

3 October 2023

TO: All Creditors

**OVATO NZ LIMITED, OVATO PRINT NZ LIMITED, PMP MAXUM LIMITED AND
OVATO RESIDENTIAL DISTRIBUTION NZ LIMITED (ALL IN LIQUIDATION)**

NOTICE REGARDING APPLICATION FOR POOLING ORDERS

Introduction

1. We Rees Logan and Andrew McKay, as joint and several liquidators ("**Liquidators**") of Ovato NZ Limited, Ovato Print NZ Limited, PMP Maxum Limited and Ovato Residential Distribution NZ Limited (all in liquidation) ("**Ovato Companies**") write further to our Liquidators reports detailing the Liquidators intention to apply to the Court to pool the liquidations of the Ovato Companies.
2. We advise that the application has been filed in the High Court of Auckland and set out the details of this matter below.

Notice

3. Pursuant to section 271A of the Act, the Liquidators give notice to each creditor of each of the Ovato Companies that on 11 September 2023 an application was filed in the High Court of Auckland for orders relating to:
 - (a) the pooling of the liquidations of the Ovato Companies pursuant to s 271(1)(b) of the Companies Act 1993 (the "**Act**"), under which the liquidations of the Ovato Companies would proceed together as if they were one company; and
 - (b) the treatment of the claims of the IRD and NZ Customs in a pooled liquidation of the Ovato Companies pursuant to s 271(2) of the Act (reflecting the agreement from those creditors to cap their preferential entitlements against the Ovato Companies).
4. In addition to the orders described above, the Liquidators have sought and obtained orders (without notice to creditors) enabling the Liquidators to commence the application by way of an originating application, and regarding the manner of service of this notice. A copy of that Minute is **enclosed**.

Grounds for seeking the pooling orders

5. The orders are sought on the following grounds which are based on the information available to the Liquidators as at the date of the application:
 - (a) the businesses of the Ovato Companies were combined to a significant extent as demonstrated by the governance, management, employee, tax, inventory management, contracting, invoicing, payment and accounting arrangements;
 - (b) the conduct of the Ovato Companies towards creditors did not reflect the separate legal personality of each of the Ovato Companies;
 - (c) the liquidation of some of the Ovato Companies was attributable to the actions of other Ovato Companies;
 - (d) the orders sought will result in an efficient process for allocating realisations across the creditors of Ovato Companies in a manner that is just, equitable, and in the best interests of creditors;
 - (e) there would be no significant prejudice to creditors if the orders are made. The Liquidators have secured binding commitments from both the IRD and NZ Customs to limit the amount of their respective claims that have a preferential status, in order to limit the extent to which the orders sought disproportionately favour those creditors; and
 - (f) if the orders are not made:
 - (i) the Liquidators would incur significant additional costs to properly allocate assets, recoveries, liabilities and costs across the Ovato Companies in a fair and equitable manner (which would reduce creditor recoveries); and
 - (ii) the Liquidators would be required to make various assumptions because of the complex intermingling of the business of the Ovato Companies, which could affect the accuracy of the allocation exercise and which could have a corresponding impact on creditors.

Right to obtain information

6. If you would like further information regarding the Liquidators' application, including copies of the documents filed with the Court, please contact the Liquidators at bri.akl@bdo.co.nz or Lily Chen of this office on (09)366 8225.

Right to oppose the application

7. This proceeding has been set down in the Duty Judge list in the week commencing 16 October 2023, at which the Court will make timetabling orders including fixing a date by which you must file a notice of opposition and supporting affidavit (if you wish to oppose the orders sought). If you have any questions about this, please contact the Liquidators at bri.akl@bdo.co.nz.

8. Any recipient of this notice may oppose the Liquidators' application by filing a notice of opposition and supporting affidavit in accordance with the High Court Rules 2016 by no later than the date to be set by the Court. Once the Court has set this deadline, we will write to you to advise you of this deadline.

Yours faithfully

Ovato NZ Limited (In Liquidation)

Ovato Print NZ Limited (In Liquidation)

PMP Maxum Limited (In Liquidation)

Ovato Residential Distribution NZ Limited (In Liquidation)

A handwritten signature in black ink, appearing to read 'Rees Logan'.

Rees Logan

Liquidator

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

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

CIV-2023-404-2215

UNDER sections 271 and 271A of the Companies Act
1993 and Part 19 of the High Court Rules
2016

IN THE MATTER of OVATO NZ LIMITED, OVATO PRINT
NZ LIMITED, PMP MAXUM LIMITED
AND OVATO RESIDENTIAL
DISTRIBUTION NZ LIMITED (ALL IN
LIQUIDATION)

AND an application by REES GRAHAM LOGAN
AND ANDREW JOHN MCKAY

Hearing: On the papers

Appearances: M Kersey and AR MacDuff for the Applicants

Minute: 2 October 2023

MINUTE OF FITZGERALD J

[1] I refer to the applicants' application filed on 15 September 2023, without notice, for leave to commence an application for orders under ss 271 and 271A of the Companies Act 1993 (the on-notice application) by way of originating application (the without notice application). The without notice application has been referred to me this morning as Duty Judge.

[2] I have read the without notice application and those aspects of Mr Logan's affidavit relevant to it. I have also read counsel's helpful memorandum in support of both applications. In particular, I note that liquidators have been appointed in respect of all five companies, the pooling application appears unlikely to be opposed,¹ and agree the originating application procedure appears to be the most cost effective way of proceeding. The latter point reflects advice that there are limited resources available in these liquidations, and therefore the costs of any associated proceedings will be a particularly relevant consideration.

[3] I accordingly grant leave to commence the on-notice application by way of an originating application under Part 19 of the High Court Rules 2016.

[4] I also consider the proposals for giving creditors notice of the application are appropriate and make the following orders:

(a) the applicants may send notice to all creditors of the Ovato Companies as required by s 271A of the Act by:

(i) either:

1. email where an email address has been provided to any of the Ovato Companies; or
2. if an email address has not been provided to any of the Ovato Companies, by post to the postal address that has been provided to any of the Ovato Companies; and

¹ The liquidators have advised creditors that they were intending to make a pooling application and to date have received no objection to doing so.

(ii) posting notice of this application on the BDO website.

[5] As to the on-notice application, and to enable time for service to be effected in accordance with the orders made above, it is to be placed in the Duty Judge list in the **week commencing 16 October 2023**.

[6] The purpose of that listing will be for counsel for the applicant to update the Court in relation to service and if appropriate, for orders to be made as to a timetable for any notices of appearance or opposition and the hearing date for the on notice application, or whether it ought to be determined on the papers. From my own perspective, and even where there is no opposition, it may be helpful for the Judge determining the on-notice application to have a very short hearing with counsel for the applicant, if required. I consider it appropriate to defer making timetable orders for notices of opposition and the hearing pending service of the application so that, if required, any party wishing to oppose the application can make submissions to the Court as to any alternative proposals for timetabling and the hearing.

A handwritten signature in blue ink, appearing to read "Fitzgerald J.", is written above a horizontal line.

Fitzgerald J