

DEED OF VARIATION  
HUNT SUPERANNUATION FUND

BROWN  
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## DEED OF VARIATION OF SUPERANNUATION FUND TRUST DEED

THIS DEED POLL is made the                      day of

**BY:**            **JOHN GEOFFREY HUNT AND BARBARA IZABELLA ZIELINSKA** both  
of 35 Barry Street, Neutral Bay in the State of New South Wales (the "Trustees")

### RECITALS:

- A. By a deed (hereinafter referred to as the "Original Deed") made the 12<sup>th</sup> day of June 2000 there was established a trust fund for the purpose of providing superannuation benefits which, pursuant to the Original Deed was described as the Hunt Superannuation Fund (the "Fund").
- B. Pursuant to rule 25 of the Original Deed the Trustee is empowered to amend all or any of the provisions of the Original Deed.
- C. The Trustee wishes to delete, alter and add to the provisions of the Original Deed so as to ensure that the Fund:
  - (a) complies with the provisions of the *Superannuation Industry (Supervision) Act* 1993 and other legislative provisions regulating the conduct of superannuation funds; and
  - (b) regarded as complying superannuation fund and qualifies for maximum taxation concession.

### NOW THIS DEED WITNESSES:

The Original Deed is hereby amended by the deletion of all the provisions of the Original Deed except for the provisions of the Original Deed which constituted the Fund and by substituting the clauses numbered 1 through to 7 and the Rules numbered 1 through to 14 and the Schedules numbered 1 through to 6 and the other provisions contained in the annexure to this deed which is marked with the letter "A" (the "New Provisions"), with the intent that the Fund shall hereafter be governed by the New Provisions.

**EXECUTED** by the parties as a deed.

**SIGNED SEALED AND DELIVERED** )  
by the said )  
**JOHN GEOFFREY HUNT** )  
in the presence of: )

.....  
*John Geoffrey Hunt*

.....  
*Witness*

**SIGNED SEALED AND DELIVERED** )  
by the said )  
**BARBARA IZABELLA ZIELINSKA** )  
in the presence of: )

.....  
*Barbara Izabella Zielinska*

.....  
*Witness*

**THIS IS THE ANNEXURE MARKED "A" REFERRED TO IN THE DEED POLL MADE THE \_\_\_\_\_ DAY OF \_\_\_\_\_ BY JOHN GEOFFREY HUNT AND BARBARA IZABELLA ZIELINSKA (THEREIN DESCRIBED AS THE "TRUSTEES")**

1. (a) In this deed (including the Rules and the Schedules) unless the context indicates otherwise the following words and expressions shall have the following meanings:

"Assets of the Fund" means the Settled Sum and all moneys investments and property paid transferred to or accepted by the Trustee as additions to the Assets of the Fund held by the Trustee pursuant to this deed or upon the trusts in this deed declared, the accumulations of income hereinafter directed or empowered to be made, all accretions and additions thereto from any source, and the investments property and assets from time to time representing the said money investments property accumulations accretions and additions;

"Commencement Date" means the 12<sup>th</sup> day of June 2000;

"Fund" means the indefinitely continuing superannuation plan to provide retirement and other benefits for certain Members as constituted by this deed;

"Rules" means the Rules and Schedules attached to, and forming part of this deed and the provisions and information set out therein, as amended from time to time;

"Trustee" means the person hereinbefore named as the Trustee or other the trustee or trustees for the time being of the Fund.

- (b) In this deed (including the Rules and the Schedules) unless the context otherwise indicates:

(i) references to any party to this deed shall include the executors administrators successors and permitted assigns of that party;

(ii) references to a clause or schedule or other annexure shall be construed as references to a clause of or schedule or annexure to this deed and references to this deed shall include its schedules and any annexures;

(iii) references to (or to any specified provision of) this deed or another deed or document shall be construed as references to (that provision of) this deed or that other deed or document as amended or substituted with the deed of the relevant parties and in force at any relevant time;

(iv) references to any statute, ordinance or other law shall include all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;

(v) words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;

- (vi) where any word or phrase is given a defined meaning in this deed, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
  - (vii) headings included in this deed are for convenience only and shall be disregarded in the construction of this deed.
  - (c)
    - (i) This deed (including the Rules and the schedules) is governed by the law in force in New South Wales.
    - (ii) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.
    - (iii) Without preventing any other mode of service, any document in an action including, without limitation, any writ of summons or other originating process or any third or other party notice may be served on a party by being delivered to or left for that party at its address for service of notices under clause (iv).
    - (iv) A notice, approval, consent or other communication in connection with this deed:
      - A. must be in writing unless expressly specified otherwise; and
      - B. must be left at or sent by prepaid ordinary post to the address of the addressee which is specified on page 1 of this deed in the case of the parties to this deed.
- Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- A letter is taken to be received on the third day after posting.
- (v) Any present or future legislation which operates to vary an obligation or right, power or remedy of a person in connection with this deed is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.
  - (vi) A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise. In considering requests for its approval or consent a party must act with reasonable expedition.
  - (vii) A party may exercise a right, power or remedy at its discretion and separately or concurrently with another right, body or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
  - (viii) A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

- (ix) This deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.
- 2. In consideration of the premises the Trustee hereby declares that the Trustee shall henceforth stand possessed of the Assets of the Fund upon trust to invest the same under and with the powers hereinafter set out in this deed and the Rules and the Schedules and that the Trustee will henceforth stand possessed of the Assets of the Fund and the income thereof upon the trusts and with and subject to the powers and provisions hereafter expressed in this deed and the Rules and the Schedules concerning the same.
- 3. The Fund shall be known as the Hunt Superannuation Fund.
- 4. The Fund shall commence on the Commencement Date.
- 5. The Fund shall be managed and administered in all respects according to the Rules.
- 6. The power of appointing or removing a Trustee or Trustees shall be as provided in the Rules.
- 7. The provisions of this deed (including the Rules and the Schedules) may be amended in the manner set out in the Rules.

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## THE RULES

### RULE 1 - DEFINITIONS

1.1 In the deed and in these Rules unless the context indicates otherwise the following words and expressions have the following meanings:-

**"Accounts"** means in respect of a Member, the Member Contribution Account and the Preserved Account.

**"Act"** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997 (as the case may be).

**"Actuary"** means a Fellow of the Institute of Actuaries of Australia or other suitably qualified person, or a firm of such person, who may, for the time being, be appointed by the Trustee to advise in relation to the Fund.

**"Allocated Investment"** means investments made pursuant to Rule 4.4 and held in respect of individual Members.

**"Ancillary Purposes"** means any purpose described as one of the ancillary purposes in section 62(1) of the SIS Act, and in particular:

- (i) the provision of benefits for each Member of the Fund on or after the termination of the Member's employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member;
- (ii) the provision of benefits for each Member of the Fund on or after the Member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged and the cessation is on account of ill-health (whether physical or mental);
- (iii) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if:
  - (A) the death occurred after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before, or occurred after, the Member joined the Fund); and
  - (B) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (iv) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if:
  - (A) the death occurred after the Member attained the age prescribed for the purposes of the SIS Act; and
  - (B) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (v) the provision of such other benefits as the Regulator approves in writing.

**"Approved Deposit Fund"** means a fund established for the purpose of qualifying as such under the Act and which satisfies all Relevant Requirements.

**"Approved Superannuation Fund"** means a superannuation fund which satisfies all Relevant Requirements.

**"Auditor"** means the Auditor for the time being appointed by the Trustee.

**"Benefit"** means any benefit payable pursuant to these Rules in respect of a Member's membership of the Fund and includes any amount standing to the credit of a Member in any Account which is capable of being the subject of a Splittable Contribution.

**"Binding Nomination"** means a nomination governing the distribution of a death benefit made under Rule 12.9;

**"Category"** means the category of membership, if any, including, but without limitation, ordinary membership or those specified in Schedule 1, to which a Member is admitted or transferred.

**"Compassionate Ground"** has the meaning attributed to that term in the SIS Act.

**"Core Purposes"** means any purpose described as one of the core purposes in section 62(1) of the SIS Act and in particular:

- (i) the provision of benefits for each Member of the Fund on or after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before, or occurred after, the member joined the Fund);
- (ii) the provision of benefits for each Member of the Fund on or after the Member's attainment of an age not less than the age specified in the regulations prescribed under the SIS Act;
- (iii) the provision of benefits for each Member of the Fund on or after whichever is the earlier of:
  - (A) the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or
  - (B) the Member's attainment of an age not less than the age prescribed for the purposes of subparagraph (ii);
- (iv) the provision of benefits in respect of each Member of the Fund on or after the member's death, if:
  - (A) the death occurred before the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged; and
  - (B) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (v) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if
  - (A) the death occurred before the Member attained the age prescribed for the purposes of subparagraph (ii); and
  - (B) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both.

**"Dependants"** means the Spouse and children (including posthumous children) of a Member and all persons who are in the opinion of the Trustee in its absolute discretion at the relevant time dependant in whole or in part upon the Member for their maintenance and support.

**"Disqualified Person"** has the meaning attributed to that term in the SIS Act.

**"Distribution Date"** means a date determined by the Trustee pursuant to Rule 5.6 for the declaration of a Fund Earning Rate.

**"Distribution Period"** means any period between Distribution Dates and includes the period between the Commencement Date and the first Distribution Date.

**"Early Retirement Date"** means in relation to a Member, the date the Member attains the Preservation Age.

**"Employer"** means a Member's Employer who makes contributions to the Fund and in relation to a particular Member means the Employer of that person at the relevant time.

**"Employment"** means, in respect of a Member, service with an Employer which pursuant to the SIS Act the Fund may receive contributions on behalf of the Member.

**"Excluded Investments"** means investments or any one investment which, if made, would be a breach of the Relevant Requirements.

**"Financial Year"** means a period of 12 calendar months ending on the last day of June, or any part of such a period that may occur at the commencement or termination of the Fund.

**"Foregone Benefits Account"** means the Account required to be kept in accordance with Rule 5.5.

**"Fund"** means the entire superannuation plan as constituted by the deed and the Rules.

**"Fund Credit"** means in relation to a Member, the total of the amount standing to his or her Accounts.

**"Fund Earning Rate"** means the rate determined from time to time in accordance with Rule 5.6.

**"Investment Fluctuation Reserve"** means the reserve account to be maintained in accordance with Rule 5.8.

**"Member"** means a person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in Rule 10 and includes a person deemed to be a member of the Fund by operation of the SIS Act.

