

In the Supreme Court of New South Wales
Equity Division
Corporations List
Sydney Registry

Viscopy Limited (ACN 069 759 922)
Plaintiff

SHORT MINUTES OF ORDER

1. Pursuant to s 411(4)(b) of the *Corporations Act 2001* (Cth) (**Act**), the proposed scheme of arrangement (**Scheme**) between the plaintiff (**Viscopy**) and its members that would effect an amalgamation of Viscopy into Copyright Agency Ltd (ACN 001 228 799) (**Copyright Agency**), being the scheme of arrangement in Annexure C to the document entitled “Scheme Booklet” and approved by the Court’s order 7(a) of 6 October 2017, a copy of which is annexed to these orders, is approved.
2. Pursuant to s 411(12) of the Act, Viscopy is exempted from compliance with s 411(11) of the Act in relation to the Scheme.
3. Pursuant to s 413(1) of the Act, on the Transfer Date (as that term is defined in the Scheme):
 - a. the whole of the undertaking and property of Viscopy is transferred to, and vested in, Copyright Agency;
 - b. all liabilities of Viscopy are transferred to, and become liabilities of, Copyright Agency; and
 - c. all legal proceedings pending by or against Viscopy (including the present proceedings) are continued as legal proceedings by or against Copyright Agency,without the need for any further act or deed other than, in the case of paragraph (c), appropriate amendment of the record of the relevant court or tribunal.

4. Pursuant to s 413(1)(d) of the Act, following the Transfer Date, Viscopy is to be deregistered by the Australian Securities and Investments Commission without winding up.
5. Liberty be reserved for Viscopy or, after the Transfer Date, Copyright Agency for orders under s 413(1)(g) of the Act concerning such incidental, consequential and supplemental matters as may be necessary to ensure that the amalgamation contemplated by the Scheme is fully and effectively carried out.
6. These orders be entered forthwith.

Dated: 8 November 2017

Annexure

Date 8 November 2017

Scheme of arrangement under Part 5.1 of the Corporations Act.

Parties

- 1 **Viscopy Limited** (ACN 069 759 922) (**Viscopy**).
- 2 Each **Viscopy Member** as at the Scheme Record Date (each a **Scheme Member**).

Operative part

1 Definitions and Interpretation

1.1 Definitions

In this scheme of arrangement, the following definitions apply unless the context requires otherwise.

ASIC means the Australian Securities and Investments Commission.

Corporations Act means the *Corporations Act 2001* (Cth).

Copyright Agency Membership Terms and Conditions means the terms and conditions of Copyright Agency membership as set out in the Annexure.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed between the parties.

Deed Poll means the deed poll by Copyright Agency substantially in the form set out in **Error! Reference source not found.** to the Implementation Deed or such other form as may be agreed between the parties.

Effective means the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

End Date means 30 November 2017 or such other date as may be agreed between the parties.

Implementation Date means 30 November 2017 or such other date as may be agreed between the parties.

Liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being transferred or performed vicariously.

Property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Scheme Implementation Deed means the implementation deed dated 26 July 2017 between Copyright Agency and Viscopy.

Scheme Meeting means the meeting of Viscopy Members ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Member means a Viscopy Member (other than Copyright Agency) at the Scheme Record Date.

Scheme Record Date means 5pm on 27 November 2017 or such other date as may be agreed between the parties.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Terminating Scheme Member means a Scheme Member who has given Viscopy notice of the termination of membership prior to the Scheme Record Date and not revoked all such notices prior to the Scheme Record Date.

Transfer Date means 11.59pm on 30 November 2017.

Transferring Scheme Member means a Scheme Member who is not a Terminating Scheme Member.

Viscopy Board means the board of directors of Viscopy.

Viscopy Member, at a relevant time, means a person who is registered as a member of Viscopy at that time.

Visual Artist Class means the new class of membership to Copyright Agency to be created in accordance with the changes to the Copyright Agency Constitution as contemplated by the Copyright Agency Notice of EGM.

