

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)

Claim No. CR-2021-000750



CR-2021-000750

Before Eason Rajah QC sitting as Judge of the Chancery Division

22 July 2021

IN THE MATTER OF INTERNATIONAL METAL INDUSTRIES LIMITED, ENVIROLEAD MIDCO LIMITED, ENVIROLEAD RECYCLING LIMITED, L&P ECOLEAD LIMITED, L & P TRADING LIMITED, ENVIROWALES LIMITED, ENVIROLEAD DISTRIBUTION LIMITED, ASSOCIATED LEAD MILLS LTD, JAMESTOWN INDUSTRIES LIMITED, ROYSTON SHEET LEAD LIMITED, ROYSTON LEAD LIMITED, JAMESTOWN METAL RESOURCES LIMITED AND MET-SEAM LIMITED

AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

BETWEEN:

**(1) MAURICE ELLIOT SHERLING
(2) GRAHAM CHARLES HUDSON**

Claimants

and

THE COMPETITION AND MARKETS AUTHORITY

Defendant

ORDER

UPON THE CLAIM of the above-named Claimants by Claim Form issued on 26 April 2021 for permission pursuant to section 17 of the Company Directors Disqualification Act 1986 in the case of the First Claimant to act as a director of, and take part in the management of, International Metal Industries Limited (company number 11776916) ('**IMI**'), Envirolead MidCo Limited (company number 09173820) ('**MidCo**'), Envirolead Recycling Limited (company number 09175440) ('**Recycling**'), L&P Ecolead Limited (company number 08480353) ('**Ecolead**'), L & P Trading Limited (company number 06523828) ('**L & P Trading**'), Envirowales Limited (company number 04296277) ('**Envirowales**'), Envirolead

Distribution Limited (company number 09175438) (**‘Distribution’**), Associated Lead Mills Ltd (**‘ALM’**) (company number 03382580), Jamestown Industries Limited (**‘JI’**) (company number 03477187), Royston Sheet Lead Limited (**‘RSL’**) (company number 03031508), Royston Lead Limited (**‘RL’**) (company number 00411322), Jamestown Metal Resources Limited (a company registered in the Republic of Ireland under company number 124413) (**‘JMR’**) and Met-Seam Limited (company number 05591263) (**‘Met-Seam’**) (together **‘the IMI Group’**), and in the case of the Second Claimant to act as a director of, and take part in the management of, Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam (**‘the Claim’**)

AND UPON disqualification undertakings having been given by the Claimants and accepted by the Defendant on 2 March 2021 for periods of 3 years, in the case of the First Claimant, and 4 years, in the case of the Second Claimant, in both cases commencing on 30 May 2021

AND UPON HEARING Mr Christopher Buckley, Counsel for the Claimants, and Ms Catherine Addy QC and Ms Narinder Jhittay, Counsel for the Defendant

AND UPON the Claim no longer being pursued in respect of Midco, Recycling, Ecolead and Distribution

AND UPON Barry Smith (who was previously only a director of ALM and RSL) having been appointed on 12 July 2021 as an additional director of IMI, Envirowales, L & P Trading, JI, RL, JMR and Met-Seam

AND UPON Ian Crabbe (who was previously only a director of RL) having been appointed on 12 July 2021 as an additional director of IMI, Envirowales, L & P Trading, ALM, JI, RSL, JMR and Met-Seam

AND UPON READING the evidence

IT IS ORDERED that:

1. Notwithstanding the disqualification undertaking accepted by the Defendant on 2 March 2021, the First Claimant has permission to act as a director of, and take part in the

management of, IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam subject to the following conditions:

- 1.1. the First Claimant shall not act as a director of any other company;
- 1.2. IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam shall not act as directors of any company;
- 1.3. IMI shall not carry out any trading activities;
- 1.4. subject to condition 1.5 below, David Rintoul (**‘Mr Rintoul’**) shall remain a non-executive director of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam;
- 1.5. with the permission of the Court, Mr Rintoul may be replaced as a non-executive director of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and/or Met-Seam. Any application for such permission shall be made on notice to the Defendant;
- 1.6. subject to condition 1.7 below:
 - (a) Glynn Thomas (**‘Mr Thomas’**) shall continue to be engaged by IMI, through JC&E Limited or otherwise, as a consultant to the IMI Group, with responsibility for: (i) monitoring and advising on the performance of the IMI Group and its ability to meet its obligations to its various stakeholders, including its external lenders; (ii) attending all board meetings of the companies within the IMI Group as an observer; and (iii) providing a focal point of the relationship between the IMI Group and its external lenders;
 - (b) Barry Smith (**‘Mr Smith’**) shall remain a director of ALM, RSL, IMI, Envirowales, L & P Trading, JI, RL, JMR and Met-Seam. In addition, Mr Smith shall continue in his role as the appointed competition compliance officer for the IMI Group;
 - (c) Carl Green (currently a director of Envirowales) (**‘Mr Green’**) shall remain a director of Envirowales;