**"Member Contribution Account"** means the Account required to be kept in accordance with Rule 5.4(a).

**"Nominated Beneficiary"** means the legal personal representative of the Member or any Dependant or Dependents last nominated in writing by a Member to the Trustee under a Binding Nomination.

**"Non-Member Spouse"** has the meaning attributed to that term in the SIS Act.

**"Normal Retirement Date"** means the day on which a Member attains the age of 65 or such other age as may be specified in Schedule 2.

**"Payment Split"** has the meaning attributed to that term in the SIS Act.

**"Permanent Incapacity"**, in relation to a Member who has ceased to be gainfully employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

**"Preservation Age"** has the meaning attributed to that term in the SIS Act.

**"Preserved Account"** means the Account required to be kept in accordance with Rule 5.4(c).

**"Regulator"** has the meaning attributed to that term in the SIS Act.

**"Relevant Requirements"** means the requirements imposed under any law or by any Responsible Authority which must be satisfied by a superannuation fund or an approved deposit fund as the case may be in order to qualify for income tax concessions and includes the requirements of the SIS Act.

**"Responsible Authority"** means as the case may require, any one or more of the Regulator, the Australian Prudential Regulation Authority, the Commissioner of Taxation or any other governmental authority responsible for administering the laws, regulations or any other rules governing the operation or the availability of income tax concessions to superannuation funds and approved deposit funds.

**"Salary"** in respect of each Member has the meaning attributed to it in the SIS Act and the regulations prescribed thereunder.

**"Settled Sum"** means ten dollars (\$10.00);

**"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 and includes the regulations prescribed thereunder.

**"Splittable Contribution"** has the meaning attributed to that term in SIS Act.

**"Splittable Contribution Application"** means an application made under rule 11.3.

**"Spouse"** has the meaning attributed to that term in the SIS Act.

**"Superannuation Fund Trust Deed"** means the deed of settlement which created the Fund and includes any variation.

**"Temporary Incapacity"**, in relation to a Member who has ceased to be gainfully employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed), means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity.

**"Trustee"** means the person hereinbefore named as the Trustee or other the trustee or trustees for the time being of the Fund.

The deed and Rules: References to "the deed", "this deed", "the Rules" or "these Rules" or any Rule or Schedule include the deed establishing the Fund and the Rules and the relevant Rule or Schedule (as the case may be) as amended from time to time.

- 1.2 Headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.
- 1.3 Any term which is not defined in the Rules but has a defined meaning in the SIS Act has the same meaning in the Rules as is attributed to the term in the SIS Act.

## **RULE 2 - ESTABLISHMENT OF TRUST**

- 2.1 The Assets of the Fund shall be held by the Trustee upon trust to be applied in accordance with the provisions of these Rules.
- 2.2 The Trustee must ensure that the Fund is maintained solely:
  - (a) for one or more of the Core Purposes; or

- (b) for one or more of the Core Purposes and for one or more of the Ancillary Purposes.

### **RULE 3 - TRUSTEES**

#### **APPOINTMENT, REMOVAL AND NUMBER**

- 3.1 Where the Trustee:
- (a) comprises of natural persons, they must in relation to their number and identity and otherwise generally comply with the Relevant Requirements;
  - (b) is a company it shall in relation to the composition of its directors and otherwise generally comply with the Relevant Requirements.
- 3.2 Unless the SIS Act permits otherwise, a person other than a constitutional corporation is not eligible to be appointed as trustee of the Fund unless the Rules provide the sole or primary purpose of the Fund is the provision of old-age pensions.
- 3.3 A company must not act as a Trustee or must cease to be a Trustee:
- (a) if the company is or becomes a Disqualified Person;
  - (b) if the company does not or ceases to comply with Rule 3.2.
- 3.4 A natural person must not act as a Trust or must cease to be a Trustee:
- (a) if the person is or becomes a Disqualified Person;
  - (b) if the person dies;
  - (c) If the person would by acting or continuing to act as a Trustee cause the Trustee to cease to comply with Rule 3.1.
- 3.5 If a Member is under a legal disability or a legal personal representative of a Member has an enduring power of attorney in respect of the Member then that legal personal representative may act as a Trustee or a director of a company which is the Trustee.
- 3.6 Any natural person or company appointed by the Regulator to act as Trustee may act as Trustee. Where a person or company is an approved trustee (within the meaning of the SIS Act) that person or company may act as Trustee.
- 3.7 A Trustee may retire provided that, if it is necessary under the Relevant Requirements, a new trustee is appointed to act in lieu of the retiring trustee.
- 3.8 Approval of any application for membership of the Fund is subject to a condition that such membership does not become operative unless and until the Member becomes a Trustee or a director of the Trustee or the requirements of the SIS Act are satisfied retarding the composition and identity of Trustees or directors of the Trustee.
- 3.9 A person is not eligible for appointment as a trustee of the Fund, or as a director of company that acts as trustee of the Fund, unless the person has consented in writing to the appointment.

#### **TRANSFER OF ASSETS**

- 3.10 Upon a change of Trustee the retiring Trustee or Trustees shall execute all transfers, deeds or other documents necessary to transfer investments of moneys into the name of the new Trustee or Trustees.

#### **OTHER POWERS OF TRUSTEES**

- 3.11 Without limiting the powers vested in the Trustee by law or elsewhere to the Rules or otherwise, the Trustee shall have the following powers, that is to say power:-
- (a) to purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;

- (b) to appoint and at its discretion remove or suspend the Actuary, Auditor, investment managers administration managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments and require security in such instances and to such amount as it may think fit and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the Trustee;
- (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
- (d) to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (h) to pay Benefits out of the Fund to persons entitled;
- (i) to decide as and when the need shall arise who are Dependants for the purposes of the Rules;
- (j) subject to the SIS Act, in the case of Permanent Incapacity or Temporary Incapacity, to pay or apply such Benefits or any part thereof at its discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing to the application of payments under this paragraph or payments made in the exercise of any other power vested in the Trustee by the deed and the Rules; and
- (k) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the deed, the Rules or any other document or statute or as to the administration of the trusts hereof without being liable to any Members or their Dependants in respect of any act done by it in accordance with such opinion;
- (l) subject to the SIS Act, to pay such amounts as may be necessary pursuant to any transitional release authority or similar document;
- (m) to sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (n) to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
- (o) to buy, transfer, acquire, hire or lease any property;
- (p) to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this clause, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;

- (q) to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any of the Fund as security for any such financial accommodation;
- (r) to invest in its name or under its control the Fund in any one or more of the investments authorised by this document with power in its absolute discretion either to retain the investments authorised by this document with power in its absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power in its absolute discretion from time to time to vary or transpose any investments into others authorised by this document;
- (s) to guarantee the payment of money and the performance of obligations and to give indemnities to or on behalf of any person the Trustee thinks fit. This power may be exercised even though there may be no contractual, legal or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the Trustee proposes to give the guarantees or indemnities;
- (t) to do anything incidental to the exercise of any other power.

For the avoidance of doubt the Trustee may do anything or exercise any power that is contemplated or implied by the SIS Act.

### **INDEMNITY TO TRUSTEES**

3.12 Subject to Rule 3.22, every Trustee shall be indemnified against all liabilities incurred by it through any act or omission in the exercise of the powers, duties and discretions under the deed and the Rules or in the bona fide intended or purported exercise of its duties under the deed and the Rules and shall have a lien on the Fund for such indemnity.

### **PROCEEDINGS OF TRUSTEES**

3.13 Where the Trustees consist of more than one person, the Trustees:-

- (a) may meet together for the dispatch of business;
- (b) may adjourn and otherwise regulate their meetings as they think fit.
- (c) may determine the quorum necessary for the transaction of business;
- (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
- (e) may act on any resolution approved by two-thirds of the Trustees for the time being in office, voting in person or by proxy at the meeting at which it is proposed and any Trustee may appoint another Trustee to be his proxy at a meeting or meetings of Trustees.

3.14 Notwithstanding that the Trustees are not present together in one place at the time a meeting of Trustees is convened using available technology, a resolution passed at such meeting shall be valid and deemed passed at a meeting of the Trustees at that time.

3.15 Where there is more than one Trustee, a resolution in writing, signed by all the Trustees for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the Trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Trustees.

3.16 Where there is more than one Trustee, the Trustees may from time to time delegate to any one or more of their number the right and power on behalf of the Trustee to sign, draw, accept, make, endorse, issue, discount or otherwise execute, as the case may be, all or any cheques, promissory notes, drafts, bills of exchange, bills of lading and other

negotiable or transferable instruments, all or any receipts for money paid to the Trustees and all or any other documents connected with the due administration of the Fund or with the deed or these Rules, and may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or investment manager appointed by them.

3.17 The Trustee must:-

- (a) make a written record of all decisions made by the Trustee as trustee of the Fund;
- (b) retain records for such period as may be required by any relevant law, including the SIS Act and in any event for a period of not less than ten (10) years.

3.18 Any records made in accordance with Rule 3.17(a) shall be evidence of the proceedings where a decision was made and, until the contrary is proved, the meeting where a decision was made shall be deemed to have been duly held and convened.

### **TRUSTEE'S DISCRETIONS**

3.19 Any individual Trustee (and where the Trustee is a company, any director or other officer of the Trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the Trustee by the deed or by these Rules or by law given to the Trustee notwithstanding that the individual may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion but any Trustee or director or officer may nevertheless abstain from acting except as a merely formal party in any matter in which he or she may be so personally interested.

3.20 The Trustees in the exercise of the powers, authorities and discretions vested in them by the deed and these Rules shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, authorities and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.

### **TRUSTEE REMUNERATION**

3.21 Unless the SIS Act expressly permits otherwise, a Trustee shall not be entitled to any remuneration for acting as trustee of the Fund.

### **TRUSTEE'S LIABILITY**

3.22. Subject to the SIS Act, the Trustee shall not be responsible for:

- (a) any loss or damage occasioned to the Fund or any part thereof or to any person by the exercise of any discretion or power hereby or by law conferred on the Trustee or by any alleged failure to exercise any such discretion or power; or
- (b) any breach of duty or trust whatsoever; unless the same shall be proved to have been committed made or omitted in personal conscious and fraudulent bad faith by the Trustee charged to be so liable and all persons claiming any interest in the income or capital of the Fund shall be deemed to take with notice of and subject to the protection hereby conferred on the Trustee.

