DUPLICATE

In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua O Aotearoa
Te Whanganui-ā-Tara Rohe

CIV-2025-485- 142

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

and: **Foundation Life (NZ) Limited**

Applicant

Interlocutory application (without notice) for directions as to service and for initial orders under section 236 of the Companies Act 1993

Dated: 27 February 2025

Received by Email
Date: 27/02/25

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INTERLOCUTORY APPLICATION (WITHOUT NOTICE) FOR DIRECTIONS AS TO SERVICE AND FOR INITIAL ORDERS UNDER SECTION 236 OF THE COMPANIES ACT 1993

To the Registrar of the High Court at Wellington

This document notifies you that—

1 The applicant will apply to the Court for initial orders:

Timetable

1.1 allocating this matter to a specific Judge who will hear both this application for initial orders and the originating application for final orders approving the proposed scheme of arrangement (the **Application for Final Orders**);

1.2 scheduling a date and time for the Application for Final Orders to be heard, to be specified in the initial orders (the applicant respectfully requests a hearing date as early as possible after 16 June 2025, being seven days after the Scheme Meeting);

Service Orders

1.3 directing that personal service of this proceeding upon all persons affected be dispensed with, and instead that service be effected as set out in these orders;

Court file

1.4 directing that the court file, including the Application for Final Orders, all interlocutory applications, affidavits, and all other documents related to this proceeding, shall not be searched, inspected or copied until such time as the **Policyholder Materials** (as defined in order 1.7 below) have been distributed to **Eligible Policyholders** (as defined in the Scheme Terms);

Scheme Meeting

1.5 directing that:

(a) the applicant, Foundation Life (NZ) Limited (**Foundation Life**) is to hold a meeting (the **Scheme Meeting**) of its Eligible Policyholders;

(b) the Scheme Meeting will be held at Eden Park, World Cup Lounge West, Level 4, Samsung South Stand, 42 Reimers Avenue, Kingsland, Auckland on 9 June 2025 at 2:00pm;

(c) the purpose of the Scheme Meeting is to seek approval of the proposed scheme of arrangement (the **Scheme**) on the terms set out in the Notice of Scheme Meeting sent by Foundation Life to its Policyholders, subject to any amendment or variation (the **Resolution**);

(d) the Eligible Policyholders shall vote on the Scheme as a single class;

(e) each Eligible Policyholder can vote at the Scheme Meeting by:

(i) attending in person; or

(ii) power of attorney; or

(iii) proxy; or

(iv) completing and returning their Voting/Proxy form by post; or

(v) voting online;

(f) the Resolution shall be approved if Eligible Policyholders voting "for" the Scheme:

(i) are more than 50% in number (assuming 1 vote per Policy) of the Policies held by Eligible Policyholders who vote; and

(ii) represent not less than 75% in value of the Policies held by Eligible Policyholders who vote. For this purpose, the value of a Policy will be the Surrender Value of that Policy as at the Record Date ("Surrender Value" and "Record Date" as defined in the Scheme Terms);

(g) James Ogden, a director of Foundation Life, or his nominee, act as chairperson of the Scheme Meeting; and

(h) the Scheme Meeting is otherwise to be conducted in accordance with Schedule 5 to the Companies Act 1993, provided that references to postal votes in the Schedule shall include votes delivered by electronic means;

Policyholder Materials and Notice of Scheme Meeting

1.6 requiring Foundation Life, at least 28 days prior to the Scheme Meeting to:

(a) post the Policyholder Materials referred to in order 1.7 below to all Eligible Policyholders at the addresses it holds for those Eligible Policyholders; and

(b) place a copy of the Further Materials referred to in order 1.9 below at www.foundationlife.co.nz/scheme-of-arrangement;

1.7 directing that the **Policyholder Materials** for the purposes of order 1.6(a) above are:

(a) a covering letter, including an estimate to each Eligible Policyholder of the Sum Insured and Cash Payment ("Sum Insured" and "Cash Payment" as defined in the Scheme Terms) of the options available to that Eligible Policyholder under the Scheme;

(b) an Explanatory Statement, including a notice of Scheme Meeting, including the resolution to be voted on, the Scheme Terms, summaries of the Appointed and Independent Actuaries' reports, a copy of the replacement policy terms and an explanation of where to find the Further Materials; and

(c) a voting/proxy form,

in substantially the same form as the drafts which are referred to in and annexed to the affidavit of Timothy Charles Sole;

1.8 directing that the Policyholder Materials shall be deemed to have been received by those to whom they were ordered to be sent 48 hours after being sent (in the case of Eligible Policyholders in New Zealand) and five working days after being sent (in the case of Overseas Eligible Policyholders) in accordance with order 1.6(a) above;

1.9 directing that the **Further Materials** for the purposes of order 1.6(b) above are:

(a) a copy of the Policyholder Materials (except the covering letters referred to in order 1.7(a) above);

(b) templates of each form of covering letter sent to Eligible Policyholders which, to avoid doubt, shall contain no information about any individual Eligible Policyholder;

(c) a copy of the Appointed Actuary's full report;

(d) a copy of the Independent Actuary's full report; and

(e) all documents filed in this Court;

1.10 directing that Foundation Life may, prior to the Record Date, make amendments, revisions and/or supplements to the Policyholder Materials and Further Materials. Should Foundation Life make any material amendments, revisions and/or supplements to the Scheme or the Resolution after the Policyholder Materials have been sent to Eligible Policyholders, it will notify Eligible Policyholders of such changes by way of advertisement in the newspapers listed in order 1.12 below, and announcements at www.foundationlife.co.nz/scheme-of-arrangement;

1.11 directing that:

(a) the accidental failure or omission by Foundation Life to send the Policyholder Materials to any Eligible Policyholder;

(b) the non-receipt of such documents by any Eligible Policyholder; or

(c) the fact that Foundation Life does not hold current address details for certain Eligible Policyholders,

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 Foundation Life, then it shall endeavour to rectify it by the method and in the time most reasonably practicable in the circumstances;

1.12 requiring Foundation Life, at least 28 days before the Scheme Meeting, to advertise the Scheme Meeting by placing in the following publications an advertisement in substantially the same form as the draft which is annexed to the affidavit of Timothy Charles Sole:

(a) The New Zealand Herald;

(b) The Waikato Times;

(c) The Bay of Plenty Times;

(d) The Post;

(e) The Press; and

(f) The Otago Daily Times;

Reporting of the results of the Scheme Meeting

1.13 requiring Foundation Life, prior to the Court's consideration of the Application for Final Orders, to file with this Court, and serve on any party who has filed a notice of opposition or a notice of appearance under order 1.16 below, affidavit evidence verifying compliance with the requirements of these orders, and advising whether the Resolution was passed by the Eligible Policyholders at the Scheme Meeting;

Actions in respect of Current Policies between Record Date and Scheme Approval Date

1.14 Permitting Foundation Life, during the period from 5:00pm on the Record Date to the Scheme Approval Date,[1] to cease processing for Eligible Policyholders:

(a) claims where a claim event occurs after 5.00pm on the Record Date in respect of an Eligible Policyholder until the amount of the claim can be determined under the Scheme, except where payment is made under the arrangement set out in orders 1.15(a) or (c) below;

(b) surrender requests (including for partial surrenders) where the surrender date is after 5.00pm on the Record Date in respect of an Eligible Policyholder until the surrender amount can be determined under the Scheme, except where payment is made under the arrangement set out in order 1.15(b) below;

1.15 directing that, notwithstanding direction 1.14 above, Foundation Life may, in its sole discretion, agree with an Eligible Policyholder, during the period after 5.00pm on the Record Date and before the Scheme Approval Date, that:

(a) where a Final Claim Event has occurred after 5.00pm on the Record Date but prior to the Scheme Approval Date, the Eligible Policyholder receives the Current Policy's Death Benefit; or

(b) where the Eligible Policyholder's Current Policy is surrendered after 5:00pm on the Record Date but prior

[1] Processing of claims will not recommence on the Scheme Approval Date. Clause 3.9 of the Scheme Terms provides that, from the Scheme Approval Date, Foundation Life will cease processing claims (subject to certain terms). This application seeks a direction for the period until the Scheme Approval Date because after that date the processing of claims will be governed by the Scheme Terms and there will be no further need for such a direction from the Court.

to the Scheme Approval Date, the Eligible Policyholder receives their Current Policy's Surrender Value;

in full satisfaction of the Eligible Policyholder's entitlements under the Scheme;

(c) where a Terminal Illness claim (which is not a Final Claim Event) or a Rider Benefit claim (other than a Final Claim Event) has occurred after 5.00pm on the Record Date but before the Scheme Approval Date, the Eligible Policyholder receives the Current Policy's Terminal Illness payment or Rider Benefit, in full satisfaction of the Eligible Policyholder's entitlement under the Scheme for that Terminal Illness cover or Rider Benefit;

Rights of opposition of Eligible Policyholders and other persons

1.16 directing that any Eligible Policyholder or any other person who wishes to appear and be heard on the Application for Final Orders must file in the Wellington High Court and serve on Foundation Life, at the address for service shown on the originating application, by 5 pm, 5 working days before the hearing scheduled under [1.2] of these orders:

(a) a notice of appearance, or notice of opposition (in either case containing an address for service); and

(b) if they oppose the application, an affidavit and a memorandum of submissions, provided that if that person is not an Eligible Policyholder an application for leave to be heard must also be filed;

1.17 directing that the only persons entitled to appear and be heard at the hearing of the Application for Final Orders will be:

(a) Foundation Life; and

(b) those persons who file a notice of appearance or a notice of opposition to the application for final orders in accordance with order 1.16 above, provided that if such a person is not an Eligible Policyholder that person may appear and be heard only if the Court first grants leave;

1.18 directing that if the hearing of the originating application for final 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 order 1.16 above need to be served with notice of the adjourned date;

1.19 requiring Foundation Life, following the Court's determination of the Application for Final Orders, to send by mail to each of the Eligible Policyholders, and to place on the website referred to above, written advice of the outcome of the Application for Final Orders;

1.20 granting Foundation Life leave to apply at short notice to vary these orders and apply for such further orders as may be appropriate.

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

2.1 in relation to the orders sought in regard to service:

(a) personal service of this proceeding is unnecessary to protect the interests of persons affected;

(b) all reasonable steps will be taken to ensure that all persons affected by this proceeding will receive notice of the proposed Scheme and the Scheme Meeting pursuant to the orders sought in this application; and

2.2 section 236(2) of the Companies Act 1993 provides for the Court to make initial orders before approving a Scheme pursuant to section 236(1) of the Companies Act 1993;

2.3 the directions sought in this application are necessary and appropriate for the expeditious determination of the Application for Final Orders; and

2.4 the interests of justice require the application to be determined without serving notice of the application.

3 This application is made in reliance on:

3.1 the High Court Rules 2016 and in particular, Rules 1.2, 7.19–7.20, 7.23 and Part 19;

3.2 Part 15 of the Companies Act 1993; and

3.3 the affidavit of Timothy Charles Sole affirmed on 27 February 2025.

4 I certify that:

4.1 the grounds above on which the application relies are made out; and

4.2 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.

Date: 27 February 2025

M D Arthur
Solicitor for the applicant