

Financial Markets Conduct (Embark Early Education Limited) Exemption Notice 2023

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	1
5 Exemptions	2
6 Conditions	2

Notice

1 Title

This notice is the Financial Markets Conduct (Embark Early Education Limited) Exemption Notice 2023.

2 Commencement

This notice comes into force on 18 May 2023.

3 Revocation

This notice is revoked on the close of 17 May 2024.

4 Interpretation

(1) In this notice, unless the context otherwise requires -

Act means the Financial Markets Conduct Act 2013

approval meeting means the meeting of Embark shareholders that is to be held to consider and vote on whether to approve the arrangement

arrangement means the scheme of arrangement relating to the proposal, ordered by the High Court of New Zealand under Part 15 of the Companies 1993 and to be voted on at the approval meeting

ASIC means the Australian Securities and Investments Commission

ASX means the securities exchange operated by ASX Limited under that name

eligible shareholder means an Embark shareholder with an address recorded in Embark's

share register as at 7:00pm on the Record Date in:

- (a) New Zealand or Australia; or
- (b) any other jurisdiction in respect of which Embark reasonably believes:
 - (i) it is not prohibited from implementing the arrangement or issuing Embark AU shares to a Shareholder in that jurisdiction; and
 - (ii) issuing Embark AU shares to an Embark shareholder in that jurisdiction would not be unduly onerous or impractical

Embark means Embark Education Group Limited listed on the NZX Main Board and ASX as a foreign exempt listing

Embark AU means Embark Early Education Limited (ACN 667 611 752), an Australian public company

Embark AU shares means fully paid ordinary shares in Embark AU

Embark shares means fully paid ordinary shares in Embark

Embark shareholder means a person recorded in Embark's share register as holding Embark shares

financial information means:

- (a) the financial statements contained in Embark's annual reports for the 2021 and 2022 financial years; and
- (b) any full year or half year financial results made publicly available by Embark or Embark AU subsequent to the publication of Embark's annual report for the 2022 financial year but prior to the implementation date

New Zealand shareholder means an Embark shareholder with an address recorded in Embark's share register as at 7:00pm on the Record Date in New Zealand

proposal means the restructure of Embark involving the issue of Embark AU shares to Embark shareholders in exchange for the transfer of Embark shares held by Embark shareholders to Embark AU in accordance with the arrangement

Record Date means the record date for the scheme as notified to eligible shareholders

Regulations means the Financial Markets Conduct Regulations 2014

scheme booklet means the scheme booklet prepared by Embark in respect of the arrangement and containing the information prescribed by clause 6(k).

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions

Embark AU is exempted from Part 3 of the Act in respect of offers of Embark AU shares made to Embark shareholders in accordance with the arrangement.

6 Conditions

The exemption in clause 5 is subject to the following conditions–

- (a) the proposal proceeds by way of the arrangement approved by the High Court of New Zealand under Part 15 of the Companies Act 1993; and

- (b) the only persons to whom Embark AU shares are offered in New Zealand are New Zealand shareholders; and
- (c) it is a term of the offer that Embark AU issues the Embark AU shares to eligible shareholders, credited as fully paid, in exchange for their shares in Embark in accordance with the arrangement; and
- (d) no Embark AU shares are issued pursuant to the arrangement unless the application for quotation of the Embark AU shares on the ASX is approved by the ASX within two months of the approval meeting, and such approval by the ASX is subject only to customary conditions which ASX may reasonably require; and
- (e) the scheme booklet is distributed to Embark shareholders with the notice of meeting for the meeting of Embark shareholders at which approval for the arrangement will be sought; and
- (f) if the scheme is approved, the scheme document, together with the financial information, must be publicly available, free of charge, on the internet site maintained by, or on behalf of, Embark for at least 12 months after the implementation date; and
- (g) it is a term of the offer that Embark AU is the offeror of the Embark AU shares; and
- (h) it is a term of the offer that, immediately after the implementation of the arrangement, Embark AU is the parent company of Embark and its subsidiaries; and
- (i) it is a term of the offer that the assets and business of Embark AU and its subsidiaries immediately after the implementation of the scheme are the same as the assets and business of Embark immediately prior to the implementation of the scheme in all material respects, except that the assets of Embark AU will include all the Embark shares; and
- (j) the offer of the Embark AU shares to persons in New Zealand is made in compliance with the laws of Australia and any code, rules, or other requirements relating to the offer of those securities that apply in Australia; and
- (k) the scheme booklet includes particulars of all matters that may be material to Embark shareholders in making a decision on whether to approve the arrangement and in relation to the offer of Embark AU shares, including without limitation–
 - (i) a description of the rights attached to Embark AU shares; and
 - (ii) the purpose and effect of the proposal; and
 - (iii) the steps necessary to give effect to the proposal; and
 - (iv) a statement as to why the directors of Embark believe that the proposal is in the best interests of Embark shareholders; and
 - (v) a summary of the impact of the proposal, including any material advantages, material disadvantages and material risks of the proposal; and
 - (vi) a summary of the costs of the proposal; and
 - (vii) a comparative description of the material rights and protections of shareholders under New Zealand and Australian law that will apply to Embark and Embark AU and any material changes to those rights and protections as a result of holding Embark AU shares; and
 - (viii) the name of every person who, at the date of the scheme booklet, is proposed