### **CONFLICT OF INTEREST**

3.23 Without limiting the provisions of any other Rule but subject to the SIS Act, and in addition to the powers otherwise conferred upon the Trustee the Trustee is hereby expressly authorised to exercise all or any of the powers and discretions conferred upon the Trustee in such manner as if the Trustee were not a trustee and under no fiduciary obligation in exercising such powers and discretions (and notwithstanding



that the Trustee for the time being and/or from time to time shall be a sole Trustee) and the Trustee shall not be obliged to do or omit to do any act which the Trustee might otherwise be obliged to do or omit to do by reason only, or for reasons including the reason that the Trustee is the trustee or one of the trustees of this Fund and notwithstanding any matter or thing whatsoever no trustee or trustees (or former trustee or trustees) of this Fund shall be obliged to account to the Fund or any successor trustee or trustees of the Fund or any Member or former Members for any benefit that such trustee or trustees (or former trustee or trustees) may obtain or have obtained either directly or indirectly as a result of the exercise of any power or discretion conferred upon the Trustee.

- 3.24 The Trustee shall have the power generally to exercise or concur in exercising all the powers and discretions conferred on the Trustee notwithstanding that the Trustee or any person being a Trustee or any person being a director or shareholder of a Trustee has or may have a direct or personal interest (whether as trustee of any other trust or in his or her personal capacity or as a shareholder or director or member or partner of any company or partnership or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the trustee for the time being is the sole trustee.

#### **TRUSTEE COVENANTS**

- 3.25 The Trustee makes the covenants required of the Trustee pursuant to the SIS Act including:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary, prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor of the entity;
- (e) not to enter into any contract, or do anything else that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cashflow requirements;

- (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (iii) the liquidity of the Fund's investments having regard to its expected cashflow requirements;
- (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any reserves of the Fund - to formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a beneficiary access to any information or documents, as may be prescribed by the SIS Act.

Any natural person who is a Trustee or a director of a Trustee may become a director of any company in which part of the Assets of the Fund are invested and may receive remuneration for holding such office without being liable to account to the Fund for such remuneration.

#### **RULE 4 - THE ASSETS, EXPENSES AND INVESTMENTS**

##### **THE ASSETS**

4.1 The following property and the property for the time being representing the same and the income thereof shall constitute the Assets of the Fund namely:-

- (a) contributions;
- (b) any assets transferred to the Trustee pursuant to any arrangements made by the Trustee under these Rules; and
- (c) any other money received or receivable by the Trustee for the purposes of the Fund.

##### **EXPENSES OF THE FUND**

4.2 All the expenses of operation of the Fund incurred from time to time which are not paid by the an Employer shall be paid out of the Fund.

##### **INVESTMENTS AND LIFE ASSURANCES**

4.3 All moneys received by the Trustee but not required to meet current payments may in the absolute discretion of the Trustee either be and remain on deposit in the name of the Trustee or be reinvested either directly or indirectly in any manner in which the Trustee, if it were personally entitled to such assets, could invest, and without restricting the generality of the foregoing may be invested:-

- (a) in any one or more of the modes of investment authorised by law for the investment of trust funds;
- (b) on deposit with any bank, company or financial institution;
- (c) in the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as they shall think fit;

- (d) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-government body or public authority;
- (e) in units of any common fund, property trust or unit trust, or
- (f) in any policies of life insurance, assurance or endowment including policies providing a sum or sums on the death or disablement of a Member, with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person, absolutely and beneficially entitled dealing with his own property may do so, provided that the Trustee shall not:-
- (g) provided financial assistance to Members or relatives of Members;
- (h) invest in any Excluded Investments.

#### **ALLOCATED INVESTMENTS**

- 4.4 If a Member requests that all or part of the amount standing to the credit of one or more of the Accounts in the Fund of that Member be invested separately from the other investments or Assets of the Fund, then the Trustee may do so, provided that:
- (a) the Trustee must provide to the Member such information as may be prescribed under the SIS Act;
  - (b) any earnings on such allocated investments (after subtraction of losses and expenses attributable thereto):
    - (i) must not be used in calculating the Fund Earning Rate;
    - (ii) may be applied to an allocated Investment Fluctuation Reserve;
    - (iii) must otherwise be attributed to the Accounts of the Member for the purpose of calculating the Benefits of the Member.

#### **NOMINEES**

- 4.5 Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee shall from time to time determine.

#### **BORROWING**

- 4.6 The Trustee may borrow or raise money up to such amount as it thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the Assets of the Fund or in such other manner as it shall think fit, as the Relevant Requirements permit. The Trustee shall only borrow or raise money if so permitted by the Relevant Requirements. Any borrowing which is not permitted by the Relevant Requirements shall be immediately repaid.

#### **ACQUISITION OF ASSETS AND RELEVANT REQUIREMENTS**

- 4.7 (a) Except as may be provided pursuant to the Relevant Requirements, the Trustee shall not intentionally acquire an asset from a Member or a relative or associate of a Member.
- (b) The Trustee shall use the best endeavours of the Trustee to ensure that the acquisition of all Assets of the Fund and all investments of the Fund comply with the Relevant Requirements.

#### **ADDITIONAL INVESTMENT POWERS**

- 4.8 The Trustee may invest the Assets of the Fund in any investment that the Trustee in its absolute discretion considers appropriate, as if it were the absolute and beneficial

owner of the Assets of the Fund, provided that the Trustee must not invest in any Excluded Investments.

4.9 Without limiting Rule 4.3 or Rule 4.8, the Trustee shall have the following powers to be exercised or not by the Trustee in the absolute discretion of the Trustee in relation to any assets for the time being forming part of the Assets of the Fund whether acquired by way of investment of the Assets of the Fund or otherwise and such powers may be exercised together or separately and from time to time and at any time or times:

- (1) the power to allow all or any assets at any time forming part of the Assets of the Fund to remain in the actual state thereof so long as the Trustee may think fit and at any time or times to sell, call in or convert into money the said assets or any part thereof;
- (2) the power to change and vary any assets from time to time forming part of the Assets of the Fund for others which the Trustee is by the Rules or by law authorised to acquire;
- (3) the power to hold use purchase construct demolish maintain repair renovate reconstruct develop improve transfer convey surrender let lease exchange take and grant options over or rights in alienate mortgage charge pledge reconvey release or discharge or otherwise deal with any moveable or immoveable property;
- (4) the power to partition or agree to the partition of or to subdivide or agree to subdivision of any moveable or immoveable property which or any interest in which may for the time form part of the Assets of the Fund and to pay any moneys by way of equality or partition;
- (5) the power to exercise all rights and privileges and perform all duties and do all such acts matters and things appertaining to any shares stock or debentures in any corporation for the time being form part of the Assets of the Fund as the Trustee could so if the Trustee was the beneficial owner of the shares stock or debentures or was personally interested or concerned in the corporation and without diminishing the generality of the foregoing with power to promote and to assent to any arrangements modifying such rights privileges or duties and to promote and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation and to make any agreement in respect of or in the course of the winding up of any corporation and for any such purpose to deposit surrender or exchange any of such shares stock or debentures or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares stock or debentures or any title thereto;
- (6) the power to pay calls on shares accept transfers of shares and concur in any arrangement for the modification of the rights of holders of any debentures or of any of the stocks securities or shares in which the Assets of the Fund or any part thereof may from time to time be invested, attend all meetings of stockholders, shareholders or otherwise and vote at the Trustee's discretion at any such meeting at which the Trustee is entitled to vote with power to execute any proxy in favour of any person;

- (7) the power to vary or amend or consent to or not object to the variation or amendment of the constitution, objects, powers, rules, articles and regulations of any corporations in which the Trustee has at any time any interest or in which the Assets of the Fund or any part thereof is for the time being invested or to which the Assets of the Fund or any part thereof has been lent;
- (8) the power to wind up or dissolve or join in winding up or dissolving or to cause or consent to or not object to the winding up or dissolution of any corporation in which at any time the Assets of the Fund or any part thereof has been invested or to which the Assets of the Fund or any part thereof has been lent or in which the Trustee has any interest or against which the Trustee has any rights;
- (9) the power to vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligations of any corporation whether or not affecting the security of the apparent security of the Assets of the Fund or any property contained therein or the purchase or sale or lease of the assets of any corporation;
- (10) the power at any time or times to accept or reject any offer of and take up any bonus shares or other securities whatsoever proposed to be issued or offered for issue to the Trustee whether fully paid up or not and any rights to the allotment or issue of any securities offered to the Trustee as the holder of any securities with full power to subscribe for and pay up all securities pursuant thereto and to sell or retain the rights to allotment or issue of such other securities;
- (11) unless expressly prohibited by the SIS Act, the power to permit any Assets of the Fund to be held or registered in the name of any nominee of the Trustee and to deposit securities deeds and other documents belonging or related to any of the Assets of the Fund with any bank or other depository;
- (12) the power to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any property whether moveable or immovable forming part of the Assets of the Fund and to manage the property and effect such improvements and repairs thereto as the Trustee may consider necessary or advisable;
- (13) the power to acquire any intangible property including intellectual property rights such as trade marks, copyrights, patents, designs and the power to licence or sell such intangible property upon such terms as the Trustee may think fit;
- (14) the power to make loans and take such security, if any, as the Trustee may think fit provided that the making of a loan must not contravene the Relevant Requirement;
- (15) the power to acquire such valuables as the Trustee may think fit including, without limitation, jewellery, gold, silver, stamps, coins, paintings and other art works and antiques and includes the power to license such valuables;
- (16) the power to acquire and sell options rights and futures contracts;
- (17) the power to acquire debts or any other choses in action;

- (18) the power to do any other thing or things which may be necessary or incidental to the exercise of the powers conferred on the Trustee pursuant to this Rule.

