



Metlifecare

NOTICE OF SPECIAL MEETING

NOTICE IS GIVEN THAT A SPECIAL MEETING OF SHAREHOLDERS OF METLIFECARE LIMITED WILL BE HELD:

DATE: Friday, 10 July 2020

TIME: 11.00 am (New Zealand time)

WHERE: The meeting will be conducted as a 'virtual meeting', accessible online. Instructions on how to access the meeting accompany this document and may also be accessed at <https://www.metlifecare.co.nz/scheme-asia-pacific>.

Shareholders will be able to participate in the meeting, vote and ask questions, from smartphones, tablets or desktop devices. In order to participate remotely you will need to either:

- Visit web.lumiagm.com on your desktop or mobile device. Ensure that your browser is compatible – Lumi AGM supports the latest version of Chrome, Safari, Internet Explorer, Edge or Firefox; or
- Download Lumi AGM from the App Store or Google Play Stores for free – search for Lumi AGM

If you have any questions, or need assistance with the online process, please contact Computershare on +64 9 488 8777 between 8.30am and 5.00pm Monday to Friday.

Further details of how to participate 'virtually' are provided in the accompanying Virtual Meeting Guide, with instructions for accessing the virtual meeting. Shareholders are encouraged to review this guide and download the app prior to the special meeting.

Shareholders will require the meeting ID – which is 320-094-312 – as well as their CSN/Securityholder Number, which can be found on their proxy form, for verification purposes.

AGENDA

EQT Litigation Resolution

To consider, and if thought fit, to pass the following resolution as a special resolution:

That the Litigation (as described in the Explanatory Notes) be ratified, confirmed and approved and the directors of Metlifecare Limited authorised to conduct, or otherwise deal with, the Litigation and to take all actions in connection with, or resulting from, the Litigation they consider necessary or desirable.

Voting will be by a poll and Computershare will confirm whether the relevant voting threshold has been met (see the Explanatory Notes below).

By order of the Board of Directors

Andrew Peskett
Company Secretary
8 June 2020

EXPLANATORY NOTES

EQT Litigation Resolution

Introduction

1. The purpose of the special meeting of shareholders to be held on 10 July 2020 is solely to consider approval of the special resolution set out above. The Board of Directors of Metlifecare Limited have elected to seek approval of this special resolution to gauge shareholder support on the matter, rather than for any requirement of the NZX Listing Rules, Takeovers Panel or any other regulator.
2. While a key aspect of the background to the special resolution is Metlifecare Limited's (**Metlifecare**) entry into a Scheme Implementation Agreement (**SIA**) with Asia Pacific Village Group Limited (**APVG**) on 29 December 2019, Metlifecare does not currently seek shareholder approval of the SIA or the transactions contemplated by the SIA. Rather the special resolution is to seek shareholder approval, and ratification of steps already taken, to require APVG to perform APVG's obligations agreed with Metlifecare under the SIA.
3. As shareholders are aware, in November and December 2019, Metlifecare engaged with representatives of the EQT Infrastructure IV Fund, on the potential acquisition of all shares in Metlifecare. APVG was incorporated on 18 December for the purpose of the acquisition. Under the SIA, APVG agreed to acquire all shares in Metlifecare for \$7.00 cash per share under a scheme of arrangement (**Scheme**) under Part 15 of the Companies Act 1993. A copy of the SIA is available at <https://www.metlifecare.co.nz/scheme-asia-pacific>.
4. On 29 December 2019, EQT Infrastructure IV EUR SCSp and EQT Infrastructure IV USD SCSp, acting through their manager, EQT Fund Management S.à.r.l. (together **EQT**), entered into an Equity Commitment Letter with APVG, which was copied to Metlifecare, providing Metlifecare with specified rights to enforce the funding commitments in the letter, and on which Metlifecare relied when Metlifecare's Board of Directors approved entry into the SIA.
5. On 30 December 2019 Metlifecare announced to NZX and ASX that Metlifecare had entered into the SIA, and that the Board of Directors of Metlifecare unanimously recommended that shareholders vote in favour of the Scheme in the absence of a Superior Proposal (as defined in the SIA).
6. Following entry into the SIA, until 27 April 2020, Metlifecare and APVG worked collaboratively together towards satisfaction of the conditions set out in clause 3 of the SIA, and confirmed approval of Metlifecare's lenders, statutory supervisors, arranged to appoint KordaMentha (New Zealand) Limited (**KordaMentha**) to provide an independent adviser's report on the Scheme and developed draft materials for a meeting of shareholders.
7. On 25 March 2020 (the day the New Zealand Government imposed Level 4 lockdown restrictions), the Overseas Investment Office (**OIO**) advised APVG that it was working towards a decision prior to the Scheme Meeting (then scheduled for 29 April 2020).
8. On 26 March 2020 Metlifecare advised NZX and ASX that APVG had told Metlifecare that APVG was monitoring the COVID-19 pandemic and the implications of it in New Zealand. APVG has termination rights under the SIA, including termination rights in the event of a "Material Adverse Change" (as defined in the SIA). Metlifecare further advised that Metlifecare did not consider that a Material Adverse Change had arisen at that point in time.
9. During the evening of 7 April 2020, Metlifecare received a notice from APVG that advised of an intention to terminate the SIA on the basis of an assertion that the emergence and spread of COVID-19 had triggered a Material Adverse Change.
10. APVG also asserted that Metlifecare had not provided certain information to APVG to enable APVG to adequately review the extent to which the business was being run in the ordinary course and notwithstanding the lack of information and consultation, APVG considered that Metlifecare had breached clauses 9.2(a) and 9.2(d)(xi) and such breaches were Prescribed Occurrences (as defined in the SIA), giving rise to a termination right for APVG.

