

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

CIV-2018-404-237

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

and in the matter of: **Trilogy International Limited**, a duly incorporated
company having its registered office at Level 6, Chelsea
House, 85 Fort Street, Auckland, and listed on the NZX
and ASX as a holding company for businesses that
manufacture, distribute and sell home fragrances,
skincare and other cosmetic and natural products
Applicant

Initial orders of the Honourable Justice Edwards as to service,
representation and directions

Dated: 22 February 2018



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**CHAPMAN
TRIPP** 

INITIAL ORDERS OF THE HONOURABLE JUSTICE EDWARDS AS TO SERVICE, REPRESENTATION AND DIRECTIONS

To the applicant

The interlocutory application made by the applicant on 19 February 2018 was determined by the Honourable Justice Edwards on 22 February 2018.

The determination was made following a telephone conference hearing held on 22 February 2018. The Court heard from Mr Scorgie and Mr Wallis, counsel for the applicant.

The following orders were made:

A Service and representation

- 1 That service of this interlocutory application upon all persons affected be dispensed with.
- 2 Directing that TIL send to CITIC Capital China Partners III, L.P (*CITIC*), TIL NZ Rose Investments Limited (*BidCo*) and the Takeovers Panel copies of all documents it files in this proceeding.
- 3 Directing that personal service of the originating application dated 19 February 2018 on affected persons (other than CITIC and BidCo) be dispensed with, and instead, that the other affected parties be served in accordance with the orders below.
- 4 Granting leave for the applicant to effect service on those affected persons outside the jurisdiction in the manner referred to below.

B Notice of Scheme Meeting and Shareholder Materials

- 5 Requiring TIL to send the following information (the *Shareholder Materials*) to each of its shareholders who is entitled under its constitution to receive notice of the meeting of shareholders described in these orders (the *Scheme Meeting*), TIL's directors and TIL's auditors, such Shareholder Materials to be sent at least ten working days before the Scheme Meeting and in accordance with the requirements of the Companies Act 1993 (*Companies Act*);
 - 5.1 the proxy/voting forms; and
 - 5.2 the Scheme Booklet, which will contain the following materials:
 - (a) the Chairperson's letter;
 - (b) the formal notice of meeting;
 - (c) information about the Scheme, including:
 - (i) a summary of the Scheme;



- (ii) a summary of both the reasons to vote in favour of the Scheme and the reasons to vote against the Scheme;
- (d) information equivalent to Schedule 1 of the Takeovers Code;
- (e) information equivalent to Schedule 2 of the Takeovers Code;
- (f) the Independent Adviser's Report;
- (g) the Scheme Plan; and
- (h) the Deed Poll.

in substantially the same form as the drafts which are referred to in and annexed to the affirmation of Stephen John Sinclair.

- 6 Requiring that the Shareholder Materials be sent to those persons specified in paragraph 5 in:
 - 6.1 electronic format to all shareholders who have elected to receive documents from TIL in electronic form only; and
 - 6.2 by ordinary mail in hardcopy format to all other shareholders.
- 7 Directing that the approved Scheme Booklet be promptly lodged on NZX Main Board/securities market (*NZX Main Board*) and ASX's market announcement platform.
- 8 Directing that the Shareholder Materials 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 Directing that TIL make:
 - 9.1 electronic copies of the Shareholder Materials available at the TIL website (<http://investors.tilbrands.com/investor-centre/?page=scheme>);
 - 9.2 hard copies of the Shareholder Materials available for inspection and removal from TIL's offices at Level 6, Chelsea House, 85 Fort Street, Auckland Central, 1010, New Zealand or Chapman Tripp's offices at Level 35, 23 Albert Street, Auckland 1010, New Zealand, or on written request to TIL;
- 10 Permitting TIL to make amendments, revisions and/or supplements to the Shareholder Materials. Should TIL make any material amendments after the Shareholder Materials have been sent to shareholders, those changes will be notified to shareholders as soon



as reasonably practicable. Such notification may be made by way of market announcement to the NZX Main Board, ASX's market announcement platform and on TIL's website at <http://investors.tilbrands.com/investor-centre/?page=scheme>.

- 11 Requiring TIL to upload complete copies of the following documents to the website <http://investors.tilbrands.com/investor-centre/?page=scheme>:
 - 11.1 the Scheme Booklet (including the Independent Adviser's Report);
 - 11.2 the initial orders made by the Court, and the application for final Court orders, in respect of the Scheme;
 - 11.3 the Takeover Panel's statement, indicating that the Takeovers Panel is inclined to make no objection to an order being made under s 236(1) of the Companies Act;
 - 11.4 the Scheme Implementation Agreement (in full);
 - 11.5 technical appendices to the Independent Adviser's Report;
 - 11.6 relevant TIL, NZX and ASX announcements; and
 - 11.7 any other relevant updates to shareholders as required.

- 12 Requiring TIL to provide a copy of the relevant Shareholder Materials on written request to any other person who becomes a registered shareholder of TIL after the date that would have entitled that holder to receive the Shareholder Materials in accordance with these orders.