#### **POWERS AS TO LAND**

- 4.10 Where there is included in the Assets of the Fund for the time being any real or immoveable property or any interest therein (in this clause referred to as "the land") the Trustee shall have the following power in addition to and not in derogation from any other powers the Trustee has by law or conferred on the Trustee by other provisions of the Rules applying to property other than or including real or immoveable property and such powers may be exercised together or separately and from time to time and at any time or times:
- (2) the Trustee may lease the land or any part thereof for any purpose whatsoever and whether involving waste or not and for any term whatsoever and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection or improvement or repair or an agreement to erect or repair buildings on the land and may accept (with or without consideration) a surrender of any lease of the land or any part thereof;
  - (3) the Trustee may in exercising any trust or power of sale sell the land or any part thereof either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite including for the term of any life or lives) and being either reserved out of the land sold or secured in such other manner as the Trustee shall in the absolute discretion of the Trustee think fit;
  - (4) the Trustee may in executing any trust or power of sale or leasing:
    - (i) sell or lease any part of the land whether the division is horizontal or vertical or made in any other way;
    - (ii) sell or lease or reserve any easement or right or privilege over the land or any part thereof;
    - (iii) sell or lease or except or reserve any timber or mines or minerals on or in or under the land or any part thereof together with any easements rights or privileges of cutting or working (as the case may be) and carrying away the same respectively or otherwise incident to or connected with forestry or mining purposes (as the case may be);
    - (iv) impose and make binding for the benefit of any part of the same land sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the land retained;
    - (v) enter into any contract or grant any option for the sale or leasing of the land or any part thereof or otherwise for the exercise by the Trustee of any of the foregoing powers of this clause;
  - (5) the Trustee may transfer or agree to transfer the land or any part thereof or lease the land or any part thereof in exchange for the transfer to the Trustee or the lease to the Trustee of any other land or the transfer to the Trustee of any other property of whatever nature or any interest therein or any right or the

creation in favour of the Trustee of any rights or interests with or without any money paid or other consideration for the equality of exchange;

- (6) the Trustee shall be entitled to convert the interest in land or any part thereof to a title of a different nature therein and without limiting the generality of the foregoing they shall be entitled to the interest in the land to strata title or submit it to condominium ownership and the Trustee shall have the like powers in relation to any unit in the strata title or condominium as the Trustee has in relation to the land;
- (7) the Trustee shall not be bound to see to or be liable or accountable for omitting or neglecting to see to the repair or insurance of any building on the land or the payment of any outgoings in respect thereof but may repair and insure any such buildings in such manner and to such extent as the Trustee shall think fit and pay out of the income of the Fund or provide thereout a reserve or sinking fund for the costs of all such repairs and of effecting and keeping up such insurance and pay or make such provision for such outgoings as aforesaid in priority to any other trusts affecting the same income;
- (8) the Trustee may from time to time expend capital money comprised in the Assets of the Fund or any part of the income of the Fund in or charge the same for erecting, demolishing and rebuilding and making alterations and improvements to any building on the land or any part thereof to such extent and in such manner as they shall think fit.

## **RULE 5 - RECORDS AND ACCOUNTS**

### **RECORDS**

- 5.1 The Trustee must keep or cause to be kept a complete record of all persons who become Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund.

### **ANNUAL AUDIT**

- 5.2 The Trustee must appoint an Auditor to the Fund who shall comply with all Relevant Requirements, or a firm of such persons, and may remove any such Auditor.
- 5.3 The Trustee must each Financial Year cause to be prepared such financial statements as may be necessary to comply with the SIS Act and any other financial statements that the Trustee considers appropriate and such financial statements shall if the Trustee thinks fit or if necessary to comply with Relevant Requirements be audited by the Auditor. The Auditor shall have access to all papers, accounts and documents connected with the Fund and shall report in writing to the Trustee the result of such audit, if any. Every Member shall be entitled to inspect a copy of the financial statements of the Fund.

### **MEMBER'S ACCOUNTS**

- 5.4 The Trustee shall cause the following Accounts to be opened and maintained in respect of each Member.
  - (a) A Member Contribution Account in which shall be recorded:-
    - (i) contributions to the Fund by the Member;
    - (ii) contributions to the Fund by an Employer in respect of a Member;

- (iii) contributions to the Fund in respect of the Member or by any other person except an Employer on behalf of the Member, including without limitation contributions by the spouse of a Member;
  - (iv) proceeds of policies of insurance effected to provide benefits on the death or disability of the Member to the extent that the Trustee determines that they should be credited to the Member Contribution Account in respect of that Member;
  - (v) amounts transferred from another fund in respect of the Member pursuant to Rule 10.6 which the Trustee has determined shall be credited to the Member Contribution Account in respect of that Member;
  - (vi) amounts credited or debited to the Member Contribution Account in respect of that Member by way of application of the Fund Earning Rate;
  - (vii) amounts which the Trustee has determined shall be debited to this account in respect of losses and expenses attributable to the Member and which have not already been taken into account in determining the Fund Earning Rate; and
  - (viii) amounts paid by way of benefits from the Member Contribution Account in respect of that Member or applied in the purchase of an annuity in respect of the Member, or transferred to another Approved Superannuation Fund in respect of the Member;
  - (ix) amounts debited to the Member Contribution Account in respect of that Member in respect of any income or other tax to which the Trustee is or may become liable.
- (b) A Preserved Account in which shall be recorded:-
- (i) amounts which the Trustee has determined shall be debited to the Preserved Account in respect of that Member to pay premiums on policies of insurance effected to provide benefits on the death or disability of the Member;
  - (ii) proceeds of policies of insurance effected to provide benefits on the death or disability of the Member to the extent that they are referable to premiums referred to in Rule 5.4(a)(iv);
  - (iii) any part of an amount transferred from another fund in respect of the Member pursuant to Rule 10.6 which the Trustee has determined shall be credited to the Preserved Account in respect of that Member;
  - (iv) amounts credited or debited to the Preserved Account in respect of that Member by way of application of the Fund Earning Rate;
  - (v) amounts which the Trustee has determined shall be debited to this account in respect of losses and expenses attributable to the Member and which have not already been taken into account in determining the Fund Earning Rate; and
  - (vi) amounts paid by way of Benefits from the Preserved Account in respect of that Member or applied in the purchase of an annuity in respect of the Member, or transferred to another Approved Superannuation Fund in respect of him;
  - (vii) amounts debited to the Preserved Account in respect of that Member in respect of any income or other tax to which the Trustee is or may become liable.
- (c) A Pension Account in which shall be recorded:-



- (i) amounts which the Trustee has determined shall be debited to the Pension Account in respect of that Member to pay premiums on policies of insurance effected to provide benefits on the death or disability of the Member;
- (ii) proceeds of policies of insurance effected to provide benefits on the death or disability of the Member to the extent that they are referable to premiums referred to in Rule 5.4(a)(iv);
- (iii) any part of an amount transferred from another fund in respect of the Member pursuant to Rule 10.6 which the Trustee has determined shall be credited to the Pension Account in respect of that Member;
- (iv) amounts credited or debited to the Pension Account in respect of that Member by way of application of the Fund Earning Rate;
- (v) amounts which the Trustee has determined shall be debited to this account in respect of losses and expenses attributable to the Member and which have not already been taken into account in determining the Fund Earning Rate; and
- (vi) amounts paid by way of Benefits from the Pension Account in respect of that Member or applied in the purchase of an annuity in respect of the Member, or transferred to another Approved Superannuation Fund in respect of him;
- (vii) amounts debited to the Pension Account in respect of that Member in respect of any income or other tax to which the Trustee is or may become liable.

The extent to which any Allocated Investments of the Member are pursuant to Rule 4.4 acquired by application of amounts standing to each of the above Accounts shall be determined by the Trustee, and the earnings on and losses and expenses in respect of such Allocated Investments shall be allocated among the Accounts accordingly.

The Trustee may maintain more than one Member Contribution Account and Preserved Account and Pension Account in respect of each Member.

#### **FOREGONE BENEFITS ACCOUNT**

5.5 The Trustee shall maintain a Foregone Benefits Account to which shall be credited any balance remaining of any Member's Fund Credit after payment or preservation of the Member's Benefit, and any other amounts required by these Rules to be transferred to the Foregone Benefits Account. The amount standing to the credit of the Foregone Benefits Account may be applied as the Trustee in its discretion determines for any other or more of the following purposes:-

- (a) the provision of additional benefits for Members or their Dependants on a basis that is reasonable having regard to all the circumstances;
- (b) other purposes that comply with Relevant Requirements.

#### **FUND EARNING RATE**

5.6 The Trustee shall, on such Distribution Dates as it shall determine but at least once in each Financial Year, after taking such advice as it thinks fit, declare a Fund Earning Rate for the Distribution Period ending on the Distribution Date concerned, being such rate, whether positive or negative, as the Trustee may in its discretion determine, but in making such determination the Trustee shall have regard to:

- (a) the actual earnings of the Fund, including all income and realised and unrealised capital gains;
  - (b) the losses and expenses of the Fund other than any expenses which the Trustee determines to be attributable to particular Members;
  - (c) the past and likely future earnings and losses of the Fund and the desirability or otherwise of avoiding large fluctuations of Fund Earning Rates from year to year;
  - (d) the amount, if any, standing to the credit of the Investment Fluctuation Reserve; and
  - (e) such other matters as it thinks fit,
- but shall not have regard to:
- (f) the actual earnings of the Allocated Investments in respect of a Member during that Distribution Period, including all income and realised and unrealised capital gains referable to the Allocated Investments; and
  - (g) losses and expenses referable to Allocated Investments.

5.7 The Trustee shall on the Distribution Date, subject to Rule 4.4, credit or debit as the case may be to the Member Contribution Account and Preserved Account of each Member earnings or losses at the Fund Earning Rate on the balance standing thereto from time to time since the preceding Distribution Date or, in the case of the first Distribution Period, since the Commencement Date.

#### **INVESTMENT FLUCTUATION RESERVE**

5.8 The Trustee may apply such part or parts of the income of the Fund on a reserve (to be described as a Reserve Account) and such amounts are to be deducted from the income of the Fund when determining the Fund Earning Rate. Any difference between the actual earnings or losses of the Fund and the total amounts required to be credited or debited pursuant to Rules 5.7 and 5.9 shall form an adjustment to a reserve account to be called the Investment Fluctuation Reserve.

5.9 At the Commencement Date and at each Distribution Date the Trustee shall declare an interim Fund Earning Rate which shall be applied to credit earnings or losses as the case may be to the Member Contribution Accounts and Preserved Accounts of Members or deceased Members in respect of who, and at such time as, the last Benefits payable from the Fund in respect of them become payable before the next Distribution Date. Such interim Fund Earning Rate shall be determined on such basis as the Trustee thinks fit provided that the Trustee may in its discretion alter an interim Fund Earning Rate during the period to which it applies.

5.10 For the avoidance of doubt, subject only to the Relevant Requirements, the Fund is authorised to accept contributions from any person, including without limitation, any Member, the spouse of any Member, any Employer, and any other person who wishes to make a contribution to the Fund.