Visual Artist Member means a member of Copyright Agency in the Visual Artists Class.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included. Nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a *clause* or *Annexure* is a reference to a clause of or an Annexure to this scheme of arrangement.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (g) A reference to a party to this scheme of arrangement or an agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (j) A reference to time is to Sydney, New South Wales time.

2 Preliminary

2.1 Viscopy

Viscopy is a public company limited by guarantee, registered in New South Wales.

2.2 Copyright Agency

Copyright Agency is a public company limited by guarantee, registered in New South Wales.

2.3 Implementation of this scheme of arrangement

- (a) The Viscopy Board considers that it is in the best interests of Viscopy Members for Viscopy to unify its management, membership and operations with that of Copyright Agency in the manner contemplated by this scheme of arrangement.
- (b) Under the Scheme Implementation Deed, Copyright Agency and Viscopy have agreed to implement this scheme of arrangement.
- (c) Copyright Agency has agreed by entering into the Deed Poll to:
 - (i) admit each Scheme Member as a member of Copyright Agency;
 - (ii) accept the transfer and vesting of the whole of the undertaking and Property of Viscopy;
 - (iii) accept the transfer of all Liabilities of Viscopy as its Liabilities; and
 - (iv) continue under its name any legal proceedings pending by or against Viscopy, as at and with effect from the Scheme Implementation Date (in the case of paragraph (c)(i)) or the Transfer Date (in the case of paragraphs (c)(ii), (iii) and (iv)), subject to and in accordance with this scheme of arrangement, and to perform all other actions attributed to it under this scheme of arrangement.

2.4 Consequence of this scheme of arrangement becoming Effective

If this scheme of arrangement becomes Effective, it will:

- (a) to the extent permitted by law, override the Viscopy constitution to the extent of any inconsistency; and
- (b) be implemented in accordance with clause 4.

3 Conditions Precedent

- (a) This scheme of arrangement is conditional on:
- (i) each condition set out in clause **Error! Reference source not found.** of the Scheme Implementation Deed (other than the condition in clause 3.1(e) of the Scheme Implementation Deed) having been satisfied or waived in accordance with the Scheme Implementation Deed by 8am on the Second Court Date;
 - (ii) the Court approving this scheme of arrangement in accordance with section 411(4)(b) of the Corporations Act before the End Date; and
 - (iii) each condition (if any) imposed by the Court under section 411(6) of the Corporations Act having been satisfied in accordance with the orders which imposed them.
- (b) This scheme of arrangement will lapse and be of no further force or effect if:
- (i) it does not become Effective before the End Date or any later date as the Court (with the consent of Copyright Agency and Viscopy) may order; or
 - (ii) the Scheme Implementation Deed is terminated in accordance with its terms before the Implementation Date.
-

4 Implementation

4.1 Lodgement of Court orders

Viscopy must lodge with ASIC an office copy of each Court order under sections 411(4)(b) or 413(1) of the Corporations Act as soon as practicable after the Court order is available.

4.2 Scheme Members

On the Implementation Date:

- (a) each Scheme Member ceases to be a Viscopy Member;
- (b) pursuant to its obligations under the Deed Poll, Copyright Agency admits each Transferring Scheme Member as a member of Copyright Agency; and
- (c) each Transferring Scheme Member agrees to be bound by the Copyright Agency Membership Terms and Conditions (if not already bound by them),

in each case, without the need for any further act or deed.

4.3 Terminating Scheme Members

A Terminating Scheme Member may not revoke after the Scheme Record Date a notice of the termination of membership given before the Scheme Record Date.

4.4 Transfers

On the Transfer Date:

- (a) the whole of the undertaking and Property of Viscopy is transferred to, and vested in, Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such transfer and vesting;

- (b) all Liabilities of Viscopy are transferred to, and become Liabilities of, Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such transfer; and
- (c) all legal proceedings pending by or against Viscopy (if any) are continued as legal proceedings by or against Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such continuation,

pursuant to orders of the Court under section 413(1) of the Corporations Act, in each case without the need for any further act or deed other than, in the case of clause 4.4(c), appropriate amendment of the record of the relevant court or tribunal.

