

**TRUST DEED AND RULES
OF
THE SIER FAMILY FUND**

CONFIDENTIAL

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THIS DEED POLL is made on 3RD MARCH 2003

BY: TREVOR SIER of 22 Juvenis Avenue, Oyster Bay, New South Wales and NATALIE SIER of 22 Juvenis Avenue, Oyster Bay, New South Wales (the "Trustee").

WHEREAS:

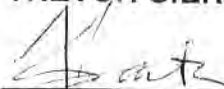
- A. The Trustee has decided to establish an indefinitely continuing superannuation plan to be known as The Sier Family Fund (the "Fund").
- B. The Trustee has agreed to act as the first Trustee of the Fund.
- C. The primary purpose of the Fund is to provide old age pensions to the Members.

NOW THIS DEED WITNESSES as follows:

- 1. The Fund shall come into operation on the date of this Deed (the "Commencement Date").
- 2. The "Rules" means the Rules and Schedules attached hereto as amended from time to time, and they shall have effect as if set out in the body of this Deed.
- 3. The assets of the Fund shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
- 4. The Fund shall be managed and administered in all respects according to the Rules.
- 5. The power of appointing and removing Trustees shall be as provided in the Rules.
- 6. The provisions of this Deed may be amended in the manner set out in the Rules.
- 7. This Deed and the Rules shall be governed by and construed in accordance with the law of New South Wales.

IN WITNESS the party has duly executed this Deed on the date first above written.

SIGNED SEALED AND DELIVERED by)
TREVOR SIER in the presence of:)



Signature of Witness)

VINCENT SANTOS

Name of Witness - please print)



SIGNED SEALED AND DELIVERED by)
NATALIE SIER in the presence of:)
)
)
)
Signature of Witness)
)
)
)
)
Name of Witness - please print)
)

N. Sier

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THE RULES

1. INTERPRETATION

Unless the context indicates otherwise:

words importing the singular shall include the plural and vice versa; and

words importing the masculine gender shall include the feminine and neuter genders; and

references to a person shall be construed as references to an individual, firm, body corporate, association, government or governmental authority; and

references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing the same; and

headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.

2. DEFINITIONS

In this Deed and in these Rules unless the context indicates otherwise the following words and expressions have the following meanings:

"Account" means a Member's Account, a Suspense Account, an Investment Fluctuation Reserve Account or any other account or reserve account established by the Trustee pursuant to **Rule 4.8**;

"Accumulated Contributions" in respect of a Member is the net amount standing to the credit of the Member's Account plus the value at that time of any policy of insurance, assurance or endowment owned by the Trustee in respect of the Member and has been funded from the Member's Account;

"Act" means the Superannuation Industry (Supervision) Act 1993 and the Regulations made thereunder;

"Allocated Investment" means assets and investments held in whole or in part for a Member or held in an Account as specified by the Trustee in accordance with **Rules 4.1** and **4.2**;

"Allocated Pension" means an income stream which is intended to comply with the standards set out in Regulation 1.06(4);

"Approved Trustee" has the same meaning as given to the term in the Act;

"Associate" has the same meaning as given to the term "Part 8 associate" in the Act;

"**Benefit**" in relation to a Member means the amount equal to a Member's Accumulated Contributions from time to time or in the event that a Complying Life Expectancy Pension, a Complying Lifetime Pension or a Non-Complying Pension is being paid such amount as agreed between the Member and the Trustee;

"**Commissioner**" means a person for the time being who is appointed to supervise the conduct of superannuation funds;

"**Complying Life Expectancy Pension**" means an income stream which is intended to comply with the standards set out in Regulation 1.06(7);

"**Complying Lifetime Pension**" means an income stream which is intended to comply with the standards set out in Regulation 1.06(2);

"**Complying Superannuation Fund**" means a superannuation fund which satisfies all the Statutory Requirements;

"**Constitutional Corporation**" has the same meaning as given to the term in the Act;

"**Dependants**" means the Spouse, widow, widower 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 dependent in whole or in part upon the Member for their maintenance and support;

"**Earnings**" includes any increase or decrease in value of the Fund (including profits and losses generated by investments and positive or negative revaluations of assets) that the Trustee determines should be added to or subtracted from each Member's Account or any other Accounts established by the Trustee;