11. On 20 April 2020, after receipt of further correspondence from APVG and further careful consideration, Metlifecare provided a market update to NZX and ASX confirming its view that APVG could not lawfully terminate the SIA on the basis asserted by APVG, and that its assertions were without substance.
12. On 23 April 2020 Metlifecare provided APVG and representatives of EQT with a written rebuttal of the APVG assertions. On 28 April 2020, APVG purported to terminate the SIA. Metlifecare rejected that notice and is treating APVG's actions as a 'repudiation' (invalid termination) of APVG's contractual obligations under the SIA.
13. The dispute between Metlifecare and APVG about APVG's purported termination of the SIA will require a Court decision in Metlifecare's favour before the Scheme can be implemented. Should it be determined that APVG has validly terminated the SIA, then the Scheme cannot proceed.
14. On 15 May 2020, Metlifecare commenced litigation in the High Court under proceeding number CIV 2020-404-683 against APVG for a declaration that the SIA remains in force, and orders requiring specific performance of APVG's obligations for the Scheme to proceed (the **Litigation**). The Litigation to enforce APVG's obligations has been commenced for the benefit of Metlifecare's shareholders and to ensure they realise value for their Metlifecare shares as set out in the Scheme. Shareholders are being asked whether they wish Metlifecare to continue with the Litigation, given it will be funded by Metlifecare and could take some considerable time to pursue, including to enforce any judgment if Metlifecare is successful.
15. A copy of the statement of claim is available at: <https://www.metlifecare.co.nz/scheme-asia-pacific>
16. The statement of claim sets out claims that Metlifecare, as the plaintiff, has commenced against three parties: APVG (the **First Defendant**), EQT Infrastructure IV EUR SCSp (the **Second Defendant**) and EQT Infrastructure IV USD SCSp (the **Third Defendant**). As against APVG, the proceeding seeks a declaration that the SIA has not been terminated, and orders that APVG take steps to perform the SIA and the Scheme, including to pay the Consideration (as defined in the SIA). Each of the Second and Third Defendants is a special limited partnership based in Luxembourg, comprising part of the fund known as EQT Infrastructure IV Fund, which indirectly owns APVG. As above, the Second and Third Defendants committed to provide APVG the funds required to pay the Scheme Consideration, subject to the terms and conditions of the Equity Commitment Letter. As against the Second and Third Defendants, the proceeding seeks orders that they fund APVG to enable it to pay the Scheme Consideration.
17. The issues for the Court to consider in the Litigation will be:
 - a. whether a Material Adverse Change had occurred or was reasonably likely to occur. Specifically, has the emergence and spread of COVID-19, as asserted in APVG's notice of termination, caused, or is it reasonably likely to cause, reductions in the value of Metlifecare's net tangible assets and consolidated underlying profits in excess of the thresholds identified in the Material Adverse Change clause. Those thresholds are a \$100 million reduction in consolidated net tangible assets of the Target Group (as defined in the SIA), or a 10% reduction in consolidated underlying net profit of the Target Group in any financial year. If either of those thresholds is exceeded, there will be no Material Adverse Change if that was the result of changes in general economic conditions and/or changes of law, unless those changes had a materially disproportionate effect on Metlifecare;
 - b. whether Metlifecare breached clause 9.2 of the SIA and, if so, whether any breach had an effect which is material to the group taken as a whole, such that it justifies termination of the SIA as a Prescribed Occurrence (APVG alleges that Metlifecare has deferred development, remediation, maintenance, and refurbishment projects outside of the legal restrictions associated with the level 4 lockdown, and that Metlifecare has materially breached the SIA by making wage subsidy applications);
 - c. if the SIA has not been validly terminated, whether specific performance (a discretionary remedy) ought to be granted; and

