

MEDIA RELEASE
21 OCTOBER 2020

SEALED FINAL ORDERS OF THE HIGH COURT

Metlifecare Limited (**NZX: MET, ASX: MEQ**) has provided a copy of the sealed final orders in relation to its scheme of arrangement.

This announcement is authorised for release to the market by the Company Secretary.

Ends

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About Metlifecare

Metlifecare is a leading New Zealand owner and operator of retirement villages, providing rewarding lifestyles and outstanding care to more than 5,600 New Zealanders. Established in 1984, it currently owns and operates a portfolio of 25 villages in areas with strong local economies, supportive demographics and high median house prices, located predominantly in New Zealand's upper North Island.

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

CIV-2020-404-1433

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

between: **Metlifecare Limited**
Applicant

Final orders approving scheme of arrangement under Part 15 of
the Companies Act 1993

Dated: 20 October 2020



Reference: Michael Arthur (michael.arthur@chapmantripp.com)
Liora Bercovitch (liora.bercovitch@chapmantripp.com)

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**FINAL ORDERS APPROVING SCHEME OF ARRANGEMENT UNDER
PART 15 OF THE COMPANIES ACT 1993**

To the Applicant, Metlifecare Limited

The originating application made by the applicant, Metlifecare Limited, on 31 August 2020 was determined by the Honourable Justice Lang on 20 October 2020.

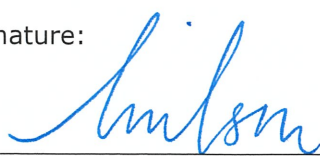
The determination was made following a hearing held on 20 October 2020. The Court heard from Mr Arthur, Mr Wallis and Ms Bercovitch, counsel for the applicant, and Mr Galbraith QC and Mr Wilson, counsel for Asia Pacific Village Group Ltd. The Court received: memoranda of counsel from Mr Arthur, solicitor for the applicant, dated 31 August 2020, 8 October 2020, as well as an outline of submissions dated 12 October 2020. The Court read the originating application for orders approving the scheme of arrangement under Part 15 of the Companies Act 1993 dated 31 August 2020, the affidavits of Kimmitt Rowland Ellis dated 31 August 2020, 7 October 2020, and 12 October 2020, the affidavits of Grant Robert Graham dated 31 August 2020 and 12 October 2020, the affidavits of Nathalie Brabers-Jastrow dated 21 August 2020 and 7 October 2020, the affidavit of Richard Charles Arthur Thomson dated 12 October 2020, the affidavit of Mark James Binns dated 12 October 2020 and the affidavit of Kayla Christine Grant dated 19 October 2020. The Court received a notice of opposition to the application for orders approving the scheme dated 6 October 2020, memoranda of counsel from Mr Lindsay dated 6 October 2020 and 15 October 2020, affidavit of Jai Basrur dated 2 October 2020, affidavits of Craig Nathen Priscott dated 6 October 2020 and 15 October 2020 and affidavit of Michael Midgley dated 14 October 2020. The Court also received a memorandum of counsel from Mr Lindsay dated 19 October 2020 withdrawing the opposition to the application.

The following orders were made:

- 1 The proposed scheme of arrangement between the applicant, Metlifecare Limited (*Metlifecare*) and its shareholders, as described in the Scheme Plan (**annexed** to these orders) is approved and binding upon Metlifecare, all of its shareholders, Asia Pacific Village Group Limited, and all such other persons as are necessary to give effect to the Scheme; and
- 2 Metlifecare is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.

Date: 20 October 2020

Signature:


Registrar/Deputy Registrar

ISABELLA WILSON
DEPUTY REGISTRAR



ANNEXURE B: SCHEME PLAN

SCHEME PLAN

for a **scheme of arrangement** under Part 15 of the Companies Act 1993

between

Metlifecare Limited a company incorporated in New Zealand whose registered office is Level 4, 20 Kent Street, Newmarket, Auckland 1023, New Zealand (**Target**)

and

Scheme Shareholders (as defined in clause 7.1)

and

Asia Pacific Village Group Limited a company incorporated in New Zealand whose registered office is Level 22, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand (**Bidder**)

1. CONDITIONS

The Implementation of the Scheme is conditional on:

- (a) each of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its respective terms before 8.00am on the Implementation Date; and
- (c) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by Target and Bidder having been satisfied or waived (to the extent capable of waiver) before 8.00am on the Implementation Date.

2. CONSIDERATION INTO TRUST ACCOUNT

2.1 Obligation to pay Consideration into trust account

Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(g) and 3.1(h) of the Scheme Implementation Agreement), Bidder must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by Computershare (the **Funds** and that account the **Trust Account**).

