

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

CIV-2018-404-1670

UNDER

Part 15 of the Companies Act 1993

AND

IN THE MATTER OF

an application for orders approving a scheme of arrangement under Part 15 of the Companies Act 1993

HEARTLAND BANK LIMITED a duly incorporated company with its registered address at Level 3, Heartland House, 35 Teed Street, Newmarket, Auckland, and carrying on its business as a banking services provider

First Applicant

HEARTLAND GROUP HOLDINGS LIMITED a duly incorporated company with its registered address at 35 Teed Street, Newmarket, Auckland, and carrying on its business as a holding company

Second Applicant

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

9 August 2018

Judicial Officer: Justice Wylie



**Russell
McLeagh**

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TO: The Registrar of the High Court at Auckland
AND TO: Any person the Court directs to be served

THIS DOCUMENT NOTIFIES YOU THAT:

- a. The without notice interlocutory application for initial orders under Part 15 of the Companies Act made by Heartland Bank Limited ("**Heartland Bank**") and Heartland Group Holdings Limited ("**Heartland Holdings**") (together, the "**Applicants**") on 2 August 2018 was determined by the Honourable Justice Wylie on *9th* August 2018.
- b. The determination was made following a hearing held on 8 August 2018. S A Armstrong, D H Jones and A J Nelder represented the Applicants at the hearing.
- c. The following orders were made:

ORDERS

Timetable for Final Orders Application

1. Unless otherwise advised by the Court, the originating application for orders approving the proposed restructure of Heartland Bank by way of scheme of arrangement ("**Scheme**") under Part 15 of the Companies Act 1993 ("**Final Orders Application**") will be heard at 9:00 am on 19 October 2018.

Service and representation

2. That:
 - (a) service of the without notice interlocutory application for initial orders relating to the Final Orders Application ("**Initial Orders Application**") be dispensed with;
 - (b) representation in relation to the Initial Orders Application be dispensed with;
 - (c) Heartland Bank serves all documents filed in this proceeding on the Takeovers Panel;
 - (d) Heartland Bank serves these interlocutory orders and the Final Orders Application on NZGT Security Trustee Limited ("**NZGT**");
 - (e) except as provided in these orders or required by section 236A of the Companies Act 1993 ("**Act**");



- (i) the applicants are not required to serve any other documents on the persons specified in these orders; and
- (ii) if the hearing of the Final Orders Application is adjourned for any reason, only those persons who are entitled to appear and be heard under order 21 below need to be served with notice of the adjourned hearing date.

Court file not be searched

- 3. The Final Orders Application, all interlocutory applications, affidavits, and all other documents related to the approval of the Scheme shall not be searched, inspected or copied until such time as the Shareholder Materials (as defined in order 8 below) have been distributed to Heartland Bank shareholders ("**Shareholders**") in accordance with order 9 below.

Shareholder meeting

- 4. Shareholders will not be divided into classes for the purpose of voting at the Shareholder Meeting (as defined in order 5(a) below).
- 5. Heartland Bank shall:
 - (a) hold its annual meeting of shareholders:
 - (i) on or about 19 September 2018 at 10:00 am;
 - (ii) at a venue located at the Waipuna Hotel & Conference Centre, 58 Waipuna Road, Mt Wellington, Auckland 1060, ("**Shareholder Meeting**");
 - (b) at the Shareholder Meeting, put the Scheme (as described in the Shareholder Materials, which may be amended by Heartland Bank before the Shareholder Meeting in a manner consistent with these orders) to Heartland Bank's shareholders for consideration and approval in accordance with order 6 below ("**Resolution**"); and
 - (c) except as otherwise provided in these orders, conduct the Shareholder Meeting in accordance with the constitution of Heartland Bank and the provisions of the Act.
- 6. The Resolution shall be approved if it is passed (whether in person or by proxy):



- (a) by at least 75% of the votes of the Shareholders voting on the Resolution; and
 - (b) a simple majority of the votes of those Shareholders entitled to vote.
7. Only holders of Heartland Bank shares whose names appear in the register of Shareholders as at:
- (a) 5:00 pm on 14 August 2018 ("**Shareholder Materials Record Time**") are entitled to receive the Shareholder Materials (as defined in order 8 below); and
 - (b) 5:00 pm on 17 September 2018 ("**Shareholder Voting Record Time**") are entitled to be represented and vote at the Shareholder Meeting or any adjournment or postponement thereof.