- d. whether relief ought to be granted under the Equity Commitment Letter, executed by the Second and Third Defendants. Under that letter, the Second and Third Defendants “acknowledge” that, if Metlifecare is entitled to specific performance of the SIA, as against APVG, Metlifecare has “the right to cause [APVG] to seek an injunction, or other appropriate form of specific performance or equitable relief, and to cause [APVG] to cause [the Second and Third Defendants] to fund, directly or indirectly, their Equity Commitments”.
18. While it is difficult to predict the outcomes of the Litigation, it is possible that any of the following outcomes may occur:
- a. The Court may make a declaration that the SIA was not validly terminated, and make orders for specific performance of APVG’s obligations in respect of the Scheme. If specific performance is ordered, APVG would be obliged to perform its obligations under the SIA, which include seeking consent from the OIO (that consent has not yet been granted; currently APVG has withdrawn its OIO application). Metlifecare would seek Court orders convening a meeting of shareholders to vote on the Scheme. If OIO consent was forthcoming, and the shareholders voted to approve the Scheme, Metlifecare would ask the Court to approve the Scheme, whereupon it would be binding on all shareholders and on APVG.
 - b. Any orders for specific performance may or may not extend to an order compelling the Second and Third Defendants to provide the equity commitments to APVG to fund the Scheme. If the Second and Third Defendants (or some other EQT entity) do not provide that funding, APVG will have no ability to pay the Scheme Consideration. If orders are made compelling the Second and Third Defendants to provide the equity commitments to APVG to fund the Scheme, it may or may not be necessary to take enforcement steps against the Second and Third Defendants (including in Luxembourg), or their assets (held in at least Germany, Malta, USA and Spain). Any such enforcement processes will vary according to the jurisdiction and the nature of the orders to be enforced, and could result in litigation in those jurisdictions.
 - c. The Court may make a declaration that the SIA was not validly terminated, but decline to make orders for specific performance of APVG’s obligations in respect of the Scheme. Damages may be ordered against APVG instead. Those damages may be for loss of bargain (being the difference between Metlifecare’s share price at the time of the Court judgment, and the Scheme Consideration of \$7.00 per share set out in the SIA), or they may be merely for Metlifecare’s costs in dealing with the Scheme (represented by the Reverse Break Fee of NZ\$14.91 million). APVG may not have sufficient funds to pay either form of damages. The Court would then have to consider whether there is to be any recourse against the Second and Third Defendants and then enforcement proceedings in Europe may be required. In the Equity Commitment Letter, the Second and Third Defendants have sought to limit their funding for damages to the Reverse Break Fee under the SIA.
 - d. The Court may determine that APVG validly terminated the SIA on the basis that a Material Adverse Change and/or a Prescribed Occurrence occurred. In this outcome, Metlifecare will be required to pay adverse costs to the defendants in accordance with the High Court Rules costs regime. If the SIA was validly terminated as a result of a Prescribed Occurrence, Metlifecare would be liable to pay the Break Fee of NZ\$14.91 million to APVG.
 - e. The parties may agree to settle the Litigation. Settlement will be a decision to be made by the Metlifecare Board in its discretion at the appropriate time, if it considers settlement is necessary and desirable. Any settlement that involves the sale of Metlifecare shares on terms that are different to that approved in the Scheme Resolution (as defined in the SIA) would need to be put to shareholders for approval, as a revised scheme of arrangement.
 - f. Any party may appeal a High Court decision to the Court of Appeal, and, with leave, to the Supreme Court.