5.11 Notwithstanding any other provision of these Rules, but subject always to the Relevant Requirements, the Trustee may in the discretion of the Trustee determine that any part or all of the actual earnings of the Fund, including all income and realised and unrealised capital gains, may be credited to the Investment Fluctuation Reserve, in which case any amount so credited will be disregarded by the Trustee when determining the Fund Earning Rate for the purposes of Rule 5.6.

**PRESERVED BENEFITS**

- 5.12 The Trustee must also record in the Accounts of the Member, if applicable, details of all benefits required to be preserved under the SIS Act. The Trustee must not permit the cashing of preserved benefits unless permitted under the SIS Act.
- 5.13 The Trustee may release preserved Benefits:
- (a) on a Compassionate Ground;
  - (b) on the Temporary Incapacity of a Member;
  - (c) on the Permanent Incapacity of a Member.

**RULE 6 - ADMINISTRATION****INTERPRETATION OF THE DEED AND RULES**

- 6.1 Except where otherwise expressly provided, if any question or dispute arises about the interpretation of the Rules or the incidence or application of any rights, benefits, duties or liabilities arising under these Rules, the decision of the Trustee shall be binding upon all Members and Employers unless and until proved to have been given in bad faith or to have been based on an error of fact or law.

**INCOME TAX**

- 6.2 If the Trustee becomes liable for any income tax or other tax in respect of any payment out of the Fund the Trustee may deduct an amount equal to such tax from such payment as the Trustee thinks proper. Nothing in this Rule shall prejudice any other rights which the Trustee may have to deduct income tax or other tax from any payment out of the Fund or to pay from the Fund any tax which the Trustee may incur.

**RIGHTS OF MEMBERS**

- 6.3 No person whether as a Member or otherwise shall have any claim, right or interest to or in respect of the Fund or any contributions thereto or any interest therein or any claim upon or against the Trustee or an Employer except under and in accordance with the provisions of these Rules and the SIS Act.

**MEMBERS TO GIVE INFORMATION**

- 6.4 Every Member and every person claiming a Benefit shall from time to time give to the Trustee such information, and produce to it such documents, as the Trustee considers are required for the purpose of putting these Rules into effect and for arranging insurances for the purposes of the Fund.

**TRUSTEE TO GIVE INFORMATION**

- 6.5 The Trustee will give to each Member:-
- (a) as soon as practicable after he becomes a Member;
  - (b) as soon as practicable after the end of each Financial Year;
  - (c) as soon as practicable after any amendment to the deed or Rules; and
  - (d) on such other occasions as the Relevant Requirements provide,

such information as may be stipulated in the Relevant Requirements.

**NOTICES**

- 6.6 Any notice to be given under these Rules shall be deemed to have been validly given if handed to the party to be served by ordinary prepaid post and duly addressed to the party to be served at the last known address of such party.

**POWER OF ATTORNEY**

- 6.7 Unless prohibited by the SIS Act, each Member hereby irrevocably appoints the Trustee as the attorney of the Member to execute and sign and do all such deeds, instruments and things as the Trustee may consider necessary or desirable in order to carry out, exercise and give effect to the deed or these Rules or the powers, authorities and discretions vested in the Trustee thereunder.
- 6.8 Unless prohibited by the SIS Act, the Trustee shall be permitted to appoint one or more attorneys under power or powers of attorney to act jointly or severally as attorney of the Trustee to execute and sign and do all such deeds, instruments and things as the Trustee may consider necessary or desirable in order to carry out, exercise and give effect to the deed or these Rules or the powers, authorities and discretions vested in the Trustee thereunder.

**RULE 7 - EMPLOYERS**

- 7.1 Nothing in these Rules shall restrict the right of an Employer to dismiss an employee or be used to increase damages in any action brought against the Employer in respect of such dismissal or affect the rights of a Member or his legal personal representative or other persons to claim damages or compensation at common law or under a Workers' Compensation Act or any other statute in force governing compensation to a Member injured or dying from an accident arising out of or in the course of his employment with the Employer.

**RULE 8 - AMENDMENT OF DEED**

- 8.1 Subject to the other provisions of this Rule 8, the Trustee may at any time by resolution or by instrument in writing amend (whether by way of deletion addition or variation) all or any of the provisions of the deed or these Rules including this Rule 8.
- 8.2 No reduction of the accrued Benefit of a Member shall be made without the consent of that Member in writing, provided that no amendment to the Rules introduced primarily for the purpose of securing exemption or relief from liability for income tax, stamp duty, gift duty, death duty, or any other form of taxation imposed or to be imposed or primarily for the purpose of complying with or conforming to present or future State or Commonwealth legislation governing or regulating the maintenance or operation of superannuation, pension or like funds shall be deemed to vary prejudicially or affect the accrued Benefit of a Member.
- 8.3 No amendment may be made pursuant to Rule 8.1 which would cause the trusts contained in the deed and these Rules to fail by reason of the application of the rule against perpetuities.
- 8.4 The Trustee shall notify the Members of the effect of any amendment to the Rules.
- 8.5 The Rules must not be amended unless:
- (a) the Trustee has consented to the amendment;
  - (b) if the Fund is an employer-sponsored fund:
    - (i) the amendment relates to contributions that an employer-sponsor will, after the amendment, be required or permitted to pay to the Fund;
    - (ii) the amendment relates solely to the termination of the Fund; or

- (iii) the circumstances in which the amendment was made are covered by the SIS Act; or
  - (c) the amendment is made solely for the purpose of conferring on the Trustee the power to consent to the amendments of the Rules.
- 8.6 The Rules must not be amended in such a way that:
- (a) a person other than a constitutional corporation would be eligible to be appointed as trustee unless the Rules provide, and will continue to provide after the amendment is made that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
  - (b) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Rules provide, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.
- 8.7 No amendment shall be made otherwise than in accordance with the Relevant Requirements.

## **RULE 9 - WINDING UP**

### **TERMINATION OF TRUST**

- 9.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any one of the following events:-
- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund; or
  - (b) on the earlier to occur of the eightieth anniversary of the Commencement Date and the date being 21 years after the date of the death of the last survivor of the issue now living of His Late Majesty King George VI, unless the laws governing the Fund provide that the Rules against Perpetuities shall not apply to it;
  - (c) of the SIS Act requires that the Fund be wound up.
- 9.2 Upon the trusts hereof ceasing and terminating in accordance with Rule 9.1 the Trustee shall give notice in writing to each Member, if any, that the Fund shall be wound up on a specified date, such date not being later than any date on which the Fund is required by Rule 9.1 to be terminated ("the Closure Date"). As from the Closure Date the following shall apply:-
- (a) no further contributions shall be accepted other than arrears of contributions due to the Closure Date; and
  - (b) arrears of contributions, if any, shall be called in immediately.

### **BENEFITS ON WINDING UP**

- 9.3 Upon the trusts ceasing and terminating in accordance with Rule 9.1 the Trustee, subject to Rule 9.7, shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following Benefits in the following order of priority:-
- (a) payments which on or before the Closure Date have become payable to retired Members or Dependants.
  - (b) payments in respect of each Member equal to the Fund Credit of the Member.
  - (c) payments in respect of each Member of such amount of the Assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under paragraph (b) as can be paid without being regarded as excessive in amount, having regard to Relevant Requirements.

- 9.4 Where a Member dies before receiving a Benefit to which he has become entitled pursuant to Rule 9.3 such benefit shall be paid to the Member's legal personal representatives.
- 9.5 If after providing Benefits for Members and their Dependants in terms of Rule 9.3 a surplus remains, such surplus shall be paid by the Trustee, subject to Rule 9.7, to or for the benefit of:-
- (i) any former Members;
  - (ii) any Dependants of any such former Members; or
  - (iii) the legal personal representatives (in their capacities as such) of any such former Members or Dependants,
- as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines, subject to Rule 12.12.
- 9.6 Subject to Rule 12.15, the payments to be provided under Rule 9.3 and 9.5 shall be in cash, life insurance policies, participation in any other superannuation fund or otherwise as determined by the Trustee but shall not be payable to or for the benefit of a Member unless and until the Member attains the Norman Retirement Age other than for personal maintenance and support in case of hardship.
- 9.7 If any payment of benefits provided under Rules 9.3 and 9.5 is otherwise required by the Relevant Requirements to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member shall not be entitled to receive from the Fund any part of the benefit which is required to be so deferred and the Trustees shall make any of the following arrangements with respect to the benefits required to be deferred:
- (a) transfer the benefit to another Approved Superannuation Fund nominated by the Member if that fund does not permit the payment of the benefit prior to the attainment of the particular age or the specified event;
  - (b) purchase a deferred annuity nominated by the Member with benefits commencing no earlier than the particular age or the specified event or which otherwise satisfies the Relevant Requirements; or
  - (c) transfer the benefit to an Approved Deposit Fund nominated by the Member if that fund does not permit the payment of the benefit prior to attainment of the particular age or the specified event.

## **RULE 10 - ELIGIBILITY AND MEMBERSHIP**

### **ELIGIBILITY**

- 10.1 Any person who has applied in writing to the Trustee to participate in the Fund or who satisfies such conditions, if any, specified in Schedule 4 and has consented to be bound by the provision of the Superannuation Fund Trust Deed and the Rules shall be eligible for admission as a Member of the Fund in the Category, if any, specified in the invitation or to which those conditions relate.

### **MEMBERSHIP**

- 10.2 Each application for membership of the Fund is to be made by the relevant prospective Member to the Trustee in such form as the Trustee may from time to time approve, and if submitted through an Employer shall indicate the Category, if any, to which the prospective Member wishes to be admitted.

- 10.3 A person shall become a Member in the Category, if any, specified by the Member from the date when his or her application has been received and approved by the Trustee.
- 10.4 Each Member shall by virtue of his or her application be deemed to have consented to be bound by the provisions of the Superannuation Fund Trust Deed and the Rules.
- 10.5 A Member may by notice in writing to the Trustee request a change to the Member's Category. The change of category shall take effect on the date the change is approved by the Trustee. The Trustee need not approve any request for a change if the change would be inconsistent with the Relevant Requirements.