4.5 Deregistration of Viscopy

Following the Scheme Implementation Date, Viscopy shall be deregistered by ASIC without winding up pursuant to an order of the Court under section 413(1)(d) of the Corporations Act.

5 General Provisions

5.1 Consent to alterations or conditions

If the Court proposes to approve this scheme of arrangement subject to any alterations or conditions, Viscopy may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Copyright Agency has consented.

5.2 Viscopy register of members

- (a) For the purposes of determining the Scheme Members and their entitlements under this scheme of arrangement, Viscopy must maintain its register of members, in accordance with its constitution and all applicable laws, until such time as all Scheme Members have been admitted as members of Copyright Agency.
- (b) The register of members of Viscopy shall, in the absence of manifest error, be the sole determinant of the Scheme Members and their entitlements under this scheme of arrangement.
- (c) From the Implementation Date, to the extent it relates to Scheme Members, the register of members of Viscopy shall cease to have any effect other than as evidence of the Scheme Members and their entitlements under this scheme of arrangement.

5.3 Scheme of arrangement binding on Scheme Members

Each Scheme Member acknowledges and agrees that this scheme of arrangement binds Viscopy and the Scheme Member regardless of whether or how the Scheme Member voted at the Scheme Meeting.

5.4 Authority to Viscopy

- (a) Each Scheme Member authorises Viscopy (who may authorise others) to do and execute all acts, matters, things and documents for or on behalf of the Scheme Member which Viscopy (or its delegate) considers necessary or expedient to implement and give full effect to this scheme of arrangement and the transactions contemplated by it.
- (b) Each Scheme Member, without the need for any further act or deed, irrevocably appoints Viscopy (who may authorise others) as its agent and attorney for the purpose of executing any document and to do and execute all other acts, matters, things and documents for or on behalf of the Scheme Member which Viscopy (or its delegate) considers necessary

or expedient to implement and give full effect to this scheme of arrangement and the transactions contemplated by it.

5.5 Enforcement of Deed Poll

- (a) Each Scheme Member, without the need for any further act or deed, irrevocably appoints Viscopy (who may appoint others) as its agent and attorney to enforce the Deed Poll against Copyright Agency.
- (b) Viscopy undertakes in favour of each Scheme Member that it will enforce the Deed Poll against Copyright Agency as the agent and attorney of the Scheme Member.

5.6 Further assurances

Viscopy must do anything necessary (including executing documents) to give full effect to this scheme of arrangement and the transactions contemplated by it.

5.7 Governing law and jurisdiction

This scheme of arrangement is governed by the laws of New South Wales. In relation to it and related non-contractual matters, Viscopy and each Scheme Member irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there.

5.8 Notices

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Viscopy Member may not, unless so ordered by the Court, invalidate this scheme of arrangement or the proceedings of the Scheme Meeting.

**Annexure to Scheme of Arrangement
Copyright Agency Membership Terms and Conditions**

1 Grant of licence

- 1.1 Where the Nominated Licence Schemes include a Copyright Agency Licence Scheme, you grant Copyright Agency the non-exclusive right to sublicense third parties (including foreign and Australian collecting societies) to Reproduce, Publish and Communicate Copyright Material under that Copyright Agency Licence Scheme.
- 1.2 The licence referred to in clause 1.1 is a worldwide licence.
-

2 Appointment as agent and RCTI authority

- 2.1 You appoint Copyright Agency as your non-exclusive agent in all matters relevant to the use of the Copyright Material under the Nominated Licence Schemes.
- 2.2 You authorise Copyright Agency to issue Recipient Created Tax Invoices (RCTI) and Adjustment Notes for Taxable Supplies made by you under the Agreement.
-

3 Administrative costs

Copyright Agency may deduct its administrative costs (including anticipated costs) and any other amounts authorised by the Constitution from moneys it collects.