"**Eligible Person**" means any person in respect of whom the Trustee may accept contributions or other payments in accordance with the Statutory Requirements but excludes a spouse of a Member entitled to some or all of the Member's Accumulated Contributions under a Payment Split;

"**Employer**" means a Member's employer who makes contributions to the Fund and includes any person from whom a Member may receive Salary and Wages;

"**Expenses**" means the costs of establishing, operating and terminating the Fund and includes any administrative, insurance and taxation costs or any decrease in value of the Fund that the Trustee determines should be charged against one or more Member's Accounts or any other Accounts in accordance with these Rules;

"**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 have occurred at the commencement or termination of the Fund;

"**Guarantee Act**" means the Superannuation Guarantee Charge Act 1992;

"Investment Fluctuation Reserve Account" means a reserve account established by the Trustee for the purposes outlined in **Rule 4.5**;

"Investment Manager" means a person appointed by the Trustee to invest money of the Fund;

"Member" means

- (a) an Eligible 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**; or
- (b) any person not currently a Member who commences to receive Benefits by way of a pension or annuity from the Fund as a consequence of the death of a Member; or
- (c) the legal personal representative of a Member.

The term Member shall include former Members who continue to have rights or contingent rights to Accumulated Contributions under this Fund;

"Member's Account" in respect of a Member is an account in which is recorded:

- (a) contributions by that Member;
- (b) contributions by a person other than a Member to satisfy that person's obligations under the Guarantee Act or an award;
- (c) contributions by a person as specified pursuant to **Rule 11.5**;
- (d) amounts transferred from a Suspense Account or an Investment Fluctuation Reserve Account or any other reserve account pursuant to these Rules;
- (e) forfeited benefits credited to the account pursuant to **Rule 14**;
- (f) the proceeds of policies of insurance credited to the account;
- (g) amounts debited to the account representing the Member's share of Expenses;
- (h) amounts debited or credited to the account representing the Member's share of Earnings;
- (i) amounts credited to the account on transfer of benefits from another superannuation fund or retirement saving account;

"Non-Complying Pension" means an income stream which is intended to comply with the standards set out in Regulation 1.06(6);

"Non-Member Spouse" has the same meaning as given to the term in the Act;

"**Payment Split**" means a payment split under the Family Law Act (1975) and the regulations made thereunder;

"**Permanent Incapacity**" of a Member has the same meaning as given to the term in the Act;

"**Prospective Member**" has the same meaning as given to the term in the Act;

"**Regulation**" means a regulation in the Superannuation Industry (Supervision) Regulations 1994;

"**Required Payment Date**" means any date at which a Member's Retirement Benefit must be paid or commence to be paid as a Pension in order to satisfy the Statutory Requirements;

"**Retire**" has the same meaning as given to the term in the Act;

"**Reversionaries**" means persons who become eligible for pension or annuity benefits from the Fund on the death of a Member who was receiving a Benefit in the form of a pension or annuity at the time of their death;

"**Rollover Fund**" means any entity or fund that is permitted by the Statutory Requirements to accept Accumulated Contributions of Members;

"**Salary and Wages**" has the same meaning as given to the term in section 221A of the Income Tax Assessment Act 1936;

"**Self Managed Superannuation Fund**" has the same meaning as given to the term in the Act;

"**Spouse**" means the legal spouse of a Member and any person regarded by the Trustee in its absolute discretion as a de facto spouse and any previous spouse or de facto spouse who is dependent upon the Member;

"**Statutory Age**" means:

- (a) for a person born before 1 July 1960 - 55 years; or
- (b) for a person born during the year 1 July 1960 to 30 June 1961 - 56 years; or
- (c) for a person born during the year 1 July 1961 to 30 June 1962 - 57 years; or
- (d) for a person born during the year 1 July 1962 to 30 June 1963 - 58 years; or
- (e) for a person born during the year 1 July 1963 to 30 June 1964 - 59 years; or
- (f) for a person born after 30 June 1964 - 60 years.

"**Statutory Authority**" means as the case may require, any one or more of the Commissioner, the Commissioner of Taxation or any other governmental,

department or authority responsible for administering the laws, regulations or any other rules governing the operation or the availability of income tax concessions to superannuation funds;

"Statutory Requirements" means the requirements imposed under any law or by any Statutory Authority which must be satisfied by a superannuation fund in order to qualify for income tax concessions provided that where a pension is taken out by a Member to comply with the requirements of the Social Security Act 1991 or the Veteran's Entitlements Act 1986, the term shall include those acts;

"Suspense Account" means an account as established, maintained and operated under **Rule 4.7**.

