

In the High Court of New Zealand
Auckland Registry

CIV-2020-404-

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

Under Part 19 of the High Court Rules and s239ADO of the Companies Act 1993

In the matter of an application pursuant to s239ADO of the Companies Act 1993 for orders modifying the default statutory requirements under Part 15A of the Companies Act 1993 that relate to creditors' meetings

and in the matter of **STA Travel (NZ) Limited (administrators appointed)**, an incorporated company having its registered office at Telco Building, Level 14, 16 Kingston Street, Auckland, New Zealand

and in the matter of **IEP New Zealand Limited (administrators appointed)**, an incorporated company having its registered office at BDO Auckland, Level 4, Graham Street, Auckland, New Zealand

and in the matter of **NNS New Zealand Limited (administrators appointed)**, an incorporated company having its registered office at Level 10, 220 Queen Street, Auckland, 1010 New Zealand

In the matter of an application by **David Sean Webb**, of Auckland and **Colin David Owens**, of Wellington, as administrators of STA Travel (NZ) Limited (administrators appointed), IEP New Zealand Limited (administrators appointed) and NNS New Zealand Limited (administrators appointed)

Applicants

Originating application without notice for orders modifying the default statutory requirements under Part 15A of the Companies Act 1993 that relate to creditors' meetings

Dated: 26 August 2020

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Originating application without notice for orders modifying the default statutory requirements under Part 15A of the Companies Act 1993 that relate to the convening of creditors' meetings

To: The Registrar of the High Court at Auckland

This document notifies you that—

- 1 The applicants, **David Sean Webb** of Auckland and **Colin David Owens** of Wellington, in their capacity as administrators of STA Travel (NZ) Limited (administrators appointed) (**STA Travel**), IEP New Zealand Limited (administrators appointed) (**IEP**), and NNS New Zealand Limited (administrators appointed) (**NNS**) following their appointment on 24 August 2020, apply for orders under s239ADO of the Companies Act 1993 (the **Act**) that:
 - a this application be permitted to be made on a without notice basis;
 - b the applicants be permitted to send the documents and notices required to be sent to the creditors of STA Travel, IEP and NNS, under Part 15A of the Act:
 - i where the creditor is a preferential or trade creditor for whom the applicants have an email address, by email;
 - ii where the creditor is a customer creditor or other creditor for whom the applicants do not have an email address, by posting advertisements in the *Gazette*, the *New Zealand Herald* and *Stuff* including reference to the availability of the documents and notices on the relevant pages of Deloitte's website; and
 - iii by posting a copy on the STA Travel, IEP and NNS pages of Deloitte's website.
 - c notwithstanding the terms of s239AK and Schedule 5 of the Act, the applicants be permitted to hold creditors' meetings under Part 15A of the Act, including the first creditors' meeting and the watershed meeting, by way of video or telephone conference;
 - d notwithstanding the terms of s239AK(2) of the Act and clauses 6 and 7 of Schedule 5 to the Act, the applicants be permitted to allow voting by electronic means, including email, at creditors' meetings;
 - e the applicants be permitted to table any documents, which they require to table at creditors' meetings under Part 15A of the Act, by means of posting

them on Deloitte's website and directing creditors to them at the relevant creditors' meeting;

- f a copy of this application and the orders of the Court be:
 - i given to creditors of STA Travel, IEP and NNS at the same time and in the same manner as notice of the first meeting of creditors under s239AO is given by the administrators to those creditors;
 - ii posted on the STA Travel, IEP and NNS pages of Deloitte's website within five working days of the above orders being granted;
- g leave is granted to any person who can demonstrate sufficient interest to apply to modify or discharge these orders, including the applicants and any creditor of STA Travel, IEP and NNS; and
- h that the applicants' solicitor-client costs and disbursements of this application are to be an expense incurred by the applicants in carrying out their duties as administrators of STA Travel, IEP and NNS.

2 The grounds on which each order is sought are as follows:

Application should be made on a without notice basis

- a Applications under Part 15A of the Act are to be made by originating application.¹
- b It is in the interests of justice, and of the speedy and inexpensive determination of this application, that this application be commenced without notice because:
 - i creditors must be notified of the first creditors' meeting by Thursday, 27 August 2020 and the meeting must be held by Thursday, 3 September 2020;
 - ii seeking the orders on notice to creditors would cause undue delay and prejudice to the applicants as they would be prevented from complying with their statutory duties to give notice of, and hold, the first creditors' meeting within the specified time; and
 - iii if the application is granted, there is no prejudice caused to creditors.

