

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE

**CIV-2023-409-664**

Under	Part 19 of the High Court Rules
In the matter of	A scheme of arrangement under Part 15 of the Companies Act 1993
Application by	MHM Automation Limited, a duly incorporated company having its registered office at 53 Lunns Road, Middleton, Christchurch, 8024, New Zealand
	Applicant

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**INITIAL ORDERS UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated: 8 December 2023

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**BUDDLE FINDLAY**

Barristers and Solicitors  
Christchurch

Solicitor Acting: **Oilly Peers**  
Email: [oilly.peers@buddlefindlay.com](mailto:oilly.peers@buddlefindlay.com)  
Tel 64 3 371 3568 Fax 64 3 379 5659 PO Box 322 DX WX11135 Christchurch 8013

**To:** The Registrar of the High Court at Christchurch

**And to:** Any person the Court directs to be served

**This document notifies you that –**

1. The without notice interlocutory application for initial orders under Part 15 of the Companies Act 1993 (**Companies Act**) made by MHM Automation Limited (**MHM**) on 8 December 2023 was determined by Associate Judge Lester on the 11<sup>th</sup> day of December 2023.<sup>1</sup>
2. The determination was made without a hearing.
3. The following orders were made.

**Service and hearing date**

- (a) That service of this application is dispensed with, except as provided for in these orders.
- (b) MHM is to send Bettcher Industries, Inc (**Bettcher**) and the Takeovers Panel by electronic means, copies of all documents it files in this proceeding.
- (c) Personal service of the Originating Application (as defined below) on affected persons (other than Bettcher) is dispensed with, and instead the other affected parties will be served in accordance with the orders below.
- (d) The originating application for final orders in this proceeding (**Originating Application**) will be heard on Wednesday 21 February 2024 at 10:00am.



**Notice of Scheme Meeting and Scheme Meeting Materials**

(e) MHM shall send the following information to each person who is, under paragraph 3(f) of these orders, to receive notice of the meeting of shareholders described in these orders (**Scheme Meeting**):

- (i) The scheme booklet (**Scheme Booklet**) in respect of the scheme of arrangement under Part 15 of the Companies Act 1993 (**Companies Act**) that the shareholders will be asked to vote on

<sup>1</sup> With order 1(d) as varied by the Minute of Associate Judge Lester dated 12 December 2023.

at the Scheme Meeting (**Scheme**), which will contain the following:

- (1) the Chair's letter;
  - (2) the formal notice of meeting, including the resolution proposing the Scheme;
  - (3) explanatory information about the Scheme;
  - (4) information equivalent to Schedule 1 of the Takeovers Code;
  - (5) information equivalent to Schedule 2 of the Takeovers Code;
  - (6) the Independent Adviser's report;
  - (7) the Scheme Plan (as defined in the Scheme Booklet);
  - (8) the Deed Poll executed by MHM, Bettcher and Merlin NZD Bidco Limited (**Bettcher NZ**),
- (ii) a proxy form;
- (iii) a copy of the Originating Application; and
- (iv) a copy of the Court's minute making these interim orders, (together, the **Scheme Meeting Materials**).
- (f) The Scheme Meeting Materials will be sent to the following persons:
- (i) those shareholders of MHM whose names appear in the register of shareholders at 5.00pm on the fifth working day before the Scheme Meeting Materials are sent; and
  - (ii) the directors and auditors of MHM.
- (g) The Scheme Meeting Materials are to be sent (in accordance with subparagraph 3(i) below) by not later than 22 December 2023 (subject to the Court granting the orders sought in this application in time to enable this to occur).



The Scheme Meeting Materials are to be in substantially the same form as the drafts which are referred to in, and annexed to, the affidavit of

Trevor John Burt dated 7 December 2023 filed in this proceeding,<sup>2</sup> except as may be amended, revised or supplemented in accordance with paragraph 3(o) below.

- (i) The Scheme Meeting Materials will be sent to the directors and auditors of MHM by email, and to the shareholders specified in paragraph 3(f) above:
  - (i) by ordinary post in hardcopy format to the physical address recorded for each shareholder unless the shareholder has elected to receive the Scheme Meeting Materials from MHM electronically; and
  - (ii) by electronic means to the email address recorded for a shareholder, if the shareholder has elected to receive the Scheme Meeting Materials from MHM electronically.
- (j) The Scheme Meeting Materials shall be deemed to have been received by all those to whom they were ordered to be sent:
  - (i) on the working day after the Scheme Meeting Materials are sent, for the Scheme Meeting Materials sent by electronic means; or
  - (ii) the earlier of 5 working days after the Scheme Meeting Materials are sent or 3 January 2024, for the Scheme Meeting Materials sent by post.
- (k) In accordance with its continuous disclosure obligations, MHM shall cause the Scheme Meeting Materials to be lodged on the NZX market announcement platform no later than the time it is deemed to have been sent to shareholders.