3. ASSETS AND INVESTMENTS

3.1 The assets of the Fund shall be held by the Trustee upon trust to be applied in accordance with the provisions of these Rules.

3.2 The Expenses of the operation of the Fund shall be paid out of the Fund.

3.3 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 the Trustee shall think fit;
- (d) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
- (e) in units of any common fund, property trust or unit trust;
- (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; or
- (g) in any policies of salary continuance insurance,

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 invest in:

- (i) loans to Members or to any relative of a Member, or provide any other financial assistance to a Member or any relative; or
- (ii) loans to or investments in Employers or Associates of Employers which do not comply with the Statutory Requirements.

- 3.4 The Trustee shall have power to vary, replace and otherwise deal with such investments in such manner as it determines without being responsible for loss occasioned by so varying, transposing or replacing.
- 3.5 The Trustee shall not intentionally acquire an asset from a Member or an Associate of a Member, otherwise than as provided pursuant to the Statutory Requirements.
- 3.6 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.
- 3.7 The Trustee shall only borrow money in compliance with the Statutory Requirements. Any borrowing which does not comply with the Statutory Requirements shall be immediately repaid.
- 3.8 The Trustee shall use its best endeavours to ensure that all investments comply with the Statutory Requirements.
- 3.9 The Trustee may enter into an agreement with an Investment Manager pursuant to which money of the Fund is placed under the control of the Investment Manager provided that the Trustee shall:
- (a) ensure the agreement contains adequate provisions to enable the Trustee to require the Investment Manager to provide information concerning the making and return of investments and to provide information to allow the Trustee to assess the capability of the Investment Manager to manage investments; and
 - (b) whenever necessary and desirable to do so, require the Investment Manager to provide the above information.
- 3.10 If the Trustee is requested to provide a Member with a pension the Trustee may identify the assets of the Fund which are to be used for the payment of such pension. The Trustee may separately invest such assets, which shall be known as segregated current pension assets.

4. INVESTMENT STRATEGIES

- 4.1 The Trustee may offer a Member or a group of Members a choice of two or more investment strategies from which the Member may choose a strategy or

combination of strategies for the investment of that part of the Fund which represents the Member's Benefit and which will be held as an Allocated Investment.

- 4.2 The Trustee may specify that a particular asset or investment, in whole or in part, of the Fund is an Allocated Investment. If the Trustee makes an Allocated Investment the Trustee shall identify the assets of the Fund which make up that Allocated Investment and the Member or Members who are entitled to that Allocated Investment.
- 4.3 The Trustee may also from time to time, in its absolute discretion, allow a Member or a group of Members to give written directions to the Trustee in relation to those Member's Allocated Investment. The Trustee is under no obligation to comply with these investment directions. However, where the Trustee makes an investment pursuant to any direction made by a Member or a group of Members in accordance with this clause, the Trustee must note in the Fund's records:
 - (a) that the investment was made in accordance with an investment direction of a Member or a group of Members; and
 - (b) the names of the Members who have made such an investment direction.
- 4.4 A Member or a group of Members may agree with the Trustee to change their Allocated Investment. The Trustee shall in its absolute discretion determine an amount of Expenses associated with the change of Allocated Investment and debit that amount of Expenses from the relevant Member's Account.
- 4.5 The Trustee may establish, maintain and operate an Investment Fluctuation Reserve Account as a mechanism to smooth any fluctuations in Earnings that relates to the Fund as a whole or one or more Allocated Investments.
- 4.6 The Trustee may from time to time credit an amount to the Investment Fluctuation Reserve Account from another Account or debit an amount from the Investment Fluctuation Reserve Account to another Account as the Trustee in its absolute discretion considers necessary.
- 4.7 The Trustee may establish, maintain and operate a Suspense Account into which amounts representing:
 - (a) contributions accepted in accordance with **Rule 11.1**;
 - (b) Earnings or Expenses of the Fund prior to being allocated amongst the Members' Accounts in accordance with these Rules;
 - (c) forfeited benefits of Members in accordance with **Rule 14**;
 - (d) appropriations made by the Trustee in accordance with the **Rules** from any other Account;

- (e) any other amounts which are permitted to be debited from or credited to the Suspense Account in accordance with the Statutory Requirements,

may be credited to the Suspense Account or debited from the Suspense Account to another Account. The Trustee has an absolute discretion to decide the size of the amounts which are debited or credited to the Suspense Account under this Rule, unless otherwise stated by the investment strategy of a particular Allocated Investment and provided further that it is in accordance with the Statutory Requirements.