- to be a director of Embark AU immediately after implementation of the proposal (subject to any requirements for those directors to be elected or otherwise approved by Embark shareholders prior to implementation of the proposal); and
- (ix) particulars of any material Australian or New Zealand taxation liabilities for Embark shareholders caused by the implementation of the proposal; and
 - (x) particulars of any material Australian or New Zealand taxation implications in holding or disposing of Embark AU shares; and
 - (xi) a statement to the effect that Embark AU's constitution can be found on the internet site maintained by, or on behalf of, Embark, together with a link to or URL for the page where that constitution is located; and
 - (xii) a statement to the effect that Embark's financial information can be found on the internet site maintained by, or on behalf of, Embark, together with a link to or URL for the page where the financial information is located.

Dated at Auckland this 17th day of May 2023



Paul Gregory

Executive Director – Response and Enforcement

Financial Markets Authority

Statement of Reasons

This notice comes into force on 18 May 2023 and is revoked on the close of 17 May 2024.

This notice exempts Embark Early Education Limited (**Embark AU**), subject to conditions, from compliance with Part 3 of the Financial Markets Conduct Act (**Act**) in relation to the shares in Embark AU (the **Embark AU shares**) that are to be offered by Embark AU to eligible shareholders under a proposed scheme of arrangement pursuant to Part 15 of the Companies Act 1993.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the offer of Embark AU shares is made in connection with a proposal to restructure Embark, involving the issue of Embark AU shares to Embark shareholders in exchange for the transfer of Embark shares held by Embark shareholders. This means the offer will only be made to existing shareholders of Embark and therefore is limited to persons who may be expected to already be familiar with the assets and business of Embark AU and the business that will be conducted by Embark AU. Conditions of the exemption require that the offer can only be made if Embark AU becomes the parent of Embark, and the underlying assets and business of Embark AU are the same after the implementation of the arrangement as before it:
- the offer is made pursuant to a court approved scheme of arrangement under Part 15 of the Companies Act 1993 and is subject to other legislation and the listing rules in New Zealand. In order to comply with these requirements, a scheme booklet containing information

relevant to evaluating the proposal will be provided to shareholders together with the notice of shareholder meeting at which approval of the scheme will be sought. The scheme booklet will be approved by the High Court before being dispatched to shareholders prior to the shareholder meeting. Conditions of the exemptions require that investors receive all material information in the scheme booklet to enable them to make an informed decision on the proposal. The offer of Embark AU shares must comply with the requirements of the laws and requirements relating to the offer of Embark AU shares that apply in Australia. The conditions require that the scheme booklet is provided to the ASX for release to the market, as well as being available on Embark's website:

- the disclosure requirements of Part 3 of the Act and the Financial Market Conduct Regulations 2014 (**Regulations**) focus on providing information about the financial products being offered, including the assets and business of the issuer. However, in these circumstances, shareholders require information about the proposed arrangement, including its effects, in order to decide whether or not to approve it. Accordingly, the nature of the information that shareholders require to assess the offer is different from that prescribed in the Act and Regulations. As such, the exemption, which includes conditions requiring shareholders to be provided with information about the effect, benefits and detriments of the scheme, supports the provision of timely, accurate and understandable information to persons to assist those persons to make decisions relating to financial products:
- the arrangement will be overseen by the High Court. The Court will need to be satisfied that the scheme documents (including the scheme booklet) include sufficient information for Embark shareholders to make an informed decision as to how to vote on the proposal:
- Embark AU will remain subject to the fair dealing provisions in Part 2 of the Act and therefore New Zealand shareholders will have protection against misleading or deceptive information being included in the scheme booklet:
- Embark AU will remain subject to the laws of Australia, including those that relate to the governance of the new shares. Placing additional New Zealand law compliance obligations on Embark AU would impose additional compliance costs, which would outweigh the expected benefits to current and future prospective New Zealand shareholders in circumstances where effective disclosure is provided to investors by virtue of the matters outlined above.

As such, the FMA is satisfied that –

- the exemption is desirable in order to promote the purposes of the Act, specifically to provide for timely, accurate and understandable information to be provided to Embark shareholders voting on the scheme to assist them to make a confident and informed decision on the proposal, and to avoid unnecessary compliance costs caused by having to prepare separate disclosure documents under the Act for New Zealand shareholders only, in addition to the scheme booklet and other documents relating to the proposal:
- the exemption is not broader than is reasonably necessary to address the matters that give rise to it, given that the exemption is limited to the offer of Embark AU shares to eligible shareholders in the context of the scheme proposal for a limited time period, and that the key impact of the exemption is to provide relief from the requirement to provide information that is not material to Embark shareholders' decision on whether to approve the proposal.