

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

CIV-2023-404-141

Under Part 19 of the High Court Rules

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

And in the matter of:

Pushpay Holdings Limited, a duly incorporated company, having its registered office
at Level 6, 167 Victoria Street West, Auckland, New Zealand

Applicant

**Initial orders under section 236 of the Companies Act 1993 relating
to an originating application for orders approving an arrangement
under Part 15 of the Companies Act 1993**

2 February 2023



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HORTON
LUSK**

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BEFORE THE HONOURABLE JUSTICE GAULT

To: Pushpay Holdings Limited (“**Pushpay**”); all Scheme Shareholders in terms of the Scheme Plan; Pegasus Bidco Limited (“**Bidder**”), Oceania Equity Investments Pty Limited (as trustee for Oceania Trust), BGH Capital Pty Limited in its capacity as investment manager or adviser to BGH Capital Fund I, Pegasus Holdings NZ Limited, Pegasus Midco I Limited, Pegasus Midco II Limited, Schrassig Fundamental S.à r.l., Consdorf Adjacent Holdco S.à r.l., Berdorf S.à r.l. and Bertrange S.à r.l. (together, the “**Bidder Entities**”); and the Takeovers Panel (“**Panel**”)

The interlocutory application by Pushpay for initial orders relating to an originating application for approval of a scheme of arrangement under Part 15 of the Companies Act 1993, dated 26 January 2023, was determined by the Honourable Justice Gault on 2 February 2023. The determination was made without a hearing.

The following orders were made:

Timetable

1. Confirming that unless otherwise advised by the Court, the Application for Final Orders will be heard at the Auckland High Court on 17 March 2023 at 10.00am.

Service and representation

2. Directing that formal service of the originating application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993 (the “**Act**”) (the “**Application for Final Orders**”) and this application without notice for initial orders (the “**Application for Initial Orders**”) be dispensed with.
3. Directing Pushpay to serve all documents filed in this proceeding on:
 - (a) the Panel; and
 - (b) the Bidder Entities.
4. Directing that, except as provided in these orders or required by s 236A of the Act:
 - (a) Pushpay is not required to serve any other documents, including any sealed order in this proceeding, on the persons specified in these orders; and
 - (b) if hearing of the Application for Final Orders is adjourned for any reason, Pushpay is required to serve only those persons who are



entitled to appear and be heard under paragraph 25 below with notice of the new hearing date.

Confidentiality and orders that the Court File not be searched

5. That the originating application, all interlocutory applications, affidavits, and all other documents related to approval of the proposed scheme of arrangement (the “**Scheme**”) on the Court File shall not be searched, inspected or copied without the leave of the Court.

Scheme Meeting

6. Directing that shareholders are in the following classes for the purpose of voting at the Scheme Meeting (as defined in paragraph 7(b) below):

(a) *First interest class*: all of the following persons:

- (i) Schrassig Fundamental S.à r.l., Consdorf Adjacent Holdco S.à r.l., Berdorf S.à r.l., and Bertrange S.à r.l.; and
- (ii) Oceania Equity Investments Pty Ltd as trustee for Oceania Trust; and
- (iii) any person who is the registered holder of, but only to the extent that that person holds, Pushpay shares as custodian, nominee or trustee directly or indirectly for any person in paragraph (i) and (ii).

(b) *Second interest class*: all other shareholders in Pushpay.

7. Directing Pushpay to:

(a) hold a special meeting of each interest class of Pushpay shareholders on 3 March 2023 commencing at 11.00am (or, if it becomes necessary or appropriate to adjourn the meeting, on the first practicable date thereafter):

- (i) online, at: www.virtualmeeting.co.nz/pphsm23; and
- (ii) concurrently, at Link Market Services Limited, Level 30, PwC Tower, 15 Customs Street West, Auckland 1010;

(b) as there is more than one interest class, conduct the special meetings of each interest class contemporaneously (the “**Scheme Meeting**”); and



- (c) at the Scheme Meeting, put the Scheme to the Pushpay shareholders for consideration and approval in the manner specified in these orders (the “**Resolution**”).
8. Except as otherwise provided in these orders, directing that the Scheme Meeting be conducted in accordance with Pushpay’s constitution and ss 121 - 125 and Schedule 1 of the Act (including in respect of the chair’s power to adjourn the Scheme Meeting).
9. Directing that Pushpay’s Chair, Graham John Shaw, or his nominee act as the chair of the Scheme Meeting.
10. Directing that only holders of Pushpay shares whose names appear in the register of shareholders as at:
- (a) 7.00pm on 2 February 2023 (“**Scheme Booklet Record Date**”) are entitled to receive a Scheme Booklet (as defined at paragraph 14 below); and
- (b) 7.00pm on 1 March 2023 (“**Shareholder Voting Record Date**”) are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement thereof.
11. Directing that:
- (a) to be valid, all completed proxy votes must be received by Link Market Services Limited (“LINK”), Pushpay’s share registrar, by no later than 11.00am on 1 March 2023 (New Zealand time) (“**Proxy Deadline**”) and can be submitted:
- (i) online: at LINK’s website, vote.linkmarketservices.com/PPH;
- (ii) by email: meetings@linkmarketservices.co.nz;
- (iii) by mail: by sending to LINK at: PO Box 91976, Auckland, 1142;
- (iv) in person: by delivering to LINK at Level 30, PwC Tower, 15 Customs Street West, Auckland 1010;
- (b) Pushpay is entitled to disregard any proxy votes received after the Proxy Deadline; but
- (c) Pushpay may waive, in its discretion, the Proxy Deadline if it considers such waiver to be in its best interests and in the best interests of Pushpay shareholders as a whole.