Notice of meeting and information for shareholders

8. Heartland Bank shall distribute to each Shareholder at least 10 working days before the Shareholder Meeting, documents in substantially the same form as exhibit GTR-1 to the affidavit of Geoffrey Thomas Ricketts sworn 1 August 2018, together with any amendments, revisions or supplements included in accordance with order 16. The information for Shareholders shall include:
- (a) a notice of meeting, including:
 - (i) the formal notice of meeting, including the Resolution that shareholders will be asked to vote on at the Shareholder Meeting; and
 - (ii) explanatory notes, including procedural details;
 - (b) a voting/proxy form for use by shareholders for appointment of a proxy to vote on the Resolution at the Shareholder Meeting or to vote on the polls at the Shareholder Meeting; and
 - (c) a scheme booklet which includes:
 - (i) explanatory notes giving shareholders details of the Scheme; and
 - (ii) a report from an independent adviser on the merits of the Scheme for Heartland Bank shareholders;

(together, the "**Shareholder Materials**").



Distribution of the Shareholder Materials

9. Heartland Bank shall:
- (a) at least 10 working days before the Shareholder Meeting, distribute the Shareholder Materials to:
 - (i) all of Heartland Bank's directors;
 - (ii) Heartland Bank's auditors;
 - (iii) NZGT; and
 - (iv) all Shareholders whose names appear in the register of shareholders as at 5:00pm on the Shareholder Materials Record Time;
 - (b) provide the Shareholder Materials to Shareholders in terms of orders 8 and 9(a)(iv) by sending it to the Shareholders' addresses as recorded on Heartland Bank's share register at the Shareholder Materials Record Time:
 - (i) in electronic format to all Shareholders who elect to receive documents from Heartland Bank in electronic form only; and
 - (ii) by ordinary mail in hardcopy format to all other Shareholders;
 - (c) provide, in the manner referred to in order 9(b) and as soon as practicable, a copy of the Shareholder Materials to any person not referred to in order 9(a)(iv) who becomes a Shareholder and entitled to vote on the Resolution after the Shareholder Materials Record Time and before the Shareholder Voting Record Time;
 - (d) on the first working day after the Shareholder Materials are sent to Shareholders:
 - (i) make hard copies of the Shareholder Materials available for inspection and removal at Heartland Bank's registered office; and



- (ii) make electronic copies of the Shareholder Materials available for inspection and download from Heartland Bank's website.
10. The Shareholder Materials shall be deemed to have been received by those to whom they were ordered to be sent 48 hours after being sent in accordance with order 9(b) above.
11. Heartland Bank shall be granted leave to effect service on Heartland Bank's shareholders outside New Zealand in the manner referred to in order 9(b).
12. Heartland Bank shall lodge the Shareholder Materials on NZX's market announcement platform prior to their distribution to shareholders in compliance with Heartland Bank's obligations under the NZX Listing Rules.
13. Heartland Bank shall:
- (a) publish the Final Orders Application and these interlocutory orders on its website;
 - (b) make a copy of the Final Orders Application and these interlocutory orders available for inspection at Heartland Bank's registered office; and
 - (c) send a copy of the Final Orders Application and these interlocutory orders to any shareholder or other persons who will be bound by the Final Orders, who requests them (in hard or electronic copy as requested by that shareholder or other person) within two working days of receiving the request.
14. The following shall not constitute a breach of these orders nor invalidate any resolution passed at the Shareholder Meeting:
- (a) an accidental omission by Heartland Bank to give the Shareholder Materials to any person specified in order 9;
 - (b) an accidental omission by Heartland Bank to give the Final Orders Application or these interlocutory orders to any person specified in order 13(c); or
 - (c) the non-receipt of any documents by any persons specified in orders 9 or 13(c).