MHM shall make:

- (i) electronic copies of the Scheme Meeting Materials available at the MHM website <https://mhmautomation.com/news-and-investors> on the date on which the Scheme Meeting Materials are sent to shareholders (in accordance with paragraph 3(g) above); and

<sup>2</sup> At Bundle of Documents referred to in affidavit of Trevor John Burt in support Tab 6, pp198-327,

- (ii) hard copies of the Scheme Meeting Materials available on written request to MHM to any person who becomes a registered shareholder of MHM before the Scheme Meeting but after the date that would have entitled that holder to receive the Scheme Meeting Materials in accordance with these orders.
- (m) The following will not constitute a breach of these orders nor invalidate any resolution passed at the Scheme Meeting (but if any such failure or omission is brought to the attention of MHM, then it shall use its best endeavours to rectify it by the method and in the time most reasonably practicable in the circumstances):
  - (i) the accidental failure or omission by MHM to send the Scheme Meeting Materials, or any specific document or document(s), to any persons; or
  - (ii) the non-receipt of the Scheme Meeting Materials, or any particular document or document(s) by any persons.
- (n) MHM is not required to send the Scheme Meeting Materials to those shareholders for whom MHM does not have a known address (being 51 shareholders as at 5 December 2023, accounting for approximately 0.03% of MHM's shares on issue). In the event that (i) Link identifies any such shareholder or (ii) any such shareholder contacts Link or MHM to update its address details, in each case not less than 5 working days before the Scheme Meeting, MHM shall send a set of the Scheme Meeting Materials to that shareholder.

#### **Power of Amendment**

- (o) MHM is permitted to make such amendments, revisions or supplements to the Scheme Booklet or the Scheme Meeting Materials as MHM may determine are in the best interests of MHM and its shareholders, and to which Bettcher has agreed in writing, as well as any inconsequential amendments to the Scheme Booklet and the Scheme Meeting Materials, and the Scheme Booklet so amended will set out the Scheme to be submitted to the shareholders at the Scheme Meeting for approval.



(p) Where possible, any amendments referred to in 3(o) above will be made before MHM sends the Scheme Meeting Materials and:

- (i) if the Scheme Booklet or Scheme Meeting Materials are amended before the Scheme Meeting Materials are sent, MHM will send amended Scheme Meeting Materials in accordance with these orders; and
- (ii) if MHM makes any material amendments to the Scheme Booklet or the Scheme Meeting Materials after they have been sent to shareholders, MHM will notify the shareholders of the amendments as soon as reasonably practicable by lodging notices on NZX's market announcement platform and on MHM's website at <https://mhmautomation.com/news-and-investors>.

### **Scheme Meeting**

(q) MHM shall hold the Scheme Meeting not earlier than 22 January 2024 (subject to the orders of the Court), as a hybrid meeting both:

- (i) online at [www.virtualmeeting.co.nz/mhmsm24](http://www.virtualmeeting.co.nz/mhmsm24); and
- (ii) in person at a venue in Christchurch,

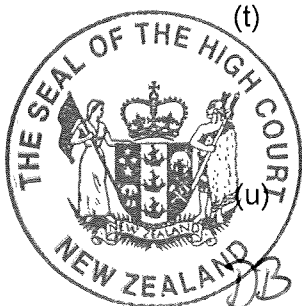
to seek approval of the Scheme (subject to any amendment or variation made in accordance with these orders) by special resolution before consideration by the Court.

(r) If MHM considers it necessary or desirable to do so due to health and safety reasons or otherwise, the Scheme Meeting may be held as a virtual meeting only, or on a later date, in each case to be notified by MHM to its shareholders through the NZX market announcement platform and on MHM's website <https://mhmautomation.com/>.

(s) Only persons registered on MHM's share register as the holders of shares in MHM at 5:00pm on the day which is 2 working days before the Scheme Meeting are entitled to be represented and vote at the Scheme Meeting or any adjournment or postponement of the Scheme Meeting.

(t) A shareholder is entitled to attend the meeting online or in person with shareholders to be provided with a virtual meeting link in the Notice of Scheme Meeting.