4 Remuneration

- 4.1 Subject to clause 4.2, Copyright Agency will notify you of any money allocated to you in accordance with the method of allocation determined by Copyright Agency from time to time.
- 4.2 You acknowledge that the payment of money allocated to you will be subject to requirements reasonably imposed by Copyright Agency from time to time.
-

5 Warranties, indemnities & waiver

- 5.1 You warrant that:
- (a) You are eligible under the Constitution to be admitted as a member of Copyright Agency;
 - (b) You can grant the rights granted by the Agreement and those rights do not infringe the copyright or other proprietary right of any other person;
 - (c) Where you are not the sole owner of copyright in the Copyright Material, you have obtained the necessary consents to enter into the Agreement; and
 - (d) Where you have notified Copyright Agency of payment splits for the Copyright Material, the information supplied is correct.
- 5.2 You undertake to notify Copyright Agency of any changes in the control of the Copyright Material including reversions of rights and, where you have notified Copyright Agency of any payment splits, including any changes to those payment splits.
- 5.3 You indemnify Copyright Agency against any liability incurred by Copyright Agency arising out of:
- (a) a breach by you of the Agreement; or

- (b) an infringement of copyright or other proprietary right in the licensing of the rights granted by the Agreement.

5.4 The warranties and indemnities given in this clause 5 extend for the benefit of the Licensees.

5.5 You waive any claim of copyright infringement you may have against a Licensee in relation to any act or omission done under a licence granted under the Nominated Licence Schemes.

6 Term and termination

6.1 This Agreement starts on the date you are admitted to membership of Copyright Agency and ends when the membership terminates in accordance with the Constitution.

6.2 Subject to the Corporations Act 2001, Copyright Agency may at any time terminate your membership of Copyright Agency if you cease to be eligible for membership under the Constitution.

6.3 If:

- (a) the Agreement is terminated, or
- (b) you seek to withdraw Copyright Material from a Copyright Agency Licence Scheme, Copyright Agency may, except as otherwise provided in the Constitution, continue to license the rights granted by you for a further three years.

7 Constitution

You acknowledge that, on admission as a member of Copyright Agency, you will be an Artist Member of Copyright Agency and subject to the terms of the Constitution.

8 Glossary of terms

Act means the Copyright Act 1968;

Adjustment Note, Recipient Created Tax Invoice and **Taxable Supply** have the same meaning as in the A New Tax System Act 1999 legislation;

Agreement means the agreement between you and Copyright Agency formed by your admission as a member of Copyright Agency on the terms set out in this application;

Artistic Work has the same meaning as in the Act;

Copyright Agency means Copyright Agency Ltd ABN 53 001 228 799;

Copyright Agency Licence Schemes means the schemes administered by Copyright Agency from time to time where a specified category of user is licensed by Copyright Agency to Reproduce, Publish or Communicate Works;

Communicate has the same meaning as in the Act;

Constitution means the Copyright Agency constitution;

Copyright Material means the Works in which you own, control or represent copyright from time to time;

Licensee means any person licensed or authorised by Copyright Agency to Reproduce or Communicate Works;

Nominated Licence Schemes means the Statutory Licence Schemes, any other Copyright Agency Licence Schemes in which you elect to participate from time to time and, if you are a former member of Viscopy Limited, the voluntary licence scheme previously administered by Viscopy Limited in respect of Artistic Works;

Reproduce has the same meaning as in the Act;

Statutory Licence Schemes means the schemes in the Act under which bodies may Reproduce and Communicate Works; and

Work has the same meaning as in the Act.

Unless otherwise stated in this application, words and phrases in this application have the same meaning as in the Act and the Constitution. The Agreement is subject to the Constitution and the terms of the Constitution prevail over the Agreement to the extent of any inconsistency. In this application, the singular includes the plural. The Agreement binds the parties and their respective successors and assignees. The Agreement is governed by the laws of New South Wales.