- 4.8 In addition to the accounts and reserve accounts mentioned in these Rules, the Trustee may establish, maintain and operate such other accounts and reserves as the Trustee deems appropriate.
- 4.9 The Trustee may make payment to or from such other accounts or reserves established under **Rules 4.5, 4.7 and 4.8** for any purpose and to any Account or person permitted by the Statutory Requirements, and accordingly the Trustee in its absolute discretion may appropriate an amount or amounts from such other Account to any Member's Account as the Trustee may decide.
- 4.10 The Trustee may in accordance with the Statutory Requirements, make such rules in respect of any Accounts established under **Rules 4.5, 4.7 and 4.8** as the Trustee determines and without limiting the generality of the foregoing those rules may include rules with respect to:
 - (a) the investment strategy applying to each Account;
 - (b) the allocation of contributions, Expenses and Earnings to each Account;
 - (c) transfers from one Account to another;
 - (d) Expenses that may be levied in respect of payments from an Account to or in respect of the Member or to another Account; or
 - (e) any special conditions attaching to any Account.

5. ALLOCATION OF EARNINGS AND EXPENSES

- 5.1 Earnings and Expenses of the Fund from time to time may be applied to such Accounts as the Trustee may in its absolute discretion determine.
- 5.2 In ensuring its discretion under **Rule 5.1**, the Trustee must comply with the Statutory Requirements.
- 5.3 In making its determination as to the amounts to be debited or credited from any Account, the Trustee must take into consideration the following matters:
 - (a) the balances of that Account and any other Account that the Fund has;

- (b) the amount of Earnings in respect of the general Fund or any Allocated Investment generated during the Financial Year and expected to be generated in the next Financial Year;
 - (c) the investment strategy applying to a particular Account;
 - (d) such other matters as the Trustee considers relevant or which are required by the Statutory Requirements.
- 5.4 In exercising the allocation powers in **Rule 5**, the Trustee may in its absolute discretion:
- (a) divide Earnings into different parts including differences in the nature, character or source of those earnings; and
 - (b) determine how tax credits shall be applied or apportioned.

6. ADMINISTRATION

- 6.1 Every Member shall have the right to inspect a copy of these Rules at the address of the Trustee during usual business hours.
- 6.2 Every Member 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.
- 6.3 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.

7. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES

- 7.1 The Trustee must be a company which is a Constitutional Corporation as defined in the Act or where the Trustee is not a company which is a Constitutional Corporation then the primary purpose of the Fund is the provision of old age pensions.
- 7.2 The minimum number of corporate Trustees shall be one. The minimum number of individual Trustees shall be two.
- 7.3 If the Fund has fewer than 5 Members and the Fund is not a Self Managed Superannuation Fund then the Trustee must be an Approved Trustee or, if the Fund elects no longer to be a Self Managed Superannuation Fund, then it must appoint an Approved Trustee within 6 months of such election.

- 7.4 In the event that the Fund is a Self Managed Superannuation Fund and the Trustee admits a Member which causes the number of Members to exceed 4 in number, the Trustee must notify the Statutory Authority in accordance with the Statutory Requirements of this event.
- 7.5 In the event that the Fund is a Self Managed Superannuation Fund and a Member ceases to be a Member, then that Member must resign as Trustee or, where the Trustee is a company, must resign as a director of the Trustee company within 6 months of cessation of membership of the Fund.
- 7.6 The Trustees may at any time appoint an additional trustee or additional trustees and any Trustee may at any time resign as Trustee provided that upon such resignation the Trustee appoints in its stead a person or corporation to act as the new Trustee where the resignation would reduce the numbers of Trustees below that specified in **Rule 7.2**.
- 7.7 If not a Self Managed Superannuation Fund the Members may at any time by a notice in writing signed by at least 75% of them and given to the Trustee remove any one or more of the Trustees and appoint another Trustee of the Fund.
- 7.8 In the event that there are more than four (4) members of the Fund at any point of time, then:
- (a) if the Fund has individual trustees - the trustees must consist of equal numbers of employer representatives and member representatives; or
 - (b) if the Fund has a single corporate trustee - the board of the corporate trustee must consist of equal numbers of employer representatives and member representatives.
- 7.9 Any trustee or trustees which are appointed or removed must be appointed or removed in accordance with the Statutory Requirements.