- 13 That the accidental failure or omission by TIL 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 TIL, then it shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

- 14 That TIL is not required to send the Shareholder Materials to those shareholders for whom TIL does not have known addresses (as at 16 February 2018, 15 shareholders holding 0.093% of TIL's shares). In the event that any of those shareholders contacts TIL to update their address details not less than 5 working days before the Scheme Meeting, TIL is required to send a set of the Shareholder Materials to that shareholder.



C Scheme Meeting

- 15 Directing TIL to hold the Scheme Meeting in Auckland, at 10:00am on 14 March 2018, to seek approval of the Scheme between TIL, CITIC, BidCo and TIL's shareholders (subject to any amendment or variation made in accordance with these orders).
- 16 Directing that only holders of TIL shares whose names appear in the register of shareholders as at 7:00pm on 12 March 2018 are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof.
- 17 Directing that:
- 17.1 Compañía de Inversiones y Desarrollo Sur Limitada (*CIDSUR*), a current shareholder of TIL, whose shares will be transferred to TIL and cancelled by 30 March 2018, shall comprise a separate interest class for the purposes of s 236A(4)(a);
- 17.2 all other shareholders (the *Non-CIDSUR Shareholders*) shall vote on the Scheme as a single class;
- 17.3 the vote be conducted by poll;
- 17.4 the resolution shall be passed if it is approved by all of the following:
- (a) *CIDSUR*, with TIL voting as its attorney for the purposes of the vote;
- (b) a majority of 75% of the votes of the *Non-CIDSUR Shareholders* entitled to vote and voting on the resolution; and
- (c) by a simple majority of the votes of all of those shareholders entitled to vote;
- 17.5 the Chairperson of the Scheme Meeting shall not have a casting vote;
- 17.6 the resolution sought by TIL may be put to the shareholders at the same as, or incorporated into, the resolutions as to class composition as required by Part 15 of the Companies Act; and
- 17.7 subject to these orders, the Scheme Meeting is to be conducted in accordance with the provisions of the Companies Act and TIL's constitution.
- 18 Directing that:
- 18.1 to be valid, all proxy votes need to be:



- (a) mailed to the Registrar, Computershare Investor Services Limited, Private Bag 92119, Auckland 1142, New Zealand; or
- (b) mailed to the Registrar, Computershare Investor Services Pty Limited, GPO Box 3329, Melbourne Vic 3000, Australia; or
- (c) lodged online at www.investorvote.co.nz; or
- (d) faxed to +649 488 8787;

by 10:00am on 12 March 2018 (*Proxy Deadline*);

18.2 TIL is entitled to disregard any proxy votes received after the Proxy Deadline; but

18.3 Notwithstanding TIL's constitution, TIL may waive, in its discretion, the Proxy Deadline if it deems such waiver to be in its best interests and in the best interests of TIL's shareholders as a whole.

D Reporting the results of the Scheme Meeting

19 Requiring TIL to notify the outcome of the Scheme Meeting by:

19.1 lodging the results on NZX and ASX Main Boards' market announcement platforms as soon as practicable after voting at the Scheme Meeting is complete; and

19.2 serving written notice on persons entitled under paragraph 25 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.

20 Requiring TIL, prior to the Court's consideration of the application for final Court orders, to file and serve on any party who has filed a notice or an application for leave under order 22 to 23 (as applicable), an affidavit or affidavits:

20.1 verifying compliance with these orders;

20.2 confirming the outcome of the Scheme Meeting; and

20.3 confirming the issue of a Takeovers Panel no-objection letter and approval from NZX if those have been obtained.

E Hearing date for application for final court orders

21 Directing that the matter will be called again at a date to be fixed by the Court not earlier than 28 March 2018 in order to hear the originating application for orders approving the Scheme (the *Application for Final Court Orders*).



F Rights of appearance and opposition

- 22 Directing that, if any of CITIC, BidCo, any Non-CIDSUR Shareholder(s) or the Takeovers Panel wish 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 by 21 March 2018, and on the same day serve a copy on TIL.
- 23 Directing that 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 by 21 March 2018 and on the same day serve a copy on TIL.
- 24 Directing that by 23 March 2018 TIL serve on any party which is entitled under paragraph 25 to appear and be heard on the Application for Final Court Orders, copies of all documents filed in support of the Application for Final Court Orders.
- 25 Directing that the only persons entitled to appear and be heard at the hearing of the Application for Final Court Orders will be:
- 25.1 TIL;
- 25.2 CITIC, if a notice of appearance has been filed in accordance with order 22 above;
- 25.3 BidCo, if a notice of appearance has been filed in accordance with order 22 above;
- 25.4 any of the Non-CIDSUR Shareholders of TIL or the Takeovers Panel, having filed a notice of appearance or a notice of opposition to the Application for Final Court Orders in accordance with order 22 above;
- 25.5 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 23 above, and who are subsequently granted leave to appear and be heard at the hearing of the Application for Final Court Orders.
- 26 Directing that 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 22 and 23 above need to be served with notice of the adjourned date.



Court file not to be searched

27 That the Court file in this proceeding may not be searched, inspected or copied without leave of the Court.

Leave to apply for variation at short notice

28 Granting TIL leave to apply at short notice to vary these orders and to apply for such further orders as may be appropriate, including without limitation any material changes to the Shareholder Materials.

Date: 22 February 2018

Signature:



**R KUMAR
DEPUTY REGISTRAR**



Registrar/Deputy Registrar