¹ Rule 19.2 of the High Court Rules 2006.

- c The Court has previously permitted applications of this type under s239ADO of the Act to be made on a without notice basis (see *Re EncoreFX (NZ) Limited* [2020] NZHC 674).

Orders in respect of creditors' meetings

- d The applicants' role as administrators is to advance the objects of s239A of the Act, namely, to provide for the business, property, and affairs of the companies to be administered in a way that:
 - i maximises the chances of the companies, or as much as possible of their business, continuing in existence; or
 - ii if that is not possible, results in a better return for creditors and shareholders of the companies than would result from their immediate liquidation.
- e Under s239ADO of the Act, the Court may make any order, on the application of the administrators, that it thinks appropriate about how Part 15A is to operate in relation to a particular company.
- f The overriding principle is that the Court should only exercise this power to ensure that the objectives of Part 15A, as set out above, are adhered to in relation to the company.
- g The orders sought in this application are designed to avoid unnecessary and disproportionate expense being incurred, and to allow the applicants to comply with the requirements of Part 15A despite the obstacles presented by the 'lockdown' regulations. These goals are consistent with the objects of Part 15A.
- h The grounds for each order sought are set out below.

Sending of documents and notices required under Part 15A of the Act

- i Under Part 15A of the Act, the applicants must send various notices and documents to the creditors of STA Travel, IEP and NNS. In particular:
 - i the applicants must give written notice of the first creditors' meeting to as many of the creditors as reasonably practicable not less than five working days before the meeting;²

² Section 239AO of the Act.

- ii the applicants must give written notice of the watershed meeting, along with the documents set out at s239AU(3), to as many of the creditors as reasonably practicable not less than five working days before the meeting;³ and
 - iii should the applicants decide to call the creditors' meetings of STA Travel and NNS together, on the basis that they are related companies, they are required to give written notice to all the creditors, seeking consent to do so.⁴
- j As set out at paragraph [1(b)] above, the applicants seek orders from the Court modifying the service requirements for these notices and documents, along with any others that may be required under Part 15A of the Act. In particular, the orders sought allow service by email in respect of most preferential and trade creditors and service by advertisement in respect of customer creditors.
- k Pursuant to s239AN of the Act, the applicants must hold the first creditors' meeting within eight working days after the date on which the administration began. The applicants were appointed as administrators of STA Travel, IEP and NNS on 24 August 2020, so the last day on which the first creditors' meeting may be held is 3 September 2020. Written notice of the first creditors' meeting must, accordingly, be given no later than Thursday, 27 September 2020.
- l The applicants are in their early stages of investigations in respect of STA Travel, IEP and NNS. It is, however, apparent that STA Travel and IEP have numerous creditors in the following classes:
- i preferential creditors consisting of the companies' employees and the IRD;
 - ii secured and unsecured trade creditors, including landlords and suppliers; and
 - iii customers owed money by STA Travel and IEP, including those who have paid for services but have not received the services for which they paid, and those on whose behalf refunds have been received from third parties.

³ Section 239AU(1) and (2) of the Act.

⁴ Section 239AL of the Act.

- m Issuing notice by post to creditors in relation to the first creditors' meeting will be expensive and time consuming, and such costs would be detrimental to all creditors and stakeholders in the administration. Additionally, the current 'Level 3 Lockdown' in Auckland makes preparing and sending notices and other documents by post more difficult and undesirable.
- n In the three days available to the applicants between appointment and the last day on which they can give notice of the first creditors' meeting, the applicants hope to be able to collate email details for the preferential creditors and trade creditors, but will not be able to collate the information required to give individual notice by email to each of the customer creditors.
- o Even in the period before the watershed meeting, the applicants may not be able to collate the necessary information in respect of all creditors. In any case, due to the number of likely creditors, giving individual notice to each of the customer creditors will be onerous and expensive. Again, such costs would be detrimental to all creditors and stakeholders in the administration.
- p The orders sought are designed to allow the applicants to give individual notice to creditors where reasonably practicable, while making provision so that the customer creditors, who do not receive individual notice by email, are made aware of meetings by advertisement.
- q All creditors will have access to the relevant documents via Deloitte's website. A link to the relevant page of Deloitte's website will also be posted on IEP's website (if it remains available). STA Travel's website is not currently operational but, if it begins operating again, the applicants will, if possible, also post a link to the documents there. The applicants will also provide a posted copy of any documents to any creditors that request that they be sent.