19. Litigation can be a time-consuming (including for management) and costly process, the outcome of the Court process cannot be certain and enforcement of any Court order may require litigation in other jurisdictions. Also, because Metlifecare is seeking specific performance, it must continue to comply with the SIA during the litigation process, including by operating within the restrictions imposed by the SIA.
20. Metlifecare has previously expressed its view that there is no lawful basis to terminate the SIA, as no Material Adverse Change has occurred and there have been no Prescribed Occurrences that would permit APVG to terminate the SIA. EQT has equally asserted to the market its belief in its position that the SIA was validly terminated. While Metlifecare believes in its case, it acknowledges that litigation is not without risk.
21. The key steps to date in the Litigation are:
 - a. Metlifecare filed the statement of claim on 15 May 2020 and provided a copy of it to all defendants informally.
 - b. On 20 May 2020 Metlifecare formally served the proceeding and initial disclosure on APVG by way of service on APVG's solicitors, Bell Gully.
 - c. On 4 June 2020 (European time), Metlifecare served the proceeding and initial disclosure on the Second Defendant and Third Defendant.
22. At the first case management conference on 28 May 2020, the Court set a timetable, including the following key events:
 - a. APVG's statement of defence is scheduled to be filed and served by 19 June 2020;
 - b. the parties to complete discovery listing and exchange by 31 July 2020;
 - c. Metlifecare to serve its briefs of evidence by 11 September 2020;
 - d. the defendants to serve their briefs of evidence by 23 October 2020; and
 - e. a three week trial from 23 November 2020.
23. In respect of the Second and Third Defendants, the Court acknowledged that the directions made must be regarded as provisional because they may be affected by issues that arise if and when the Second and Third Defendants take steps to defend the proceeding. The Second and Third Defendants may protest the jurisdiction of the New Zealand Courts, requiring Metlifecare to apply to Court to determine whether that protest should be set aside and/or seek to delay the November trial.
24. Also, on 28 May 2020, Metlifecare sought initial orders from the High Court to approve calling a meeting of shareholders to approve the terms of the Scheme. The materials provided to the Court included a near final draft of KordaMentha's independent adviser's report in relation to the Scheme.
25. For reasons set out in a judgment of the Court on 2 June 2020 (a copy of which is available from <https://www.metlifecare.co.nz/scheme-asia-pacific>), Justice Lang decided that the dispute between Metlifecare and APVG on the validity of the purported termination should be resolved first, before the Court would consider granting initial and final orders on the Scheme.
26. Metlifecare's website (at <https://www.metlifecare.co.nz/scheme-asia-pacific>) includes a copy of KordaMentha's analysis of the merits of the scheme as at 5 June 2020, in substantially the form produced to the Court. However, as noted above, and to avoid any doubt, the purpose of the special resolution is to approve the Litigation, including steps already taken by the Board of Metlifecare, rather than the Scheme. Should the Litigation be successful then, as part of an application for Initial Orders, Metlifecare will arrange for preparation of a new independent adviser's report based on circumstances prevailing at the time.
27. Future material developments on the Litigation, including APVG's statement of defence, will be released by Metlifecare to NZX and ASX, and to Metlifecare's website at <https://www.metlifecare.co.nz/scheme-asia-pacific>. As noted above, APVG's statement of defence should be received by 19 June 2020.

NZX Regulation no objection

28. This notice of special meeting has been reviewed by NZX Regulation. NZX Regulation has confirmed it has no objection to this notice of special meeting.

Voting

29. For the resolution to be approved by the shareholders, 75% or more of the votes cast must be voted in favour of the resolution. If the special resolution is not approved by shareholders, then Metlifecare would withdraw the Statement of Claim and Metlifecare would likely need to pay costs to APVG and EQT (those costs, at this early stage of the Litigation, will be low compared to the costs which will be required to pursue the Litigation to its conclusion). Technically, if the resolution is not passed, the SIA would (in the company's view) remain in place, but the directors would then consider Metlifecare terminating it.

30. The persons who will be entitled to vote at the meeting are those persons (or their proxies or representatives) whose names are recorded in the share register at 5 pm (New Zealand time) on Wednesday, 8 July 2020. No shareholder is subject to any voting restrictions under the NZX Listing Rules or otherwise.

31. Shareholders who are eligible to vote can vote:

- **by proxy** – by completing, signing and lodging the Proxy Form in accordance with the instructions on that form; or
- **online** – by attending the virtual meeting online.

32. To appoint a proxy, completed Proxy Forms must be received by Computershare by no later than 11.00 am (New Zealand time) on Thursday, 9 July 2020. Completed Proxy Forms can be submitted:

- **online:** www.investorvote.co.nz
- **by email:** corporateactions@computershare.co.nz
- **by post:** by sending to:

Computershare Investor Services Limited
Private Bag 92119
Auckland 1142
New Zealand

or

Computershare Investor Services Pty Limited
GPO Box 3329
Melbourne Vic 3000
Australia

- **by fax:** +64 9 488 8787

33. A proxy need not be a shareholder. You may, if you wish, appoint the Chair (or any other Director) as your proxy. The Chair and all other Directors intend to vote proxies in favour of the Litigation resolution at the virtual meeting unless otherwise instructed.

34. If, in appointing a proxy, you have not named a person to be your proxy (either online or on the enclosed Proxy Form), or your named proxy does not attend the virtual meeting, the Chair of the meeting will be your proxy and will vote in accordance with your express direction. If you have not included an express direction (either online or in the enclosed Proxy Form), then the Chair will exercise your vote in favour of the Litigation resolution.

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