8. TRUSTEES GENERALLY

- 8.1 The Trustee covenants that it shall operate the Fund in accordance with the standards prescribed by the Statutory Requirements from time to time which may include but are not limited to:
- (a) acting honestly in all matters concerning the Fund;
 - (b) exercising 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 the property of another for whom the person felt normally bound to provide;
 - (c) exercising and performing all duties and powers in the best interests of the Members;

- (d) keeping 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 an Employer or an Associate of the Employer;
 - (e) not entering into any contract or doing anything else that would prevent it from, or hinder it in, properly performing or exercising its function and powers;
 - (f) formulating and giving effect to an investment strategy in accordance with the Statutory Requirements that has regard to the whole of the circumstances of the Fund or to particular Allocated Investments including, but not limited to, the following:
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investment having regard to its objectives and its expected cash flow 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 cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
 - (g) formulating and giving effect to a strategy for the prudential management of any reserve accounts of the Fund, 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) allowing a Member access to any information or any documents prescribed by the Statutory Requirements.
- 8.2 Upon a change of Trustee the retiring Trustee or Trustees shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee or Trustees or the retiring Trustee or Trustees shall declare that they hold the investments or moneys as bare nominee for the new Trustee or Trustees as permitted by **Rule 3.6**.
- 8.3 No person who is disqualified under the Statutory Requirements from acting as Trustee shall be appointed as a Trustee. Any Trustee who becomes so disqualified shall immediately resign.
- 8.4 Without prejudice to the powers vested in the Trustee by the Deed and 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 any 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 Accumulated Contributions out of the Fund to persons entitled or pay such other benefits as may be allowed by the Statutory Requirements;
- (i) to decide as and when the need shall arise who are Dependants for the purposes of the Rules;
- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to Accumulated Contributions, to pay or apply such Accumulated Contributions 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 clauses 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.

- 8.5 Every Trustee (and if the Trustee is a company, every director) 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. The Trustee shall not be liable for any act or default done or omitted to be done in the exercise of its powers, duties and discretions or for any loss or expenses incurred by the Fund through the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities shall be deposited or for any other loss, damage or misfortune whatever.
- 8.6 The provisions of **Rule 8.5** shall have no application, and neither the Trustee, nor where the Trustee is a company, any of its directors shall be entitled to be indemnified by the Fund in relation to any liability which arises as a consequence of the Trustee, or where the Trustee is a company, any of its directors:
- (a) fails to act honestly in a matter concerning the Fund; or
 - (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or where the Trustee is a company, any of its directors, was required to exercise; or
 - (c) incurs a liability for a monetary penalty under a civil penalty order.
- 8.7 For the purposes of the Deed and the Rules the Trustee shall be entitled to regard an exercise of a discretion or the giving of any instruction or other authorisation made orally or written and signed by, or purported to be signed by, the Employer or a director for the time being of an Employer as a valid exercise of discretion, instruction or other authorisation of the Employer.
- 8.8 Where the Trustee consists 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 the Trustees.
- 8.9 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.

- 8.10 If the Trustee is a company, then such company may exercise or concur in exercising any discretion or power conferred on the Trustee by the Deed or by these Rules by a resolution of its directors or governing body in accordance with the company's Constitution or constituent document and may delegate the right and power to exercise or concur in exercising any such discretion or power from time to time to one or more members of its board of directors or governing body appointed by a resolution of its directors or governing body.
- 8.11 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 it or he respectively 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 as aforesaid may nevertheless abstain from acting except as a merely formal party in any manner in which he may be so personally interested.
- 8.12 The Trustee in the exercise of the powers, authorities and discretions vested in it 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.
- 8.13 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 Trustees 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.
- 8.14 The Trustee shall ensure that:
- (a) minutes of any proceedings of meetings of the Trustee at which matters affecting the Fund were considered are maintained and retained for at least 10 years; and
 - (b) where the Trustee is a company, the directors of the company shall ensure that, minutes of any proceedings of meetings of the Trustee at which matters affecting the Fund were considered, are maintained and retained for at least 10 years.