Holding of creditors' meetings remotely

- r Section 239AK of the Act provides that clause 4 and clauses 6-11 of Schedule 5 to the Act apply to creditors' meetings held under Part 15A of the Act.
- s Clause 1 of Schedule 5, which, accordingly, does not apply to creditors' meetings held under Part 15A of the Act, provides (among other things) that meetings may be held:
 - i by assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting; or
 - ii by means of audio, or audio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting.
- t In the absence of an equivalent clause applying to creditors' meetings under Part 15A of the Act, it is unclear whether, without an order from the Court, they must be held in person or can be held remotely by means of video or telephone conference.
- u Auckland is currently in 'Level 3 Lockdown'. By the date by which the first creditors' meeting must be held, Auckland will be in 'Level 2 Lockdown', but gatherings of more than 10 people will still be prohibited. It is unknown what restrictions will apply when the watershed meeting, or any other subsequent creditors' meetings, will need to be held.
- v Given the number of creditors who may seek to attend the creditors' meetings, it will be impossible to hold them in person without contravening the prohibitions applying to gatherings. Meeting by video or telephone conference will allow the creditors' meetings to go ahead and will allow creditors who wish to do so to participate effectively.

Voting by electronic means

- w In the absence of an order from the Court, s239AK(2) of the Act and clauses 6 and 7 of Schedule 5 to the Act regulate voting at creditors' meetings.
- x Postal voting, and voting by proxy, is permitted under s239AK(2) and clause 7 of Schedule 5, but no specific provision is made for voting by electronic means, such as email.

- y The applicants seek orders permitting voting by electronic means, such as email, in addition to the voting methods specifically allowed under the Act.
- z Voting electronically is similar to postal voting. The customer creditors of STA and IEP are likely to be spread across New Zealand and electronic voting will provide them with a cost effective means of participating in the creditors' meetings.

Tabling of documents

- aa At the first creditors' meeting for each company, the applicants are required to table an interests statement and the directors statement. There are further documents that the applicants may need to file at subsequent creditors' meetings. Given that, if the orders sought are granted, the meetings are to be held by video or telephone conference, the applicants also seek permission to post these documents on Deloitte's website and direct creditors to them.

Other orders

- bb The applicants also seek orders that a copy of the above orders, if granted, be sent to creditors of STA Travel, IEP and NNS in the same way as notices or other documents (as set out in the other orders sought).
- cc The grounds set out above in relation to those other notices and documents apply equally to the service of the orders. Personal service of the orders would be expensive and time consuming and would not be possible in respect of certain creditors.
- dd No prejudice is caused to creditors as they will be given notice of the orders in the same way as for other notices, and should they wish to apply to have the orders modified or discharged, the order requested at paragraph [1(f)] above allows them to do so.

3 The application is made in reliance upon:

- a sections 239A and 239ADO of the Companies Act 1993;
- b rules 7.23, 7.46, 19.2, 19.4 and 19.5 of the High Court Rules 2016;
- c *Re EncoreFX (NZ) Limited* [2020] NZHC 674, *Re Ansett Australia Ltd* (2002) 115 FCR 395, and *Re Pumpkin Patch Ltd* [2016] NZHC 2771.
- d the affidavit of Colin David Owens affirmed in support of this application.

4 I certify that—

- a the grounds set out in paragraph 2 on which the application relies are made out; and
- b all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Dated: 26 August 2020



J A McMillan
Solicitor for the applicants

Address for service:

This document is filed by **James Alexander McMillan**, solicitor for the applicants, of the firm Dentons Kensington Swan, Auckland. The address for service of the applicants is 18 Viaduct Harbour Avenue, Auckland 1010. Documents for service on the applicants may be left at that address for service or may be:

- a posted to the solicitor at c/o Dentons Kensington Swan, Private Bag 92101, Auckland 1142; or
- b left for the solicitor at a document exchange for direction to c/o Dentons Kensington Swan, DX CP22001, Auckland; or
- c emailed to the solicitor at james.mcmillan.nz@dentons.com and rachael.choy@dentons.com.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2020-404-1401

UNDER the Companies Act 1993, section 239ADO
and Part 19 of the High Court Rules

IN THE MATTER OF an application for orders modifying the
default statutory requirements under Part
15A of the Companies Act 1993 that relate
to creditors. meetings

BETWEEN: **STA TRAVEL (NZ) LIMITED**
(Administrators appointed)

AND **IEP NEW ZEALAND LIMITED**
(Administrators appointed)

AND **NNS NEW ZEALAND LIMITED**
(Administrators appointed)