(u) As to voting on the Scheme:



- (i) all shareholders shall vote on the Scheme as a single interest class;
- (ii) voting will be conducted by poll:
  - (1) personally during the Scheme Meeting (online or in person at the physical meeting, further details of which are provided in the Scheme Booklet); or
  - (2) by proxy, where the Proxy Form accompanying the Scheme Booklet is completed and submitted to Link, as MHM's share Registrar, in accordance with the instructions on the Proxy Form and in the Scheme Booklet; or
  - (3) by corporate representative (appointed by a corporate shareholder to represent it in the same manner as appointing a proxy);
- (iii) the resolution shall be passed if it is approved (whether in person or by proxy) by:
  - (1) at least 75 percent of the votes of the shareholders in each interest entitled to vote and voting on the resolution; and
  - (2) a simple majority of the votes of those shareholders entitled to vote, whether or not actually voting on the resolution; and
- (iv) Link shall act as scrutineer at the Scheme Meeting.
- (v) Except as otherwise provided for in these orders, MHM shall conduct the Scheme Meeting in accordance with the constitution of MHM, the provisions of the Companies Act and the NZX Listing Rules.
- (w) A shareholder who is entitled to vote at the Scheme Meeting but who is unable to attend may appoint a proxy to attend the Scheme Meeting to act generally and vote on their behalf.



As to validity of votes:

(i) to be valid, all votes need to be:

- (1) cast in person at the Scheme Meeting; or
- (2) if attending the virtual meeting, made online at the online meeting platform [www.virtualmeeting.co.nz/mhmsm24](http://www.virtualmeeting.co.nz/mhmsm24); or

- (3) if voting by proxy on a validly completed Proxy Form received by Link at least 2 working days prior to the Scheme Meeting in accordance with the instructions on the Proxy Form and in the Scheme Booklet;
- (ii) MHM is entitled to disregard any votes received after the relevant voting deadline; and
- (iii) MHM may waive, in its discretion, the relevant voting deadline if it deems such waiver to be in its best interests and in the best interests of MHM shareholders as a whole.

### **Reporting the results of the Scheme Meeting**

- (y) MHM shall notify the outcome of the Scheme Meeting by lodging the results on NZX's market announcement platform as soon as practicable after voting at the Scheme Meeting is complete and the results are advised by Link to the Chairperson of the Scheme Meeting.
- (z) MHM shall, prior to the Court's hearing of the Originating Application, file with this Court an affidavit or affidavits:
  - (i) verifying compliance with these initial orders granted by the Court;
  - (ii) annexing copies of the Scheme Booklet and/or the Scheme Meeting Materials if amendments have been made as referred to in paragraph 3(o) above;
  - (iii) confirming the actions taken at, and the outcomes of, the Scheme Meeting; and
  - (iv) confirming whether the Takeovers Panel has issued a no-objection letter (and, if so, annexing that letter).



### **Rights of appearance and shareholder opposition**

(a) if Bettcher, Bettcher NZ, the Takeovers Panel or a MHM shareholder wishes to appear and be heard on the Originating Application, leave is not required, but the party must file a notice of appearance or a notice of opposition (as applicable, and in either case containing an address for service), any affidavits and a memorandum of submissions on which they intend to rely, no later than 10 working days before the hearing



date set for the Originating Application, and on the same day serve a copy on MHM;

- (bb) if any other person who claims to have an interest in the Scheme wishes to appear and be heard on the Originating Application, they must file an application for leave to be heard on the Originating Application (containing an address for service), a notice of opposition, any affidavits and a memorandum of submissions upon which that person intends to rely no later than 10 working days before the hearing date set for the Originating Application, and on the same day serve a copy on MHM;
- (cc) MHM shall serve on any shareholder wishing to appear and be heard on the Originating Application, and any other person who is granted leave to be heard (pursuant to paragraph 3(bb) above), copies of all documents filed in support of the Originating Application no later than 5 working days before the hearing date set for the Originating Application.

**Court file not to be searched**

- (dd) That the Court file in this proceeding may not be searched, inspected or copied without leave of the Court on notice to MHM.

**Leave to apply for variation at short notice**

- (ee) MHM is granted leave to apply at short notice to vary these orders and to apply for such further orders as may be appropriate.
- (ff) If the shareholders do not vote to approve the Scheme, MHM will likely discontinue or seek leave to amend the Originating Application.



A handwritten signature in black ink, appearing to read "D. Brensell", written over a horizontal line.

(Registrar/Deputy Registrar)

**D. BRENSSELL**

Sealed this 13<sup>th</sup> day of December 2023