2.2 Details of Trust Account

- (a) Subject to clause 2.2(b), the Trust Account will be held and operated by Computershare on the basis that the Funds are held on trust for Bidder and to its order, such that only Bidder may direct how the Funds will be paid from the Trust Account.
- (b) Clause 2.2(a) is subject to a standing written direction from Bidder to Target and Computershare to make payment of the Consideration to the Scheme Shareholders upon transfer of the Scheme Shares to Bidder under clause 3(a).
- (c) The details of the Trust Account will be provided to Bidder by Computershare not less than five Business Days before the Implementation Date.

2.3 Interest

Any interest earned on the amount deposited in the Trust Account will be payable to Bidder by Computershare as directed by Bidder.

2.4 Scheme not implemented

Should the implementation of the Scheme not occur by 5.00 pm on the Implementation Date for any reason, Computershare will immediately repay the Funds to Bidder to such New Zealand dollar denominated account(s) instructed to Computershare by Bidder.



3. IMPLEMENTATION

Subject to the conditions set out in clause 1 being satisfied and the Consideration having been deposited into the Trust Account in accordance with clause 2.1 and Bidder having provided the written direction required by clause 2.2(b), commencing at 9.00am on the Implementation Date and in the following order:

- (a) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder and Target must procure Computershare to enter the name of Bidder in the Register as holder of all of the Scheme Shares; and then
- (b) in accordance with the instructions in clause 2.2(b) and subject to compliance in full with clauses 2.1 and 3(a), Target must instruct Computershare to pay or procure the payment from the Trust Account of the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register as at 5.00 pm on the Scheme Record Date.

4. PAYMENT OF THE CONSIDERATION

4.1 Method of payment

The payment obligations of Target under clause 3(b) will be satisfied by:

- (a) where a Scheme Shareholder has, not less than five Business Days before the Scheme Record Date, provided bank account details to enable Computershare and Target to make payments by electronic funds transfer, Computershare must pay the Consideration to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder (unless Target in its absolute discretion elects to make the payment in accordance with clause 4.1(b)); or
- (b) otherwise by Computershare dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at 5.00 pm on the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.2).

4.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 4.1, the Consideration is payable to the joint holders and any cheque required to be sent under this Scheme Plan will be made payable to the joint holders and sent to either, at the sole discretion of Bidder, the holder whose name appears first in the Register as at 5.00 pm on the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be sent to either, at the sole discretion of Target, the holder whose name appears first in the Register as at the Scheme Record Date or to the joint holders.

4.3 Surplus in trust account

To the extent that, following satisfaction of the obligations under clause 3(b), there is a surplus in the Trust Account, that surplus (less the aggregate amount of any cheques dispatched under clause 4.1(b) which remain unpaid, any amount retained under clause 4.5(b) and bank fees and other third party charges directly in connection with the account) shall be promptly paid to Bidder.

4.4 Unclaimed monies

- (a) Target may cancel, and may instruct Computershare to cancel, a cheque issued under clause 4.1(b) if the cheque is returned to Target or has not been presented for payment within 12 months after the Implementation Date, but such cancellation will not extinguish a Scheme Shareholder's claim.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target, Target must either
 - (i) make an electronic funds transfer to a bank account nominated in writing by the Scheme Shareholder; or



- (ii) reissue, or procure the reissue of, a cheque that was previously cancelled under clause 4.4(a) or in respect of an electronic funds transfer that was rejected by the recipient bank.

4.5 Orders of a court or Government Agency

Notwithstanding any other provision of this Scheme Plan, if written notice is given to Target prior to the Scheme Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Target in accordance with clause 3(b), Target will be entitled to procure, and Bidder will be deemed to have instructed Computershare to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 3(b), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 3(b) is permitted by that order or direction or otherwise by law, and any amount so retained under this clause 4.5(b) may be held by Target or any of Target's related companies, provided that Bidder procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of Bidder's and Target's obligations under clause 3(b) with respect to the amount so provided or retained.

5. DEALING IN SHARES

5.1 Recognition of dealings

To establish the Identity of the Scheme Shareholders:

- (a) dealings in Shares will only be recognised if:
 - (i) in the case of dealings of the type to be effected through NZX's clearing and settlement system, the transferee is registered in the Register as the holder of the relevant Shares as at 5.00 pm on the Scheme Record Date; and
 - (ii) in all other cases, registrable transmission applications or transfers in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00 pm on the Scheme Record Date at the place where the Register is kept; and
- (b) Target must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme Plan and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after 5.00 pm on the Scheme Record Date or received prior to such time, but not in registrable or actionable forms.

5.2 Register

- (a) Target must register registrable transmission applications or registrable transfers of Shares in accordance with clause 5.1(a)(ii) on or before 5.00pm on the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 5.2(a) requires Target to register a transfer that relates to a transfer of Shares on which Target has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares, or any interest in them, on or after 5.00 pm on the Scheme Record Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Target and Bidder shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, Target must maintain the Register in accordance with the provisions of this clause 5.2 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to and the Consideration.