AND **DAVID SEAN WEBB**
and
COLIN DAVID OWENS
(Administrators appointed for STA Travel
(NZ) Ltd and IEP New Zealand Ltd, and
NNS New Zealand Ltd)
Applicants

On the papers:

Counsel: James McMillan / Rachael Choy for the Applicants

Minute: 26 August 2020

MINUTE of ASSOCIATE JUDGE R M BELL

Solicitors:

Dentons Kensington Swan (J A McMillan/R J Choy), Auckland, for the applicants

Email: james.mcmillan.nz@dentons.com / rachael.choy@dentons.com

Case Officer:

Email: Aukuso.Lesa@justice.govt.nz

[1] On 24 August 2020 the applicants were appointed voluntary administrators of STA Travel (NZ) Limited, IEP New Zealand Limited and NNS New Zealand Ltd. They apply under s 239ADO of the Companies Act 1993 for orders modifying the default requirements under Part 15A of the Companies Act for notifying creditors and conducting both the first creditors' meeting and the watershed meeting. Their main reason for seeking the modifications is the impact of the COVID-19 Public Health Response (Alert Levels 3 and 2) Order 2020, which came into force on 12 August 2020. That put Auckland into Level 3 lockdown. The restrictions under the order prevent the first creditors' meeting and a watershed meeting being conducted in person in Auckland.

[2] STA Travel (NZ) Ltd is a travel agency specialising in youth travel. It has 11 stores in New Zealand, all of which have now closed. Its website has been taken offline. Overseas companies in the STA Travel group have also gone into various forms of insolvency administration.

[3] IEP New Zealand Ltd provides work and study abroad support services (both inbound and outbound) to the STA Travel group. That includes assisting inbound customers with applications for working visas.

[4] NNS handles the sale and distribution of an international student identification card that is recognised globally.

[5] The administrators say that STA Travel's affairs are disorganised. They have still to establish the extent of all creditors and what funds if any may be available.

[6] A first creditors' meeting must be held no later than 8 working days of the administrators' appointment, that is, by **Thursday 3 September 2020**. The administrators must give creditors notice of their appointment within three working days of their appointment, that is, by **27 August 2020**.¹

¹ Companies Act 1993, s 239AN, 239AO.

[7] The administrators required leave of the court under s 280 of the Companies Act 1993 to be appointed administrators. Under the court's orders, they are required to give creditors information about their appointment including about conflicts and remuneration.

[8] The administrators consider that because of the current Level 3 lockdown, it would be difficult and undesirable to advise creditors by post. They say that postal delivery may raise health and safety concerns, and there may be delays in posting notices and voting forms. They therefore propose that documents and notices may be sent by email, by advertisement and by posting documents to their website. They propose holding creditors' meetings by video or telephone conference and allowing voting by electronic means. That is to allow creditors' meetings to be run in a timely and safe way.

[9] The Government has announced that Auckland will enter Alert Level 2 next week. Under those restrictions, it will not be possible to have a meeting of more than 10 people. Under Part 15A, a meeting with creditors cannot be run by audio or audio-video conference – at least not without a direction from the court.²

[10] The administrators' proposal is appropriate. But I add one requirement. For any meeting held by audio or audio-visual communication, all creditors taking part must be able to hear each other throughout the meeting.³

[11] Similarly, it is appropriate to allow voting by electronic means, including by email at the meeting. Likewise, the applicants are permitted to table any documents for the meetings by posting them on their website and directing the creditors to those documents during the meetings.

[12] Counsel responsibly referred me to an Australian decision, *Re Ansett Australia Ltd*,⁴ where the court declined to allow administrators to give notice of a creditors' meeting by advertising. I accept counsel's submission that the facts and circumstances of this case are distinguishable from those in *Ansett*.

² Companies Act 1993, s 239AK which refers to Schedule 5, clauses 5-11, but not to clause 1(b) which allows meetings by audio or audio-video conference.

³ Companies Act 1993, Schedule 5, clause 1(b).

⁴ *Ansett Australia Ltd* (2002) 115 FCR 395.

[13] The court has given similar directions for watershed meetings in other voluntary administrations because of the restrictions during the COVID-19 lockdowns.⁵

[14] I am satisfied that the administrators' proposed modifications will better serve the objects of the voluntary administration under s 239A of the Companies Act than adhering to the default provisions.

[15] The administrators have appropriately applied without notice. The creditors are to be given a copy of the administrators' application and this order at the same time and in the same manner as they are notified of the first creditors' meeting, and by posting on the administrators' website.

