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

Memorandum of counsel for applicant for telephone conference on 24 March 2025

Dated: 18 March 2025

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MEMORANDUM OF COUNSEL FOR TELEPHONE CONFERENCE ON 24 MARCH 2025

May it please the Court:

1 This conference has been called to consider the applicant's without notice interlocutory application seeking directions providing for policyholders to be notified of the proposed scheme, the scheme meeting and the hearing date for the originating application.

2 By minutes of 6 and 11 March, the Court appointed Mr Ross KC as amicus curiae. Mr Ross has filed his report on the matters covered by the interlocutory application. That report, dated 17 March 2025, identifies no reason at this stage why the scheme is not capable of approval, and no reason why the initial orders should not be made.

3 The Court also has the applicant's first memorandum of counsel, dated 27 February 2025, setting out in detail the basis for the directions and the reasons why they are appropriate.

4 With this memorandum the applicant has also filed a second affidavit by Mr Tim Sole, Chairman of the applicant. That affidavit puts into evidence two letters from the Reserve Bank of New Zealand. Mr Sole's initial affidavit attached a letter from RBNZ (exhibit 7). That letter was incorrect in describing the four complaints received by RBNZ about the proposed scheme. The two further letters correct the position. For completeness, those complaints should not prevent the scheme being put to policyholders in the manner sought in the interlocutory application. They were necessarily made without full information. Policyholders who, after receiving the full explanatory statement and scheme terms, are not in favour of the scheme can of course vote against it.

5 The applicant asks that the directions sought in the interlocutory application now be made.

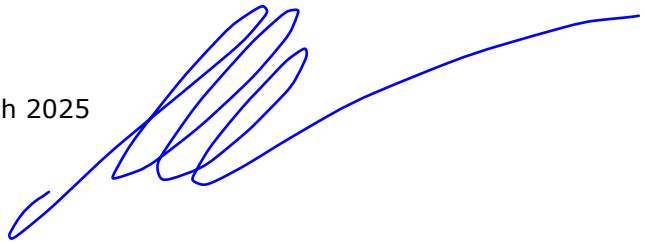
6 Both the initial directions and the orders approving the Scheme may be made by an Associate Judge. Both orders are sought under s236 of the Companies Act 1993. Section 20(2)(b) of the Senior Courts Act provides that an Associate Judge has the jurisdiction and powers of the court or a High Court Judge under ss 236 to 238 of the Companies Act.

7 The applicant seeks the orders in the form **attached** to this memorandum.

8 The appointment of the amicus curiae has necessitated some minor changes to the timetable directions sought in the application. The sealed orders containing the directions will be sent to all eligible policyholders; they will form appendix 4 of the Explanatory Statement. It will therefore be helpful to show in the orders the

timetable as it relates to the amicus curiae. The attached draft orders are marked up to show how they differ from the orders sought in the interlocutory application.

Dated: 18 March 2025



M D Arthur / J Marcetic
Counsel for applicant

In the High Court of New Zealand
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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

between: **Foundation Life (NZ) Limited**, a duly incorporated company having its registered office at Ground Floor, 50 Customhouse Quay, Wellington

Applicant

draft

Initial orders as to service, representation and directions

Dated: 2025

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INITIAL ORDERS AS TO SERVICE, REPRESENTATION AND DIRECTIONS

To: the Applicant

1 The interlocutory application made by Foundation Life (NZ) Limited on 27 February 2025 was determined by the Honourable Justice **[name] on [date]**.

2 The determination was made following a hearing held on **[date]** after hearing from Mr Arthur and Mr Marcetic for the applicant and Mr Ross KC as amicus curiae.

3 The following orders were made:

Timetable

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

3.2 scheduling a date and time for the Application for Final Orders to be heard, being **[Insert]**~~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

3.3 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

3.4 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 3.7 below) have been distributed to **Eligible Policyholders** (as defined in the Scheme Terms);

Scheme Meeting

3.5 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;

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(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

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

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(a) post the Policyholder Materials referred to in order 3.7 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 3.9 below at www.foundationlife.co.nz/scheme-of-arrangement;

3.7 directing that the **Policyholder Materials** for the purposes of order 3.6(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;

3.8 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 3.6(a) above;

3.9 directing that the **Further Materials** for the purposes of order 3.6(b) above are:

(a) a copy of the Policyholder Materials (except the covering letters referred to in order 3.7(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;

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3.10 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 3.12 below, and announcements at www.foundationlife.co.nz/scheme-of-arrangement;

3.11 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;

3.12 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

3.13 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 3.16 below and on the

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amicus curiae, 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

3.14 Permitting Foundation Life, during the period from 5:00pm on the Record Date to the Scheme Approval Date, 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 3.15(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 3.15(b) below;

3.15 directing that, notwithstanding direction 3.14 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 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;

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Rights of opposition of Eligible Policyholders and other persons

3.16 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 3.2 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;

3.17 directing that the amicus curiae file in the Court and serve on Foundation Life a report to the Court in relation to the Application for Final Orders no later than 5 working days before the hearing scheduled under 3.2 of these orders, and further directing that Foundation Life shall serve a copy of that report on all persons who have filed a notice of appearance or notice of opposition in this proceeding;

~~3.17~~3.18 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;

~~(a)~~(b) Amicus Curiae; and

~~(b)~~(c) those persons who file a notice of appearance or a notice of opposition to the application for final orders in accordance with order 3.16 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;

~~3.18~~3.19 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 3.16 above need to be served with notice of the adjourned date;

~~3.19~~3.20 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;

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~~3.20~~3.21 granting Foundation Life leave to apply at short notice to vary these orders and apply for such further orders as may be appropriate.

Date: 2025
Signature:

_____
Registrar/Deputy Registrar

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