(d) Ian Crabbe ('**Mr Crabbe**') shall remain a director of RL, IMI, Envirowales, L & P Trading, ALM, JI, RSL, JMR and Met-Seam;

1.7. with the permission of the Court:

(a) Mr Thomas may be replaced as consultant to the IMI Group, with responsibility for: (i) monitoring and advising on the performance of the IMI Group and its ability to meet its obligations to its various stakeholders, including its external lenders; (ii) attending all board meetings of the companies within the IMI Group as an observer; and (iii) providing a focal point of the relationship between the IMI Group and its external lenders;

(b) Mr Smith may be replaced as a director of any or all of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam and/or as the appointed competition compliance officer for the IMI Group (save that any replacement competition compliance officer shall also be appointed as a director of each of the aforesaid companies);

(c) Mr Green may be replaced as a director of Envirowales;

(d) Mr Crabbe may be replaced as a director of any or all of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and/or Met-Seam.

Any application for such permission shall be made on notice to the Defendant;

1.8. Mr Rintoul, or his replacement, shall:

(a) supervise compliance with competition law by IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR, Met-Seam and the First Claimant; and

(b) report to the board of directors of each of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam and Mr Thomas every quarter, and the Defendant on reasonable request with no less than 14 days' notice, on compliance with competition law by IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR, Met-Seam and the First Claimant;

1.9. the First Claimant shall procure that face to face (or video, following government regulations and/or recommendations in response to the COVID-19 pandemic) competition compliance training is conducted annually for:

(a) staff employed by IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam who are identified by Mr Rintoul as being at a higher risk of non-compliance; and

(b) all directors of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam;

1.10. by no later than 26 July 2021 a written whistleblowing policy shall be adopted, and thereafter maintained, by each and all of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam in the form of or similar to the draft policy exhibited to Mr Rintoul's second affidavit;

1.11. at the discretion of, and under the supervision of, Mr Rintoul or his replacement:

(a) at every board meeting the Claimants shall be asked to confirm whether they have had (and if so the details of) any contact with any competitor since the last board meeting;

(b) no less than twice a year, all email servers within the custody or control of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam shall be searched for high risk terms relating to potential competition law breaches; and

(c) no less than four times a year, samples of the electronic copies of the Claimants' text and call records shall be reviewed and all text exchanges identified as being with a competitor shall be reviewed;

and if Mr Rintoul, or his replacement, has any concerns following their investigations, such concerns shall be reported to the CMA in writing;

1.12. each of IMI, Envirowales, L & P Trading, ALM, JI, RSL, RL, JMR and Met-Seam shall hold minuted board meetings at which the respective company's compliance with competition law and any concerns raised by Mr Rintoul or his replacement are considered on a monthly basis. In addition, the appointed competition compliance officer shall provide a report to every board meeting which shall (a) include details of any competition law compliance training undertaken within the IMI group since the last board meeting and (b) include details of any matters or reports that such officer has become aware of under the applicable competition compliance policy and/or whistleblowing policy.

PROVIDED THAT the permission hereby granted shall cease immediately and without further Order upon any of the aforementioned conditions not being complied with and any permission shall not without further Order be capable of reinstatement by the subsequent fulfilment of the condition.

SAVE THAT should the First Claimant issue and serve an application either pursuant to conditions 1.5 or 1.7 above or for permission to continue to act prior to or within 7 days of the breach of any condition(s), the permission shall continue until the close of the first hearing of such application which shall be listed before an Insolvency and Companies Court Judge in the urgent applications list no later than 14 days after issuing, subject to further Order of the Court.

2. Notwithstanding the disqualification undertaking accepted by the Defendant on 29 July 2019, the Second Claimant has permission to act as a director of, and take part in the management of, Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam subject to the following conditions:

2.1. the Second Claimant shall not act as a director of any other company;

2.2. Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam shall not act as directors of any company;

2.3. subject to condition 2.4 below, Mr Rintoul shall remain a non-executive director of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam;

2.4. with the permission of the Court, Mr Rintoul may be replaced as a non-executive director of Envirowales, ALM, JI, RSL, RL, JMR and/or Met-Seam. Any application for such permission shall be made on notice to the Defendant;

2.5. subject to condition 2.6 below:

(a) Mr Thomas shall continue to be engaged by IMI, through JC&E Limited or otherwise, as a consultant to the IMI Group, with responsibility for: (i) monitoring and advising on the performance of the IMI Group and its ability to meet its obligations to its various stakeholders, including its external lenders; (ii) attending all board meetings of the companies within the IMI Group as an observer; and (iii) providing a focal point of the relationship between the IMI Group and its external lenders;

(b) Mr Smith shall remain a director of ALM, RSL, Envirowales, JI, RL, JMR and Met-Seam. In addition, Mr Smith shall continue in his role as the appointed competition compliance officer for the IMI Group;

(c) Mr Green shall remain a director of Envirowales;

(d) Mr Crabbe shall remain a director of RL, Envirowales, ALM, JI, RSL, JMR and Met-Seam;

2.6. with the permission of the Court:

(a) Mr Thomas may be replaced as consultant to the IMI Group, with responsibility for: (i) monitoring and advising on the performance of the IMI Group and its ability to meet its obligations to its various stakeholders, including its external lenders; (ii) attending all board meetings of the companies within the IMI Group as an observer; and (iii) providing a focal point of the relationship between the IMI Group and its external lenders;

(b) Mr Smith may be replaced as a director of any or all of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam and/or as the appointed competition compliance

officer for the IMI Group (save that any replacement competition compliance officer shall also be appointed as a director of each of the aforesaid companies);

- (c) Mr Green may be replaced as a director of Envirowales;
- (d) Mr Crabbe may be replaced as a director of Envirowales, ALM, JI, RSL, RL, JMR and/or Met-Seam.

Any application for such permission shall be made on notice to the Defendant;

2.7. Mr Rintoul, or his replacement, shall:

- (a) supervise compliance with competition law by Envirowales, ALM, JI, RSL, RL, JMR, Met-Seam and the Second Claimant; and
- (b) report to the board of directors of each of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam and Mr Thomas every quarter, and the Defendant on reasonable request with no less than 14 days' notice, on compliance with competition law by Envirowales, ALM, JI, RSL, RL, JMR, Met-Seam and the Second Claimant;

2.8. the Second Claimant shall procure that face to face (or video, following government regulations and/or recommendations in response to the COVID-19 pandemic) competition compliance training is conducted annually for:

- (a) staff employed by Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam who are identified by Mr Rintoul as being at a higher risk of noncompliance; and
- (b) all directors of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam;

2.9. by no later than 26 July 2021 a written whistleblowing policy shall be adopted, and thereafter maintained, by each and all of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam in the form of or similar to the draft policy exhibited to Mr Rintoul's second affidavit;

2.10. at the discretion of, and under the supervision of, Mr Rintoul or his replacement:

- (a) at every board meeting the Claimants shall be asked to confirm whether they have had (and if so the details of) any contact with any competitor since the last board meeting;
- (b) no less than twice a year, all email servers within the custody or control of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam shall be searched for high risk terms relating to potential competition law breaches; and
- (c) no less than four times a year, samples of the electronic copies of the Claimants' text and call records shall be reviewed and all text exchanges identified as being with a competitor shall be reviewed;

and if Mr Rintoul, or his replacement, has any concerns following their investigations, such concerns shall be reported to the CMA in writing;

2.11. each of Envirowales, ALM, JI, RSL, RL, JMR and Met-Seam shall hold minuted board meetings at which the respective company's compliance with competition law and any concerns raised by Mr Rintoul or his replacement are considered on a monthly basis. In addition, the appointed competition compliance officer shall provide a report to every board meeting which shall (a) include details of any competition law compliance training undertaken within the IMI group since the last board meeting and (b) include details of any matters or reports that such officer has become aware of under the applicable competition compliance policy and/or whistleblowing policy.

PROVIDED THAT the permission hereby granted shall cease immediately and without further Order upon any of the aforementioned conditions not being complied with and any permission shall not without further Order be capable of reinstatement by the subsequent fulfilment of the condition.

SAVE THAT should the Second Claimant issue and serve an application either pursuant to conditions 2.4 or 2.6 above or for permission to continue to act prior to or within 7 days

of the breach of any condition(s), the permission shall continue until the close of the first hearing of such application which shall be listed before an Insolvency and Companies Court Judge in the urgent applications list no later than 14 days after issuing, subject to further Order of the Court.

3. The Defendant's costs of the Claim be paid by the Claimants, such costs to be subject to detailed assessment if not agreed;
4. This order shall be served by the Claimants on the Defendant.

Dated: 22/07/2021

Service of Order

The court has provided sealed copies of this Order to the serving party:

Hogan Lovells International LLP
Atlantic House
Holborn Viaduct
London
EC1A 2FG