12. Directing that voting at the Scheme Meeting is to be by way of a poll, rather than by a show of hands.
13. Directing that the Resolution shall be approved if it is passed:
 - (a) by a majority of 75% of the votes of the shareholders in each interest class entitled to vote and voting; and
 - (b) a simple majority of the votes of those shareholders entitled to vote.

Notice of Scheme Meeting and information for shareholders

Scheme Booklet

14. Directing Pushpay to give notice of the Scheme, Scheme Meeting, and Application for Final Orders by distributing a booklet including the following sections, together with a covering letter, drafts of which are at page 645 of the Bundle of Documents attached to the affidavit of Molly Rena Matthews (the “**Scheme Booklet**”), which collectively will constitute part (though not necessarily all) of the materials to be sent to Pushpay shareholders, in accordance with paragraph 15 below:
 - (a) a summary of the key times and dates relevant to the Scheme;
 - (b) a letter from Graham Shaw as Chair of Pushpay’s board of directors addressed to Pushpay shareholders;
 - (c) a section highlighting the action required by shareholders in respect of the Scheme;
 - (d) a notice of meeting including or accompanied by:
 - (i) the formal notice of meeting;
 - (ii) explanatory notes providing procedural details; and
 - (iii) a proxy form for use by shareholders for appointment of a proxy to vote at the Scheme Meeting;
 - (e) a section setting out key considerations relating to shareholders’ votes;
 - (f) a more detailed explanation of how the Scheme will be implemented (including a statement to the effect that Pushpay has applied for, and has been granted, initial orders);
 - (g) information about the Bidder;



- (h) further information about the Bidder. This is intended to be equivalent to the information shareholders would receive under Schedule 1 of the Takeovers Code had the Bidder made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
- (i) further information about Pushpay. This is intended to be equivalent to the information shareholders would receive under Schedule 2 of the Takeovers Code, if the Bidder had made a takeover offer under the Takeovers Code instead of proceeding by a scheme of arrangement;
- (j) a summary of the scheme implementation agreement entered into by the Bidder and Pushpay on 28 October 2022 (the “**Scheme Implementation Agreement**”);
- (k) a glossary;
- (l) an independent adviser’s report prepared by Grant Samuel & Associates Limited on the merits of the Scheme and addressed to the Court for the purposes of s 236(2)(c) of the Act and to Pushpay shareholders;
- (m) a copy of the Scheme Plan, the form of which is attached to the Scheme Implementation Agreement;
- (n) a copy of the executed Deed Poll;
- (o) notice that copies of the orders made by the Court following the hearing of this interlocutory application for initial orders will be available for inspection on the NZX and ASX market announcements platforms; and
- (p) notice that copies of the documents filed in support of the originating application will be provided to shareholders that have filed a notice of appearance or a notice of opposition with the Court.

Distribution of Scheme Booklet

15. Directing Pushpay to:

- (a) distribute the approved Scheme Booklet at least 10 working days before the Scheme Meeting by sending it in accordance with paragraph 15(b) below to:
 - (i) all Pushpay directors;



- (ii) Pushpay's auditors;
 - (iii) all Pushpay shareholders listed on Pushpay's share register as at the Scheme Booklet Record Date;
 - (b) send the approved Scheme Booklet to Pushpay shareholders in terms of the preceding paragraph by sending it to the shareholders' addresses as recorded on Pushpay's share register on the Scheme Booklet Record Date in:
 - (i) electronic format to all shareholders who have elected to receive documents from Pushpay in electronic form, by way of an email providing a link to the approved Scheme Booklet; and
 - (ii) by ordinary mail in hardcopy format to all other shareholders;
 - (c) provide, on request, a copy of the approved Scheme Booklet to any other person who becomes a Pushpay shareholder after the Scheme Booklet Record Date and before the Shareholder Voting Record Date;
 - (d) make hard copies of the approved Scheme Booklet available during normal business hours for inspection and removal from Pushpay's offices at Level 6, 167 Victoria Street West, Auckland, New Zealand, from the day after the date on which the Scheme Booklet is sent to Pushpay shareholders; and
 - (e) make electronic copies of the approved Scheme Booklet available for inspection and download from Pushpay's website, from the day after the date on which the Scheme Booklet is sent to Pushpay shareholders.
16. Directing that the Scheme Booklet be deemed to have been received by all those to whom it was sent in accordance with paragraph 15(b) above.
17. Granting leave to Pushpay to effect service outside New Zealand in the manner referred to in paragraph 15(b) above.
18. Directing that an electronic copy of the approved Scheme Booklet be lodged on the NZX and ASX market announcement platforms on or prior to its distribution to Pushpay shareholders.
19. Directing that if Pushpay accidentally fails or omits to send a Scheme Booklet to any person specified in paragraph 15(a) above or the Scheme Booklet is not received by any such person:



- (a) any such failure or omission does not constitute a breach of the orders made in relation to the Scheme or invalidate any Resolution passed or proceedings taken at the Scheme Meeting; but
- (b) where any such failure or omission is brought to Pushpay's attention, Pushpay shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances.

Amendment of Scheme Booklet

20. Directing that Pushpay may make such amendments to materials contained in the Scheme Booklet as it may determine are in its best interests or the best interests of its shareholders (or other affected or properly interested persons) including as provided for by the Scheme Plan. Where possible, any such amendments to materials in the Scheme Booklet will be:

- (a) made before Pushpay distributes the Scheme Booklet to shareholders and any other person identified in paragraph 15(a) or directed to be served with this application; but
- (b) if any amendment to a document contained in the Scheme Booklet is made after the Scheme Booklet is distributed to Pushpay shareholders and any other person directed to be served with this application:
 - (i) Pushpay will notify those persons of such amendment by lodging a notice on the NZX and ASX market announcement platforms as soon as reasonably practicable, or by other means that it considers will ensure timely notification and receipt; and
 - (ii) Pushpay will not otherwise be obliged to give further notice to any person.

Reporting of the results of the Scheme Meeting

21. Directing Pushpay to notify the outcome of the Scheme Meeting by:

- (a) lodging the results on the NZX and ASX market announcement platforms as soon as practicable after voting at the Scheme Meeting is complete; and
- (b) serving written notice on persons entitled under paragraph 25 below to appear and be heard at the hearing of the Application for Final



Orders. Such notice is to be served as soon as is practicable after voting at the Scheme Meeting is complete.

22. Requiring Pushpay, prior to the Court's consideration of the Application for Final Orders, to file with the Court, and serve on any party who has filed a notice or an application for leave under the orders at paragraphs 23 or 24 (as applicable) at the relevant address for service, an affidavit or affidavits:
- (a) verifying compliance with the requirements of the orders made following hearing of this Application for Initial Orders;
 - (b) including confirmation of:
 - (i) the Resolution voted on at the Scheme Meeting;
 - (ii) in respect of each interest class of shareholders, the number of votes cast for and against the Resolution;
 - (iii) the number of shareholders voting in favour of the Resolution; and
 - (iv) the proportion of the total number of voting rights that were voted in favour of the Resolution.

Rights of opposition and appearance

23. Directing that any shareholder who wishes to appear and be heard on the Application for Final Orders must, by 5.00pm on 10 March 2023, file and serve on Pushpay at C/- Harmos Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz:
- (a) a notice of appearance (containing an address for service within New Zealand); or
 - (b) if they oppose the Application for Final Orders:
 - (i) a notice of opposition (containing an address for service within New Zealand);
 - (ii) any affidavit(s) on which they wish to rely; and
 - (iii) a memorandum of submissions on which they intend to rely.



24.

Directing that any other person who considers that they have a proper interest in the Scheme and who wishes to appear and be heard on the Application for Final Orders to file and serve on Pushpay at C/- Harmos

Horton Lusk Limited, Level 33, Vero Centre, 48 Shortland Street, Auckland 1010, or by email at nathanael.starrenburg@hhl.co.nz by 5.00pm on 10 March 2023 an application for leave to be heard on the Application for Final Orders (containing an address for service in New Zealand), a notice of opposition, any affidavit(s) and a memorandum of submissions.

25. Directing that the only persons entitled to appear and be heard at the Application for Final Orders are:
- (a) Pushpay;
 - (b) the Panel;
 - (c) those persons who file a notice of appearance or opposition in accordance with paragraph 23 above;
 - (d) those persons who are granted leave pursuant to an application made in accordance with paragraph 24 above; and
 - (e) the Bidder Entities.
26. Requiring Pushpay by 5.00pm on 14 March 2023 to serve (at the stated address for service) a copy of all documents filed in support of the Application for Final Orders upon any person entitled under paragraphs 23 or 24 to appear and be heard at the Application for Final Orders and to file and serve any papers in reply.

Leave to return to Court at short notice

27. Granting leave to Pushpay or any other person entitled under paragraph 25 above to appear and be heard at the Application for Final Orders to apply for further orders on 24 hours' notice.

Dated: ²8 February 2023
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S. J. Parker

Registrar/Deputy Registrar
S. J. PARKER
DEPUTY REGISTRAR