#### **TRANSFER FROM ANOTHER FUND**

- 10.6 The Trustee may, make such arrangements as it thinks proper with any Member or the trustees of any superannuation fund of which the Member was or is a member of any of them for any transfer of Assets to the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the admission of such Member to membership of the Fund, PROVIDED THAT:
- (a) if a superannuation fund from which such assets are transferred is one in which the payment of benefits is otherwise required by any Relevant Requirements to be deferred until the attainment of a particular age or the occurrence of specified events, then the Member shall not be entitled to receive from the Fund any part of a Benefit that is attributable to those assets at a date earlier than that on which he would have been entitled to receive the same from the said fund;
  - (b) the trustee must not accept such transfer if such acceptance would contravene the Relevant Requirements.

#### **TRANSFER TO ANOTHER FUND**

- 10.7 Should a Member become eligible to join another Approved Superannuation Fund the Trustee may, if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under these Rules, transfer to the trustees of such superannuation fund such portion of the Assets of the Fund as the Trustee in its discretion determines, not exceeding such amount as the Trustee considers equivalent in value to the Benefit being provided for the Member, to the extent that it has accrued. Subject to the SIS Act, the Trustee may in the discretion of the Trustee determine whether the transfer is to be effected by way of cash or in specie transfer of assets or both.
- 10.8 If a Member is required to transfer all or part of any amount held for the benefit of a Member to another superannuation fund pursuant to Part VIII B of the Family Law Act, the Trustee shall do all things necessary to facilitate such a transfer. If an interest in the Fund becomes subject to a Payment Split, the Trustee must give to the Non-member Spouse in relation to the interest such information as may be prescribed for that purpose under the SIS Act.
- 10.9 The Trustee may do all such things as may be necessary or contemplated by the SIS Act in order to give effect to the requirements of the SIS Act to deal with any Payment Split or the interest of a Non-member Spouse in the Fund.

#### **CESSATION OF MEMBERSHIP**

- 10.10A person ceases to be a Member on the happening of the first of the following:-

- (a) when the total amount of all amounts payable under the Rules in respect of his or her membership has been paid;
- (b) when under the Rules all Benefits payable to the Member cease to be payable; or
- (c) the date the Trustee makes a determination under Rule 10.11.

10.11 The Trustee may also determine that a person must cease to be a Member of the Fund:

- (a) if the Member is or becomes a Disqualified Person;
- (b) the Member becomes bankrupt and the Trustee does not appoint an approved trustee;
- (c) the Fund will not comply with the Relevant Requirements if the Member remains a member of the Fund.

### **CHILD MEMBERSHIPS**

10.12 A child may become a Member if:

- (a) subject to Rule 10.13, until the child turns 18, decisions in relation to the Account of the child are made by:
  - (i) the legal personal representative of the child; or
  - (ii) if the child does not have a legal personal representative, a parent of the child or the child's guardian; and
- (b) the person who applied for membership on behalf of the child is the child's legal personal representative, a parent of the child or the child's guardian, or the application is made in a manner which is consistent with the Relevant Requirements.

10.13 A child may make decisions in relation to the Account of the child if:

- (a) the child is at least 16 years old; and
- (b) the Fund has been notified that the child will be making decisions in relation to the Account by:
  - (i) the child's personal legal representative; or
  - (ii) if the child does not have a legal personal representative, a parent of the child or the child's guardian.

### **RULE 11 - CONTRIBUTIONS**

11.1 The Trustee may accept contributions to the Fund from any person or any other entity provided that such acceptance does not contravene the Relevant Requirements.

11.2 Subject to the Relevant Requirements, but without limiting Rule 11.1, the Trustee may accept contributions from the Government including contributions made under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003.

11.3 Subject to the Relevant Requirements, a member may in a financial year apply to the Trustee to roll over, transfer or allot an amount of Benefits, for the benefit of a Member's spouse, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Member in:

- (a) the last financial year that ended before the Splittable Contribution Application; or
- (b) the financial year in which the Splittable Contribution Application is made - where a Benefit is to be rolled over or transferred in that year.



## **RULE 12 - PAYMENT OF BENEFITS**

### **PENSION BENEFITS**

- 12.1 Unless contrary to the Relevant Requirements, a pension may be arranged as a life time pension which may have such design features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:-
- (i) the pension shall be payable at least annually throughout the life of the Member;
  - (ii) the Trustee may in its discretion determine the pension continue to be paid upon the death of the Member to a reversionary beneficiary throughout the reversionary beneficiary's life but if the reversionary beneficiary is a minor the pension shall be paid at least until his or her 16th birthday and if the reversionary beneficiary is a full-time student at age 16 at least until his or her 25th birthday or cessation of full-time studies (whichever occurs first);
  - (iii) the size of payments of the pension in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Rule 12.9 and subject to a commutation that may be required to pay a superannuation contributions surcharge;
  - (iv) if the inflation rate prescribed by the Relevant Requirements is not negative then the pension payable in a year shall be not less than the sum payable in the immediately preceding year (annualised if necessary);
  - (v) if the inflation rate prescribed by the Relevant Requirements is negative then the pension payable in a year shall not be less than the said negative rate applied to the sum payable in the immediately preceding year (annualised if necessary);
  - (vi) the pension shall not have a residual capital value otherwise than as authorised by the Relevant Requirements at the time and any amount that remains to the credit of the Account of the Member at the time of termination of the pension that is not applied by way of residual capital value shall be forfeited as against the pensioner and shall be credited to the Foregone Benefits Account;
  - (vii) the pension may not be commuted except as allowed by the Relevant Requirements which circumstances may include the purchase of a pension satisfying the requirements of Rule 12.2;
  - (viii) any reversion of the pension authorised by this Rule 12.1 shall not exceed the amount of pension that would otherwise had been paid to the previous pensioner;
  - (ix) any commutation or residual capital value of the pension that is authorised by this Rule 12.1 and the Relevant Requirements shall not exceed the lesser of the credit in the Account of the Member and the amount (if any) that may be authorised under the Relevant Requirements.
- 12.2 Unless contrary to the Relevant Requirements, a pension may be arranged as a fixed term pension which may have such design features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:-

- (i) the commencement date of the pension ("the commencement date") shall be the day when the Member becomes entitled to be paid the pension;
- (ii) the Member must have already attained the pension age within the meaning of the Relevant Requirements as at the commencement date;
- (iii) the pension shall be paid at least annually to the Member:-
  - A. if the life expectancy of the Member on the commencement date is less than 15 years, for a fixed term of the said life expectancy rounded up to the next whole number of years; or
  - B. if the said life expectancy is 15 years or more for a fixed term determined by the Trustee not being less than 15 years but not more than the period of the life expectancy rounded up to the next whole number of years;
- (iv) the size of payments of pension in the first year after the commencement date shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Rule 12.9 and the first such payment shall relate to the period commencing on the commencement date;
- (v) the size of payments of pension after the first year as prescribed by Rule 12.2(iv) shall not be less than the sum payable in the immediately preceding year and shall not be increased by a percentage rate greater than may be prescribed by the Relevant Requirements from time to time;
- (vi) the pension payments made in accordance with this Rule 12.2 may only be varied to allow commutation that may be required to pay a superannuation contributions surcharge;
- (vii) the pension shall not have a residual capital value otherwise than is authorised by the Relevant Requirements at the time and any amount that remains to the credit of the Account of the pensioner at the time of termination of the pension that is not applied by way of residual capital value shall be forfeited as against the Member and shall be credited to the Foregone Benefits Account;
- (viii) the pension may not be commuted except as allowed by the Relevant Requirements which circumstances may include the purchase of a pension satisfying the requirements of Rule 12.1 or payment by way of commutation upon the death of the pensioner;
- (ix) any reversion of the pension authorised by this Rule 12.2 shall not exceed the amount of the pension that would otherwise have been paid to the previous pensioner.

12.3 Unless contrary to the Relevant Requirements, a pension may be arranged as an allocated pension which may have such design features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:

- (i) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided the payment is made at least annually except that the Trustee shall not be required to make a pension payment prior to 30 June in a year if the date of commencement of the pension is on or after a date specified in the SIS Act as enabling the Trustee not to make such a pension payment;

- (ii) the size of payments of the pensions in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Rule 12.9 and payments in respect of a year, except by way of commutation, shall not be larger or smaller in total than respectively the maximum and minimum amounts calculated in accordance with the Relevant Requirements;
- (iii) the pension may be payable to a reversionary beneficiary;
- (iv) the pension may be commuted and a residual capital value may be payable by the Trustee subject to all times to the requirements of the Relevant Requirements.

12.4 Unless contrary to the Relevant Requirements, a pension may be arranged as a fixed benefit payment pension which may have such design features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:

- (i) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided that a payment is made at least annually;
- (ii) subject to Rule 12.4(ii) the size of payments of the pension in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Rule 12.9;
- (iii) the size of payments of pension (not including payments by way of commutation) after the first year shall not be increased by an amount greater than the average rate of increase in the consumer price index in the 3 years preceding the year;
- (iv) the pension may be payable to a reversionary beneficiary provided that the pension payable to the reversionary beneficiary does not exceed the amount of the pension that would otherwise have been paid to the previous pensioner;
- (v) a residual capital value of the pension may be payable by the Trustee subject at all times to the requirements of the Relevant Requirements;
- (vi) the pension may be commuted on such terms as the Trustee may determine except that the amount able to be commuted shall not exceed the lesser of the credit in the Account of the relevant Member and the sum determined by applying the appropriate pension valuation factor determined in accordance with the Relevant Requirements to the pension.

12.5 Unless contrary to the Relevant Requirements, a pension may be arranged as a market linked pension which may have such design features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:-

- (i) the pension may be payable at least annually (whether to a primary beneficiary or a reversionary beneficiary):
  - (a) throughout the period being equivalent to the life expectancy of the relevant Member on the commencement date of the pension;
  - (b) at the option of the relevant Member throughout the period being equivalent to the life expectancy of the relevant Member on the basis that the relevant Member was up to five (5) years younger on the commencement date of the pension;

- (c) for the period of years between the age of the relevant Member on the commencement date and the date the Member would attain one hundred (100) years of age;
- (ii) if the annuity reverts to a surviving spouse of the Member on the death of a Member and the life expectancy of the spouse is greater than the life expectancy of the Member and the Member has not made one of the elections referred to in Rule 12.5(i)(ii) or (iii), then references to the period in Rule 12.5(i)(ii) and (iii) can be made as if a period that refers to the Member refers to the spouse of the Member;
- (iii) the total amount of payments made in a year must be within the range that is authorised by the Relevant Requirements;
- (iv) the pension must not have a residual capital value, unless authorised by the Relevant Requirements;
- (v) the pension cannot be commuted unless authorised by the Relevant Requirements;
- (vi) any reversionary component must not exceed the credit in the Account of the Member immediately before the reversion unless otherwise authorised by the Relevant Requirements;
- (vii) if the pension is commuted, the amount paid on commutation must not exceed the credit in the Account of the Member immediately before the commutation unless otherwise authorised by the Relevant Requirements.

