between:* **Embark Education Group Limited**, a company  
incorporated in New Zealand whose registered office is  
Level 10, 21 Queen Street, Auckland, New Zealand  
*Applicant*

Originating application for orders approving scheme of  
arrangement under Part 15 of the Companies Act 1993

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Dated: 2 May 2023

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**ORIGINATING APPLICATION FOR ORDERS APPROVING SCHEME OF ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

To the Registrar of the High Court at Auckland

**This document notifies you that—**

- 1 The applicant, Embark Education Group Limited, will at on 2023 apply to the court for orders that:
  - 1.1 the proposed scheme of arrangement (the **Scheme**) between the applicant, Embark Education Group Limited (**Embark**) and its shareholders, as described in the Scheme Plan (a draft of which is annexed to this application and the final version of which will be submitted to the Court prior to the hearing of this application) (the **Scheme Plan**), is approved and binding upon Embark, all of its shareholders, and all such other persons as are necessary to give effect to the Scheme; and
  - 1.2 Embark is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.
- 2 The grounds on which each order is sought are as follows and as set out in the accompanying memorandum:
  - 2.1 Part 19 of the High Court Rules requires this application to be made by originating application (High Court Rule 19.2(c));
  - 2.2 s 236(1) of the Companies Act 1993 (the **Companies Act**) provides the Court with powers to make orders that the Scheme is binding on Embark and its shareholders and on such other persons as the Court may specify and upon such terms and conditions as the Court thinks fit;
  - 2.3 by the date on which this application is determined Embark will have:
    - (a) complied with the initial orders made by this Court and the requirements of Part 15 of the Companies Act; and
    - (b) fairly put the Scheme to the class of shareholders affected by the proposal, who will be fairly represented by those in attendance at the meeting;
  - 2.4 the proposed arrangement affects the voting rights of a code company, and accordingly, pursuant to s 236A of the Companies Act:

- (a) Embark has notified the Takeovers Panel of this application;
- (b) by the date on which this application is determined, Embark's shareholders will have approved the Scheme in accordance with s 236A(4):
  - (i) by resolution approved by a majority of 75 per cent of the votes of the shareholders in each interest class entitled to vote and voting on the question; and
  - (ii) by resolution approved by a simple majority of the votes of those shareholders entitled to vote;
- (c) by the date on which this application is determined, Embark will have filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to an order being made under s 236(1);

2.5 the Scheme is such that:

- (a) an intelligent and honest person of business acting in respect of his or her interest would reasonably approve it; and
- (b) it is generally fair and equitable.

3 The application is made in reliance on:

- 3.1 Part 15 of the Companies Act, particularly s 236, 236A and Schedule 10 of the Companies Act;
- 3.2 Part 19 of the High Court Rules;
- 3.3 *Re Michael Hill International Ltd* [2016] NZHC 1114; *Re Abano Healthcare Group Ltd* [2020] NZHC 3343; *Re Fliway Group Ltd* [2017] NZHC 3216; *Re Nuplex Industries* [2016] NZHC 1677; *Weatherson v Waltus Property Investments Ltd* [2001] 2 NZLR 103 (CA); *Re CM Banks Limited* [1944] NZLR 248 (CA); *Re PGG Wrightson Ltd* [2019] NZHC 1780; *Re Tilt Renewables Ltd* [2020] NZHC 1398; *Re Tower Ltd* [2022] NZHC 328; *Re Avita Medical Ltd (No 2)* [2020] FCA 674 and other cases as set out in the memorandum of counsel filed in support of the application (without notice) for initial orders and in support of this application;
- 3.4 the affidavit of Christopher John Scott dated 2 May 2023, and any further affidavits/affirmations to be filed in support of this application; and

3.5 the memorandum of counsel filed in support of the application (without notice) for initial orders and in support of this application dated 2 May 2023.

Date: 2 May 2023

This document is filed by Laura Louise Fraser, solicitor for Embark Education Group Limited, of the firm Chapman Tripp. Documents for the applicant should be served by email to all of the email addresses on the front page of this document.

Provided that documents are served by email, documents may also be:

(a) posted to the solicitor at PO Box 2206, Auckland 1140; or

(b) hand delivered to level 34, PwC Tower, 15 Customs Street West, Auckland CBD, Auckland 1010.