15. Where any such failure or omission set out in order 14 above is brought to Heartland Bank's attention, Heartland Bank shall endeavour to rectify it by the method and in the timeframe most reasonably practicable in the circumstances.

Powers of amendment and adjournment

16. Subject to order 16(b) below, Heartland Bank may make such amendments, revisions or supplements to the Shareholder Materials (including the Resolution), as it may determine are in its best interests, or the best interests of Shareholders or other affected persons. If the Shareholder Materials are amended, it will be the Shareholder Materials as amended that will be put to Shareholders for consideration and approval. Where possible, any such amendments to the Shareholder Materials will be:
- (a) made before Heartland Bank distributes the Shareholder Materials to Shareholders and any other person identified in order 9 or directed to be served with this application; but
 - (b) if any material amendment to a document contained in the Shareholder Materials is made after the Shareholder Materials are distributed and more than 72 hours before the Shareholder Meeting (including any adjournment of the Shareholder Meeting), Heartland Bank will notify those persons identified at order 9 above of such amendment by means that it considers will ensure timely notification of the amendment.

Reporting the results of the Shareholder Meeting

17. Heartland Bank shall notify the outcome of the Shareholder Meeting by:
- (a) lodging the results on the NZX's market announcement platform as soon as practicable after voting at the Shareholder Meeting is complete and the results are advised to the chair of the Shareholder Meeting by the scrutineer of the Shareholder Meeting; and
 - (b) serving written notice on persons entitled under order 20 below to appear and be heard at the hearing of the Final Orders Application. Such notice is to be served as soon as is practicable after voting at the Shareholder Meeting is complete and the results are advised to the chair of the Shareholder Meeting by the scrutineer of the Shareholder Meeting.



18. Heartland Bank shall, as soon as reasonably practicable after the Shareholder Meeting and in any event prior to the Court's consideration of the Final Orders Application, file with this Court, and serve on any party who has filed a notice or an application for leave under order 19 to 20 (as applicable in accordance with order 22) at the relevant address for service, an affidavit or affidavits:
- (a) verifying compliance with the requirements of these orders; and
 - (b) verifying the actions taken and the voting on the Resolution put to shareholders.

Rights of opposition

19. Any Shareholder who wishes to appear and be heard on the Final Orders Application must, by 5:00 pm on 3 October 2018, file and serve on Heartland Bank at its registered address for service:
- (a) a notice of appearance (containing an address for service within New Zealand); or
 - (b) if they oppose the Final Orders Application:
 - (i) a notice of opposition (containing an address for service within New Zealand);
 - (ii) any affidavit(s); and
 - (iii) a memorandum of submissions on which they intend to rely.
20. Any other person who considers they have a proper interest in the Scheme and who wishes to appear and be heard on the Final Orders Application must, by 5:00 pm on 3 October 2018, file and serve on Heartland Bank at its registered address for service:
- (a) an application for leave to be heard on the Final Orders Application (containing an address for service within New Zealand);
 - (b) a notice of opposition;
 - (c) any affidavit(s); and
 - (d) a memorandum of submissions upon which that person intends to rely.



21. The only persons entitled to appear and be heard on the Final Orders Application shall be:
- (a) the applicants, Heartland Bank and Heartland Holdings;
 - (b) the Takeovers Panel;
 - (c) NZGT;
 - (d) those Shareholders who file a notice of appearance or opposition in accordance with order 19; and
 - (e) those persons who claim to have an interest in the Scheme who file an application for leave to be heard and a notice of opposition to the Final Orders Application in accordance with order 20 above, and who are subsequently granted leave to appear and be heard at the hearing of the Final Orders Application.
22. Heartland Bank shall, by 5:00 pm on 12 October 2018, serve (at the stated address for service) a copy of all documents filed in support of the Final Orders Application as well as file and serve any papers in reply upon any person who has filed, and served on Heartland Bank, the documents specified in orders 19 and 20.
- Leave to apply**
23. The applicants are granted leave to apply to vary these interlocutory orders and to apply for such further interlocutory orders as may be necessary or appropriate at any time prior to the Court's determination of the Final Orders Application.

Dated:  2018




M. REDDY
DEPUTY REGISTRAR

(Deputy) Registrar