[16] Leave is reserved to anyone with an appropriate interest to apply to modify and discharge these orders. It may be necessary to review whether these directions will be appropriate when the watershed meeting is convened, if COVID-19 restrictions are eased by then. The administrators are asked to keep that under consideration.

[17] The costs of the application, including lawyers' costs and disbursements, are part of the expenses incurred by the applicants in their administration.

[18] Leave is reserved to apply for further directions.

[19] In short, subject to the rider in [10] above, I make orders in terms of the administrators' application.


.....
Associate Judge R M Bell

⁵ *Re Encorex (NZ) Ltd* [2002] NZHC 674, *Re Ripetime Ltd* CIV-2020-404-1377, HC Auckland, minute of 21 August 2020.

**In the High Court of New Zealand
Auckland Registry**

CIV-2020-404-1401

**I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe**

Under Part 19 of the High Court Rules and s239ADO of the Companies Act 1993

In the matter of an application pursuant to s239ADO of the Companies Act 1993 for orders modifying the default statutory requirements under Part 15A of the Companies Act 1993 that relate to creditors' meetings

and in the matter of **STA Travel (NZ) Limited (administrators appointed)**, an incorporated company having its registered office at Telco Building, Level 14, 16 Kingston Street, Auckland, New Zealand

and in the matter of **IEP New Zealand Limited (administrators appointed)**, an incorporated company having its registered office at BDO Auckland, Level 4, Graham Street, Auckland, New Zealand

and in the matter of **NNS New Zealand Limited (administrators appointed)**, an incorporated company having its registered office at Level 10, 220 Queen Street, Auckland, 1010 New Zealand

In the matter of an application by **David Sean Webb**, of Auckland and **Colin David Owens**, of Wellington, as administrators of STA Travel (NZ) Limited (administrators appointed), IEP New Zealand Limited (administrators appointed) and NNS New Zealand Limited (administrators appointed)

Applicants

Orders as to the modification of the default statutory requirements under Part 15A of the Companies Act 1993 that relate to creditors' meetings

Dated: 27 August 2020

Judicial officer: Bell AJ

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Orders as to the modification of the default statutory requirements under Part 15A of the Companies Act 1993 that relate to creditors' meetings

To: Colin David Owens and David Sean Webb

- 1 The originating application made by **Colin David Owens** of Wellington and **David Sean Webb** of Auckland, accredited insolvency practitioners, on 26 August 2020, was determined by the Honourable Associate Judge Bell on 26 August 2020.
- 2 The determination was made without a hearing.
- 3 The following orders were made:
 - a this application be permitted to be made on a without notice basis;
 - b the applicants be permitted to send the documents and notices required to be sent to the creditors of STA Travel, IEP and NNS, under Part 15A of the Act:
 - i where the creditor is a preferential or trade creditor for whom the applicants have an email address, by email;
 - ii where the creditor is a customer creditor or other creditor for whom the applicants do not have an email address, by posting advertisements in the *Gazette*, the *New Zealand Herald* and *Stuff* including reference to the availability of the documents and notices on the relevant pages of Deloitte's website; and
 - iii by posting a copy on the STA Travel, IEP and NNS pages of Deloitte's website.
 - c notwithstanding the terms of s239AK and Schedule 5 of the Act, the applicants be permitted to hold creditors' meetings under Part 15A of the Act, including the first creditors' meeting and the watershed meeting, by way of video or telephone conference and, for any creditors' meeting held in this manner, all creditors taking part must be able to hear each other throughout the meeting;
 - d notwithstanding the terms of s239AK(2) of the Act and clauses 6 and 7 of Schedule 5 to the Act, the applicants be permitted to allow voting by electronic means, including email, at creditors' meetings;



- e the applicants be permitted to table any documents, which they require to table at creditors' meetings under Part 15A of the Act, by means of posting them on Deloitte's website and directing creditors to them at the relevant creditors' meeting;
- f a copy of this application and the orders of the Court be:
 - i given to creditors of STA Travel, IEP and NNS at the same time and in the same manner as notice of the first meeting of creditors under s239AO is given by the administrators to those creditors;
 - ii posted on the STA Travel, IEP and NNS pages of Deloitte's website within five working days of the above orders being granted;
- g leave is granted to any person who can demonstrate sufficient interest to apply to modify or discharge these orders, including the applicants and any creditor of STA Travel, IEP and NNS; and
- h that the applicants' solicitor-client costs and disbursements of this application are to be an expense incurred by the applicants in carrying out their duties as administrators of STA Travel, IEP and NNS.

Date: 26 August 2020


(Deputy) Registrar