- (d) From 5.00pm on the Scheme Record Date, each entry that is current on the Register (other than entries on the Register in respect of Bidder), will cease to have effect except as evidence of entitlement to the Consideration in respect of Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Scheme Record Date and in any event by 5.00pm on that day, Target must make available to Bidder in the form Bidder reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Scheme Record Date.

6. GENERAL PROVISIONS

6.1 Amendments to Consideration

Bidder may increase the Consideration by written notice at any time to Target prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by Target.

6.2 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Bidder on the Implementation Date that all of their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights and entitlements attaching to those shares.

6.3 Authority given to Target

Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints Target as its attorney and agent for the purpose of enforcing the Deed Poll against Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Target as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Target accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 6.3 to one or more of Target's directors or senior managers.

6.4 Binding effect of Scheme

- (a) The Scheme binds:
 - (i) Target;
 - (ii) Bidder; and
 - (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Target.

6.5 End Date

If the Scheme has not become Unconditional on or before the date that is 10 Business Days after the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Bidder of any Funds deposited in accordance with clause 2 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

6.6 Successor obligations

To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Bidder or Target that continues or arises after the Implementation of the Scheme, such obligation may instead be performed by any successor or related company of Bidder or Target (as applicable) in which case the obligation will be satisfied as if performed by Bidder or Target (as applicable).

6.7 Governing law

- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- (b) The courts having jurisdiction in New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the exclusive jurisdiction of the courts having jurisdiction in New Zealand.

7. DEFINITIONS AND INTERPRETATION

7.1 Definitions

In this Scheme Plan:

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand and excluding any day between 24 December and 3 January;

Companies Act means the Companies Act 1993;

Computershare means Computershare Investor Services Limited;

Conditions means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) of the Companies Act and approved in writing by Target and Bidder in accordance with clause 3.2 of the Scheme Implementation Agreement;

Consideration means NZ\$6.00 in cash in respect of each Scheme Share held by a Scheme Shareholder as at 5.00 pm on the Scheme Record Date, as reduced by the per Share value of any dividend, the record date for which falls between the date of the Scheme Implementation Agreement and the Implementation Date;

Court means the High Court of New Zealand, Auckland Registry;

Deed Poll means the deed poll to be entered into by Bidder in favour of the Scheme Shareholders;

Encumbrance means any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means:

- (a) 25 January 2021, subject to extension under clause 7.4 of the Scheme Implementation Agreement; or
- (b) any other date agreed in writing by Bidder and Target;

Final Orders Date means the day on which final orders of the Court made under section 236(1) (and section 237, if applicable) of the Companies Act are granted;

Funds has the meaning given in clause 2.1;

Government Agency means any government, any department, officer or minister of any government, and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity, including the Statutory Supervisors, and any court;



Implementation Date means the day on which the Scheme is to be implemented, being two Business Days after the Scheme Record Date, or such other date as Bidder and Target agree in writing;

NZX means NZX Limited or the main board financial market that it operates, as the context requires;

Register means the register of Shares maintained by Computershare on behalf of Target;

Registered Address means, in relation to a Shareholder, the address shown in the Register as at the Scheme Record Date;

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Bidder and Target in writing;

Scheme Implementation Agreement means the scheme implementation agreement dated 10 July 2020 between Bidder and Target;

Scheme Meeting means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) of the Companies Act in respect of the Scheme and including any meeting convened following any adjournment or postponement of that meeting;

Scheme Record Date means 5.00 pm on the date which is 5 Business Days after the Final Orders Date or such other date agreed between Bidder and Target in writing;

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Scheme Record Date;

Scheme Shares means all of the Shares on issue as at the Scheme Record Date;

Share means a fully paid ordinary share in the capital of Target;

Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time;

Statutory Supervisor means the statutory supervisor of each retirement village operated by the Target and appointed in accordance with the Retirement Villages Act 2003;

Trust Account has the meaning given in clause 2.1; and

Unconditional means the satisfaction of each of the Conditions.

7.2 Interpretation

In this Scheme Plan:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme Plan;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (e) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (g) a reference to a document (including this Scheme Plan) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) the word includes in any form is not a word of limitation;
- (i) a reference to \$, NZ\$ or dollar is to New Zealand currency, unless denominated otherwise;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Auckland, New Zealand;
- (k) a reference to a party to a document includes that party's successors and permitted assignees; and

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- (l) no provision of this Scheme Plan will be construed adversely to a party because that party was responsible for the preparation of this Scheme Plan or that provision.

7.3 Business Day

Where the day on, or by which, any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day, unless otherwise indicated.