12.6 Unless contrary to the Relevant Requirements, a pension may be arranged as a transition to retirement pension which may have such features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:

- (i) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided the payment is made at least annually except that the Trustee shall not be required to make a pension payment prior to 30 June in a year if the date of commencement of the pension is on or after a date specified in the SIS Act as enabling the Trustee not to make such a pension payment;
- (ii) the size of payments of the pensions in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Rule 12.9 and payments in respect of a year, except by way of commutation, shall not be larger or smaller in total than respectively the maximum and minimum amounts calculated in accordance with the Relevant Requirements;
- (iii) the pension may be payable to a reversionary beneficiary;
- (iv) the pension may be commuted and a residual capital value may be payable by the Trustee subject to all times to the requirements of the Relevant Requirements;
- (v) the Member must have attained the Preservation Age (or such earlier age permitted under the Relevant Requirements);
- (vi) at the option of the Relevant Member, but subject to the Relevant Requirements, the pension may be payable even if the Member continues

Employment, if the Fund is permitted under the SIS Act to receive contributions from or on behalf of that Member.

- 12.7 Unless contrary to the Relevant Requirements, a pension may be arranged as an account based pension which may have such features as the Trustee considers appropriate having regard to the Relevant Requirements, including but not limited to:
- (i) the pension shall be payable at least annually;
  - (ii) the total amount of the payments made in a year must be within the range that is authorised by the Relevant Requirements;
  - (iii) the residual capital value, commutation value and withdrawal benefit must not be greater than one hundred percent (100%) of the purchase price of the pension unless authorised by the Relevant Requirements;
  - (iv) if the pension is commuted, the commutation amount must not exceed the benefit that was payable immediately before the commutation unless authorised by the Relevant Requirements;
  - (v) the pension may be payable to a primary or reversionary beneficiary only on the death of the Relevant Member;
  - (vi) the capital value of the pension and the income from it cannot be used as security for a borrowing unless authorised by the Relevant Requirements.
- 12.8 Any pension payable in accordance with Rules 12.1-12.7 shall be subject to the following:
- (i) the pension may not be transferred or assigned to another person unless such transfer or assignment is authorised by the Relevant Requirements; and
  - (ii) the capital value of the pension and the income from it cannot be used as security for a borrowing unless authorised by the Relevant Requirements;
  - (iii) if permitted by the Relevant Requirements, the Trustee may commence more than one pension in respect of a Member whether at the same time or different times and each such pension shall be arranged and paid just as if it were the only pension to be paid from the Fund in respect of the Member;
  - (iv) the payment of a Benefit under Rules 12.1, 12.2, 12.3, 12.4, 12.5, 12.6 and 12.7 may be paid in the form of one or more of the following pensions (subject to this Rule 12.8) or in such other form of pension that may be authorised by the Relevant Requirements from time to time.

Subject to the specific requirements of Rules 12.1-12.7 as the case may be a pension may be payable on such other basis, or from such portion of the Member's Benefit or assets which have been segregated as representing the Member's Benefit as the Trustee may determine having regard to matters such as the level of benefits, the Member's pension or lump sum reasonable benefit limits, whether or not a residual capital value and commutation entitlement are to be paid or payable and whether there shall be a reversion of entitlement to a Dependant in the event of death of the Member and upon commencing the pension in accordance with these Rules the Trustee may record in writing the contractual terms and conditions applicable to the pension which it has determined to pay.

- 12.9 (i) In the event of the commencement of a defined benefit pension the Trustee may obtain advice from the Actuary as to the various benefit design features of the pensions that are available and the pension amounts that would be payable in the first year having regard to the Member's Account balance, the type of pension and the benefit design features available in respect of each type of pension.
- (ii) Within 12 months of the commencement of a defined benefit pension and within every 12 month period thereafter during which the liability to pay the pension remains on foot the Trustee shall obtain a certificate from the Actuary in accordance with the requirements of the Relevant Requirements.
- (iii) Nothing in this rule 12.9 compels the Trustee to obtain advice from the Actuary and a reference to "the advice of the Actuary given in accordance with Rule 12.9" shall not apply if the Trustee has elected not to obtain the advice.
- 12.10 Nothing in these Rules limits the design features of any pension that the Trustee may, in the discretion of the Trustee, wish to arrange for the benefit of a Member. The Trustee may arrange or provide for any pension with such design features provided that such features are not prohibited by the SIS Act or would otherwise breach the Relevant Requirements.

#### **DEATH BENEFITS AND BINDING NOMINATIONS**

- 12.11 (a) Subject to the SIS Act, a Member may require the Trustee to provide Death Benefits to a Nominated Beneficiary.
- (b) The Trustee must give to the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustee to provide the benefits in accordance with any request made pursuant to Rule 12.11(a).
- (c) Subject to the SIS Act, if a Member makes a Binding Nomination, the Trustee must pay Death Benefits in respect of that Member, on or after the death of the Member, to the person or persons mentioned in the Binding Nomination if:
- (i) the person, or each of the persons, mentioned in the Binding Nomination is the legal personal representative or a Dependant of the Member; and
  - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the Binding Nomination; and
  - (iii) the notice is in accordance with Rule 12.11(e) and not inconsistent with the requirements of the SIS Act; and
  - (iv) the Binding Nomination is in effect.
- (d) A Member who gives a Binding Nomination to the Trustee may:
- (i) confirm the Binding Nomination by giving to the Trustee a written notice, signed, and dated, by the Member to that effect; or
  - (ii) amend, or revoke, the Binding Nomination by giving to the Trustee notice, in accordance with Rule 12.11(e), of the amendment or revocation.

- (e) For the purposes of this deed, a Binding Nomination (and any amendment or revocation) must comply with the requirements of the SIS Act and:
  - (i) must be in writing; and
  - (ii) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
    - (A) each of whom has turned 18; and
    - (B) neither of whom is a person mentioned in the Binding Nomination; and
  - (iii) must contain a declaration signed, and dated, by the witnesses stating that the Binding Nomination was signed by the Member in their presence.
- (f) A Binding Nomination ceases to have effect on the first to occur of:
  - (i) the date the Binding Nomination is revoked by the Member in accordance with Rule 12.11(e);
  - (ii) the third anniversary on the date the Binding Nomination was first signed, or last confirmed or amended by the Member; or
  - (iii) such date as may be prescribed under the SIS Act.
- (g) Subject to the Relevant Requirements any Death Benefit shall be paid as the Trustee in its absolute discretion decides by way of purchased annuities, pensions or other periodical payments (in each such case upon such terms as the Trustee may decide) or lump sum payments or any combination of such methods of payment.
- (h) If a Member has not made a Binding Nomination, the Trustee may pay the Death Benefit to any one or more of:
  - (i) to such one or more of the Dependants and in such proportions as the Trustee in its absolute discretion decides; or
  - (ii) to the legal personal representative of the Member;
  - (iii) to such other person as the Member may have nominated or a non-binding nomination.
- (i) If a Member dies, the Trustee must pay a Benefit in respect of the Member equal to the total of that Member's Account balance and the Sub Account (if any) in respect of the Member.
- (j) To the extent (if any) that the Trustee is prohibited by the Relevant Requirements from paying all or part of a death Benefit in accordance with a Binding Nomination, that part of the Benefit may be paid in accordance with Rule 12.11(h).
- (k) If a Nominated Beneficiary is under the age of 18 years and the Trustee considers it appropriate, the Trustee may pay the Death Benefit to another person for application on behalf of the Nominated Beneficiary.

The Trustee may in its absolute discretion increase the Benefit payable to either the Dependants or legal personal representatives of the deceased Member by any amount

equivalent to such amount (if any) which is a taxation deduction to the Fund by reason of the application of Section 279D of the Act.

#### **ENTITLEMENT**

- 12.12(a) All questions as to whether any person is entitled to a payment from the Fund and, if so, the amount of such payment shall be determined by the Trustee.
- (b) The payment or application of any moneys in pursuance of Rule 12 shall be a complete discharge therefor.
- (c) No benefit shall be payable until the Trustee has ascertained that it may be paid in accordance with the provisions of these Rules.

#### **PREVENTION OF EXCESSIVE BENEFITS**

- 12.13 Notwithstanding anything expressed or implied to the contrary in these Rules, no part of any Benefit from the Fund shall be payable in respect of any Member if payment thereof would result in the aggregate of the benefits paid or payable in respect of the Member from the Fund and any other relevant benefits being regarded as excessive in amount, and in breach of the Relevant Requirements.
- 12.14 If the Trustee has reason to believe that a Benefit which is or may become payable in respect of a Member is or will be excessive having regard to Rule 12.13 the Trustee may subject to the SIS Act either or both:-
- (a) reduce the contributions payable in respect of the Member in such manner as it thinks fit;
- (b) transfer to the Foregone Benefits Account an amount in respect of the Member.

#### **DISTRIBUTION IN SPECIE**

- 12.15 The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any Benefit or other amount payable pursuant to the provisions of the deed or the Rules, transfer any of the Assets of the Fund of equivalent value to the person so entitled PROVIDED THAT in the case of a transfer of an asset other than a life insurance policy the Trustee obtains any consent necessary for the Fund to remain an Approved Superannuation Fund.

#### **PAYMENT TO APPROVED DEPOSIT FUND OR TO PURCHASE ANNUITY**

- 12.16 Subject to Rule 13.8, the Trustee may at the request of the person entitled pay all or part of any lump sum Benefit payable pursuant to the provisions of the Rules to such approved deposit fund or for the purchase of such annuity or otherwise generally as the person so entitled may request.

#### **FORFEITURE OF BENEFITS**

- 12.17 Subject to the SIS Act, Benefits payable out of the Fund shall be:-
- (a) forfeited if, without the prior approval of the Trustee, the person entitled thereto purports to assign, alienate or charge such Benefits or part thereof;
- (b) suspended if the person entitled thereto becomes or is:
- (i) a bankrupt;
- (ii) insolvent (including, without limiting the generality of the foregoing, if the Member signs an authority under Section 188 of, or enters into any deed of assignment or deed or arrangement in pursuance of, Part X of the Bankruptcy Act 1966); or



(iii) in the opinion of the Trustee, mentally ill or of unsound mind or incapable of managing himself or herself or his or her own affairs.

