

In the High Court of New Zealand
Auckland Registry

CIV-2020-404-1381

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

Under Part 19 of the High Court Rules and sections 239F, 239ACD, 280 and 286 of the Companies Act 1993

In the matter of an application pursuant to sections 239F, 239ACD, 280 and 286 of the Companies Act 1993 for an order that D S Webb and C D Owens not be disqualified from appointment as administrators, deed administrators or liquidators of STA Travel (NZ) Limited and IEP New Zealand Limited

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

In the matter of **IEP New Zealand Limited**, an incorporated company having its registered office at BDO Auckland, Level 4, Graham Street, Auckland, New Zealand

In the matter of an application by **David Sean Webb**, of Auckland and **Colin David Owens**, of Wellington, insolvency practitioners

Applicants

Originating application without notice for orders that David Sean Webb and Colin David Owens be permitted to act as administrators, deed administrators or liquidators

Dated: 24 August 2020

Judicial officer: Campbell J

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Originating application without notice for orders that David Sean Webb and Colin David Owens be permitted to act as administrators, deed administrators or liquidators

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, both accredited insolvency practitioners, apply for orders that:
 - a this application be permitted to be made by way of an originating application;
 - b notwithstanding s239F(2) and s280(1)(cb) of the Companies Act 1993 (**Act**), **David Sean Webb** and **Colin David Owens** of Deloitte (the **Administrators**) may be appointed as joint and several administrators of STA Travel (NZ) Limited (**STA Travel**) and IEP New Zealand Limited (**IEP**);
 - c notwithstanding s239ACD(2) and 280(1)(cb) of the Act, the Administrators may be appointed as joint and several deed administrators or liquidators of STA Travel and IEP, if appointed as such at a watershed meeting of creditors in the voluntary administrations of STA Travel and IEP;
 - d following their appointment as administrators of STA Travel and IEP, then:
 - i this application be adjourned to a date convenient to the Court;
 - ii a copy of this application and orders of the Court be served on all known creditors of STA Travel and IEP notified of the first meeting of creditors in STA Travel and IEP's voluntary administrations pursuant to s239AO(1)(a) of the Act, at the same time and in the same manner as notice under s239AO is given by the Administrators to those creditors, with a copy of this application and the Court's orders also to be posted on Deloitte's website;
 - iii the Administrators' notice to creditors under s239AO(1)(a) of the Act shall include advice to creditors of the next mention date of this application, and advice that, if they wish to challenge the interim orders made, they are entitled to do so by filing and serving a notice of opposition within 10 working days of service of the Court's orders to set aside the Administrators' appointment as administrators of STA Travel and IEP; and

- iv the creditors of STA Travel and IEP shall have leave to apply to the Court within 10 working days of service of the Court's orders to set aside the Administrators' appointment as administrators of STA Travel and IEP;
- e the interim orders made by the Court on Friday, 21 August 2020 be supplanted by these orders from the date and time that they are made; and
- f the Administrators' solicitor-client costs and disbursements of this application are to be an expense incurred by the Administrators in carrying out their duties as administrators of STA Travel and IEP.

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

Application should be made by way of originating application

- a No objection to the orders sought is anticipated and it is appropriate that applications of this nature be made by way of originating application.
- b The Court has previously permitted applications under s280 of the Act to be made by way of originating application (see *Re Tubbs* [2014] NZHC 385).
- c It is in the interests of justice, and of the speedy and inexpensive determination of this application, that it be made by way of an originating application.

Sections 239F, 239ACD and 280 of the Act preclude Administrators' appointment as administrators, deed administrators or liquidators of STA Travel and IEP without permission of the Court

- d In the absence of Court orders, ss239F(2), 239ACD(2) and 280(1)(cb) of the Act preclude the Proposed Administrators from being appointed as administrators, deed administrators or liquidators of STA Travel and IEP because, within two years immediately before the administration would commence, Deloitte and one of the Administrators, Mr Webb, had a "continuing business relationship" with parties that are secured creditors of STA Travel and IEP. Deloitte and Mr Webb have provided professional services to Fuji Xerox Finance Limited (**Fuji Xerox**), a secured creditor of STA Travel and Flexigroup New Zealand Limited (**Flexigroup**), a secured creditor of IEP.

Administrators' independence, competence, and integrity not compromised

- e Although the Administrators may arguably be precluded from acting as administrators, deed administrators or liquidators under s280, there is no real or apparent conflict of interest as neither of the Proposed Administrators, nor Deloitte, have provided any services to Fuji Xerox or Flexigroup about STA Travel and IEP, their directors or their shareholders. In addition, Deloitte has not provided any services to STA Travel and IEP, their directors or shareholders. Any apparent conflict of interest arising under s280 of the Act would not compromise their ability to act professionally and independently.
- f The Administrators are:
 - i A partner of Deloitte, and leader of the firm's national restructuring practice (David Webb).
 - ii A director of Deloitte (Colin Owens).
 - iii Well known to this Court as experienced and reputable insolvency practitioners.
 - iv Accredited insolvency practitioners.

Appropriate to make orders sought

- g The Administrators consented in writing to being appointed administrators of STA Travel and IEP, and, on the basis of the orders made by the Court on 21 August 2020, were appointed Administrators of STA Travel and IEP, subject to this application being granted.
- h If orders are made, and any creditors object to the Administrators' appointment, then those creditors retain the right to challenge the Proposed Administrators' appointments in Court.
- i It is in the interests of justice that the application be determined without serving notice of the application on creditors because:
 - i there is no real conflict to the Proposed Administrators' appointment as administrators of STA Travel and IEP;
 - ii personal service of the application on STA Travel and IEP's numerous creditors and 69 employees would be time consuming and onerous, given the urgency of the application;

- iii there is no prejudice to any creditors, as they:
 - A will be served with a copy of this application and the Court's orders 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;
 - B retain the right to challenge the Administrators' appointment as administrators of STA Travel and IEP in Court; and/or
 - C may vote to replace the Administrators at the first creditors' meeting in the administrations of STA Travel and IEP under s239AN of the Act.

3 The application is made in reliance upon:

- a Sections 239F, 239ACD, 280 and 286 of the Companies Act 1993;
- b rules 7.23, 7.46, 18.7, 19.2, 19.4, 19.5 and 19.10 of the High Court Rules 2016;
- c *Re Huntleigh Downs Ltd* HC Wellington CIV-2009-485-1498, 11 August 2009; *Re Rapson Holdings* HC Auckland CIV-2010-404-2319, 26 April 2010; *Re Tubbs* [2014] NZHC 385; *Re Inglis & Co Ltd* HC Wellington CIV-2009-485-1336, 16 July 2009; *Re Bridgman* [2016] NZHC 933; *Re Jackson* [2018] NZHC 2447; *Re Maginness* [2019] NZHC 1237; and *Re Drikolor New Zealand Limited* [2019] NZHC 2650.
- d the affidavit of Colin David Owens affirmed in support of this application.

4 The application is made without notice to any other party on the following grounds:

- a that requiring the Administrators to proceed on notice would cause undue delay or prejudice to the Administrators; and
- b the interests of justice require the application to be determined without serving notice of the application.

5 I certify that—

- a the grounds set out in paragraph 4 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: 24 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 mark.broad@dentons.com.