

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST**

S ECI 2021 01835

IN THE MATTER OF IPO WEALTH HOLDINGS NO 3 PTY LTD (IN LIQUIDATION)
(ACN 620 706 498)

BETWEEN

IPO WEALTH HOLDINGS NO 3 PTY LTD (IN LIQUIDATION) (ACN 620 706 498)
& ORS (according to the attached Schedule)

Plaintiffs

- and -

MAYFAIR 101 LIMITED (COMPANY NUMBER: 10527210)
& ORS (according to the attached Schedule)

Defendants

FREEZING ORDER

JUDGE OF THE COURT: The Honourable Justice Attiwill

DATE MADE: 2 June 2021

ORIGINATING PROCESS: Originating process filed 31 May 2021

HOW OBTAINED: Ex parte and on return of the Plaintiffs' application filed 31 May 2021

ATTENDANCE: Mr Galvin QC and Ms Papaleo, counsel for the Plaintiffs

OTHER MATTERS:

- A. This order is signed by the Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic).
- B. This order is made by the Court pursuant to Rule 59.07(1) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic).
- C. On the Court being satisfied that the technical requirements in s 42G of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) ('Evidence Act') were met, it directed that, pursuant to s 42E(1) of the Evidence Act, all persons shall appear, give evidence and make submissions in this proceeding on this day by audio visual link.

PENAL NOTICE

TO:

1. **Mayfair 101 Limited (company number: 10527210)**
2. **101 Investments Ltd (company number: 200 5594)**
3. **James Peter Mawhinney**

IF YOU:

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,**

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO:

1. **Mayfair 101 Limited (company number: 10527210)**
2. **101 Investments Ltd (company number: 200 5594)**
3. **James Peter Mawhinney**

This is a "*freezing order*" made against you on 2 June 2021 by the Honourable Justice Attiwill at a hearing without notice to you after the Court has been given the undertakings set out in Schedule A to this order and after the Court has read the affidavits listed in Schedule B to this order.

The plaintiffs have given to the Court the undertakings set out in Schedule A to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) The application for this order is made returnable immediately.
- (b) The time for service of the originating process, interlocutory process, the affidavits of

Hamish Alan MacKinnon sworn on 31 May 2021, 1 June 2021 and 2 June 2021, the submissions dated 31 May 2021 and 1 June 2021 and the Transcripts of the proceeding dated 1 June 2021 and 2 June 2021 is abridged and service is to be effected by 4pm on 4 June 2021.

2. Subject to the next paragraph, this order has effect up to and including 8 June 2021 ("the return date"). On the return date there will be a further hearing in respect of this order at 10am before Justice Attiwill.
3. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
4. In this order—
 - (a) **"Accloud shares"** means the shares in Accloud PLC [Company Number: 09847722] that are the subject of certificate 129 at exhibit number HAM-37 to the affidavit of Hamish Alan MacKinnon sworn on 31 May 2021;
 - (b) **"third party"** means a person other than you and the plaintiffs;
 - (c) **"unencumbered value"** means value free of mortgages, charges, liens or other encumbrances; and
 - (d) **"you"**, where there is more than one of you, includes all of you and includes you if you are a corporation.
5.
 - (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
 - (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

FREEZING OF ASSETS

6. You must not remove from Australia or in any way dispose of, deal with or diminish the value of any sale proceeds of any Accloud shares (whether those shares have been sold as at the date of this freezing order or are sold in future).

PROVISION OF INFORMATION

7. Subject to paragraph 8, you must:
- (a) at or before the further hearing on the return date (or within such further time as the Court may allow) to the best of your ability inform the plaintiffs in writing of:
 - (i) the particulars of any sales by any of the defendants of any of the Accloud shares by providing:
 - A. the identity of the transferor and transferee;
 - B. the date of transfer;
 - C. the number of shares sold; and
 - D. the purchase price;
 - (ii) the quantum and location of any sale proceeds arising from any sales of the Accloud shares by any of the defendants.
 - (b) within 10 working days after being served with this order, swear and serve on the plaintiffs an affidavit setting out the above information.
8. (a) This paragraph 8 applies if you are not a corporation and you wish to object to complying with paragraph 7 on the grounds that some or all of the information required to be disclosed may tend to prove that you—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.
- (b) This paragraph 8 also applies if you are a corporation and all persons who are able to comply with paragraph 7 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 7 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively—
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty.

- (c) You must—
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
 - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

EXCEPTIONS TO THIS ORDER

9. (a) The order will cease to have effect if you—
- (i) pay the proceeds of all of the Accloud shares into Court; or
 - (ii) pay that sum into a joint bank account in the name of your Australian lawyer and the Australian lawyer for the plaintiffs as agreed in writing between them; or
 - (iii) provide security in that sum by a method agreed in writing with the plaintiffs to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the plaintiffs with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant to subparagraph (a), you must as soon as practicable file with the Court and serve on the plaintiffs notice of that fact.

COSTS

10. The costs of this application are reserved.

PERSONS OTHER THAN THE PLAINTIFFS AND DEFENDANTS

11. Set off by banks

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

12. Bank withdrawals by the respondent

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

13. **Persons outside Australia**

- (a) Except as provided in sub-paragraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia—
 - (i) you and your directors, officers, employees and agents (except banks and financial institutions);
 - (ii) any person (including a bank or financial institution) who—
 - (A) is subject to the jurisdiction of this Court;
 - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
 - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
 - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

14. **Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the plaintiffs.

DATE AUTHENTICATED: 2 June 2021

The Honourable Justice Attiwill

A red circular seal of the Supreme Court of Victoria is stamped over the signature. The seal features the coat of arms of Victoria in the center, surrounded by the text "SUPREME COURT OF VICTORIA" and "JUDGE OF THE SUPREME COURT OF VICTORIA". A blue ink signature is written across the seal and extends to the right.

SCHEDULE A

UNDERTAKINGS GIVEN TO THE COURT BY THE PLAINTIFFS

- (1) The plaintiffs undertake to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the plaintiffs will—
 - (a) file a copy of this order and the affidavits of Hamish Alan MacKinnon dated 31 May 2021, 1 June 2021 and 2 June 2021; and
 - (b) serve on the defendants copies of this order, the originating process, interlocutory process, the affidavits of Hamish Alan MacKinnon sworn on 31 May 2021, 1 June 2021 and 2 June 2021, the submissions dated 31 May 2021 and 1 June 2021 and the Transcripts of the hearings dated 1 June 2021 and 2 June 2021.
- (3) As soon as practicable, the plaintiffs will cause anyone notified of this order to be given a copy of it.
- (4) The plaintiffs will pay the reasonable costs of anyone other than the defendants which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the defendants' assets.
- (5) If this order ceases to have effect the plaintiffs will promptly take all reasonable steps to inform in writing anyone to whom the plaintiffs have given notice of this order, or who the plaintiffs have reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The plaintiffs will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The plaintiffs will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the defendants or the defendants' assets.

SCHEDULE B

AFFIDAVITS RELIED ON

<i>Name of Deponent of Affidavit</i>	<i>Date Affidavit Made</i>
Hamish Alan MacKinnon	31 May 2021
Hamish Alan MacKinnon	1 June 2021
Hamish Alan MacKinnon	2 June 2021

NAME AND ADDRESS OF PLAINTIFFS' LEGAL REPRESENTATIVES

The plaintiffs' legal representatives are Thomson Geer, Level 39, Rialto South Tower, 525 Collins Street, Melbourne, Vic, 3000.