12.18 The whole of the Benefits forfeited by a person under Rule 12.17 or 12.20 shall be applied by the Trustee as the Trustee may think fit) for the benefit of such person and his or her Dependants or any one or more of them, provided that while such person remains in Employment the Trustee shall not make any payment to or for the benefit of the person or his or her Dependants other than for personal maintenance and support in case of hardship as may be permitted under the SIS Act.

12.19 Subject to the SIS Act, the whole of the Benefits to which a person would otherwise have been entitled but which have been suspended under Rule 12.17 shall be dealt with in accordance with, and shall be subject to, the following provisions:-

- (a) upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such Benefits;
- (b) if, prior to the date upon which the person ceases to be in Employment for any reason whatsoever, the person ceases to be one to whom any of Rule 12.17(b)(i), (ii) or (iii) applies then the suspension of such Benefits shall cease and the Trustee shall thereafter hold such Benefits in respect of the person as if the suspension had not intervened;
- (c) if such Benefits remain suspended at the time when the person ceases to be in Employment for any reason whatsoever, such Benefits shall thereupon be forfeited;
- (d) while such Benefits are suspended the Trustee may pay amounts thereout to or for the benefit of the relevant person or his Dependants for, but only for, personal maintenance and support in case of hardship.

12.20 The Trustee shall be entitled to treat as unclaimed and to forfeit and to transfer to the Foregone Benefits Account any moneys in the Fund standing to the credit of any person whose whereabouts are unknown to the Trustee and if after making such enquiries as the Trustee deems appropriate it is unable positively to trace any person entitled to the benefit of such moneys.

### **REDUCTION OF BENEFITS**

12.21 Where a minimum Benefit payable on death or Permanent Incapacity is stipulated in respect of a Member pursuant to Schedule 6 or 7, and the Trustee effects or seeks to effect or increase insurance in respect of that Benefit, if:

- (a) the insurer does not accept the Member on its standard terms or refuses to provide the required insurance on terms acceptable to the Trustee; or
- (b) by reason of a mis-statement as to the Member's health, age or otherwise, the insurer reduces the level of insurance or part of a claim.

the Trustee may reduce or adjust that Benefit to take account of such refusal, reduction, rejection or deferral.

12.22 The methods of cashing benefits expressed in the Rules are non-exhaustive. The Trustee may cash benefits or pay pensions in any such manner as the Trustee may in the absolute discretion of the Trustee think fit provided that the Trustee must not, in doing so, contravene the Relevant Requirements.

**RULE 13 - CALCULATION OF BENEFITS****NORMAL RETIREMENT**

- 13.1 A Member who retires from Employment at or after the Member's Normal Retirement Date shall be entitled to receive a Retirement Benefit of a capital value equal to the Member's Fund Credit and payable as a lump sum unless the Member requests a pension and the Trustee assents to that request.

**DEATH**

- 13.2 On the death of a Member a Death Benefit shall become payable which shall be equal at least to the Member's Fund Credit but not less than the amount, if any, specified in Schedule 6 and payable as a lump sum unless the legal personal representative of the deceased Member requests a pension and the Trustee assents to that request.

**PERMANENT INCAPACITY**

- 13.3 A Member who retires from Employment on the grounds of Permanent Incapacity shall be entitled to receive a Permanent Incapacity Benefit equal at least to the Member's Fund Credit but not less than the amount, if any, specified in Schedule 7 and payable as a lump sum.

**OTHER TERMINATION OF EMPLOYMENT**

- 13.4 A Member who ceases Employment and who is not entitled to a Retirement Benefit or a Permanent Incapacity Benefit and in respect of whom a Death Benefit is not payable shall be entitled to receive a Withdrawal Benefit, subject to Rule 13.6 payable as a lump sum unless the Member requests a pension and the Trustee assents to that request, and which shall be of a capital value equal to the total of the Member Contribution Account, the Preserved Account of the Member, provided that the Trustee may in its absolute discretion in any particular case decide to increase a Member's Withdrawal Benefit to an amount not exceeding the Member's Fund Credit.

**EARLY RETIREMENT**

- 13.5 A Member who retires from Employment on or after the Member's Early Retirement Date shall subject to Rule 13.6, be entitled to receive an Early Retirement Benefit equal to the Member's Fund Credit, payable in the same manner as a Withdrawal Benefit provided that the Early Retirement Benefit shall not be less than the Withdrawal Benefit.

**PRESERVATION**

- 13.6 Where, in order to comply with all Relevant Requirements, it is necessary to ensure that payment of all or part of a Withdrawal Benefit or Early Retirement Benefit is not made to the Member prior to the Member attaining a particular age or satisfying other conditions, then the Benefit or such part of it as the case may be shall be retained in the Fund for so long as is necessary for such purpose unless otherwise transferred in accordance with Rules 10.7, 10.8 or 12.14, provided that no such transfer shall be made unless similar restrictions are applied by the fund or organisation to which the transfer is made. A Benefit or part thereof the payment or transfer of which is deferred shall continue to participate in the earnings of the Fund as if it constituted a Member Contribution Account.

**PENSION PAYMENTS**

13.7 The Trustee may, at the request of a Member, unless a particular pension is indicated in Schedule 1 for the Category to which the Member then belongs, pay a Benefit in any form or manner that the SIS Act permits or otherwise contemplates. Nothing in these Rules restricts the form or manner in which a pension may be paid if such form or manner is not prohibited or restricted by the SIS Act.

**MEMBER REQUESTS**

13.8 The Trustee may refuse any request for a Benefit to be payable as a pension or any other request if assenting to such request:

- (a) would constitute a breach of the Relevant Requirements;
- (b) would constitute a breach of the SIS Act;
- (c) would constitute a breach of the Rules.

**OTHER BENEFITS**

13.9 Subject to Rule 13.8, if permitted by the SIS Act, the Trustee may cash Benefits for a Member at any time upon request by the Member including but not limited to a Compassionate Ground.

**TIMING OF PAYMENT OF BENEFITS**

13.10 For the avoidance of doubt, nothing in this deed compels the Trustee to pay a benefit at any time unless required to do so by the SIS Act or by the Member.

**COMPLIANCE WITH RELEVANT REQUIREMENTS**

14. (a) Notwithstanding any other provision herein contained but subject only to clause 14(b) the Trustee shall at all times comply with the Relevant Requirements in respect of the administration of the Fund.
- (b) The Trustee may, having regard to such advice as the Trustee considers necessary or appropriate, elect not to comply with the Relevant Requirements.
- (c) If there is any inconsistency between the Deed and Rules and the Relevant Requirements the Trustee shall act in accordance with the Relevant Requirements unless the Trustee elects not to do so pursuant to clause 14(b).

## **SCHEDULE 1**

(Categories)

Such categories as the Trustee may determine from time to time to provide benefits to a Member or Members in the form of a lump sum or pension, or both, but in all cases subject to, and not inconsistent with the Relevant Requirements.

## **SCHEDULE 2**

(Normal Retirement Date)

Such age (if any) as may be prescribed for the purposes of the SIS Act.

## **SCHEDULE 3**

(Member Eligibility)

1. Admission of the prospective Member must not result in a breach of the Relevant Requirements by the Fund.
2. The Trustee may, as a condition of eligibility, require the prospective Member or a legal personal representative of a prospective Member, to consent to appointment as a trustee or a director of the Trustee.
3. Such conditions as the Trustee may from time to time determine, not inconsistent with the Relevant Requirements.

**SCHEDULE 4**  
(Contributions)

ordinary            The greater of:

- (a)    one dollar (\$1.00);
- (b)    such amount as the Trustee may determine from time to time to provide benefits to a Member or Members in the form of a lump sum or pension, or both, but in all cases subject to and not inconsistent with the Relevant Requirements.

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**SCHEDULE 5**  
(Death Benefit)

CATEGORY	BENEFIT AMOUNT
ordinary	The greater of: <ul style="list-style-type: none"><li>(a)    one dollar (\$1.00);</li><li>(b)    such amount as the Trustee may determine from time to time to provide benefits to a Member or Members in the form of a lump sum or pension, or both, but in all cases subject to, and not inconsistent with the Relevant Requirements.</li></ul>

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**SCHEDULE 6**  
(Permanent Incapacity Benefit)

CATEGORY	BENEFIT AMOUNT
ordinary	The greater of:  (a) one dollar (\$1.00);  (b) such amount as the Trustee may determine from time to time to provide benefits to a Member or Members in the form of a lump sum or pension, or both, but in all cases subject to, and not inconsistent with the Relevant Requirements.

**RESOLUTION OF JOHN GEOFFREY HUNT AND BARBARA IZABELLA ZIELINSKA (the "Trustees") ACTING IN THEIR CAPACITY AS TRUSTEES OF THE HUNT SUPERANNUATION FUND MADE ON THE DAY OF**

We, the undersigned John Geoffrey Hunt and Barbara Izabella Zielinska note, record and resolve that we are in favour of and agree to each of the resolutions of this document:

1. The original Hunt Superannuation Fund Trust Deed be amended as set out in the deed of variation of superannuation fund trust deed (the "Deed of Variation") received by the Trustees from their solicitors.
2. The Trustees be authorised to execute the Deed of Variation.
3. The Trustees are to provide to each member of the Fund as soon as practicable after the execution of the Deed of Variation, a written statement explaining the nature and purpose of the amendment and the effect of the amendment on the entitlement or rights of the members.

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John Geoffrey Hunt

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Barbara Izabella Zielinska

## NOTICE TO MEMBER

John Geoffrey Hunt and Barbara Izabella Zielinska as trustees of the Hunt Superannuation Fund hereby give notice that the Hunt Superannuation Fund trust deed ("Trust Deed") has been amended pursuant to the Trust Deed.

The amendment of the Trust Deed has been made to take account of changes made to the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994*.

The changes made to the Trust Deed include:

1. more flexible pension design features;
2. permitting child accounts and Government co-contributions;
3. enabling payment splits if appropriate orders are made under the Family Law Act 1975; and
4. permitting certain members to draw on their superannuation benefits without having to permanently retire from the workforce.

It is noted that the amendments do not adversely affect the benefits or benefit entitlement of members of the Hunt Superannuation Fund.

Dated this                      day of

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John Geoffrey Hunt

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Barbara Izabella Zielinska