- 8.15 Any minutes entered in accordance with **Rule 8.14** in books kept for that purpose shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

9. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT

- 9.1 The Trustee shall keep or cause to be kept a complete record of all persons who become Members of the Fund and all other records as required by the Statutory Requirements. All records shall be in the form, and shall be retained for the periods, specified in the Statutory Requirements.
- 9.2 The Trustee shall appoint an auditor to the Fund who shall comply with all the Statutory Requirements, or a firm of such persons, and may remove any such auditor.
- 9.3 The Trustee shall each Financial Year cause to be prepared such accounts and statements of the Fund as shall comply with the Statutory Requirements and within any time limits specified by the Statutory Requirements. The Trustee shall ensure that such accounts and statements are 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 in accordance with the Statutory Requirements, within the time limits specified by the Statutory Requirements.
- 9.4 The Trustee shall retain the records described in **Rule 9.1** and the accounts and statements prepared in accordance with **Rule 9.3** for at least five years following the end of the Financial Year to which the records, accounts or statements relate.
- 9.5 The Trustee shall disclose to Members, Prospective Members, Non-Member Spouses or Employers such information, at the time and in the manner, prescribed by the Statutory Requirements to be so disclosed to Members, Prospective Members, Non-Member Spouses or Employers.
- 9.6 The Trustee shall provide to the Statutory Authority such information, at the time and in the manner, prescribed by the Statutory Requirements to be so provided to the Statutory Authority.

10. ELIGIBILITY AND MEMBERSHIP

- 10.1 Any Eligible Person may make application in writing to the Trustee in a form prescribed by the Trustees from time to time to join the Fund.
- 10.2 Subject to **Rule 10.3**, the Trustee may accept or refuse any application for membership from an Eligible Person in its absolute discretion and shall not be required to assign any reason for any refusal.
- 10.3 If the Fund has fewer than 5 Members and is a Self Managed Superannuation Fund then the Trustee cannot accept an Eligible Person as a Member of the

Fund if acceptance would cause the Fund to cease to be a Self Managed Superannuation Fund.

- 10.4 An Eligible Person shall become a Member from the date when notice in writing by the Trustee that it approves the application has been given to them, or where a person becomes a Member because of the receipt of Benefits as a consequence of the death of a Member from the date of commencement of receipt of such Benefits.
- 10.5 A person ceases to be a Member on the happening of the first of the following:
- (a) when he dies;
 - (b) when the total amount of all amounts payable under the Rules in respect of his membership has been paid; or
 - (c) when under the Rules any Accumulated Contributions payable to him or any person on his account ceases to be payable.
- 10.6 Each Member shall by virtue of his application be deemed to have consented to be bound by the provisions of the Deed and the Rules.

11. CONTRIBUTIONS

- 11.1 Subject to the provisions of this **Rule 11** any person (including a Member) may contribute (in cash or by in specie transfer of assets) to the Fund in respect of a Member or Members as a whole or to any other Account (not being a Member's Account) at such rate as he determines provided that the Trustee may only accept such contribution in accordance with the Statutory Requirements.
- 11.2 At the time of making such contributions, the Employer, or any other person contributing, shall advise the Trustee of the contribution in respect of each Member, and whether the contributions are made:
- (a) pursuant to an industrial award or agreement; and/or
 - (b) in lieu of the Employer paying the superannuation guarantee charge pursuant to the Guarantee Act.
- 11.3 No person shall make a contribution to the Fund in any Financial Year which would cause the Fund to fail to be a Complying Superannuation Fund.
- 11.4 If any Member of the Fund ceases to be an Eligible Person the Trustee shall not accept any further contribution to the Fund in respect of that Member until the Member shall again become an Eligible Person.
- 11.5 Without limiting the generality of **Rule 11.1** the Trustee may accept contributions from a person (other than the Employer) who, on behalf of the Employer, wishes to contribute to the Fund in respect of any Member (including the contributor, where the contributor is a Member).

- 11.6 Within 60 days of becoming aware that a Member has ceased to be an Eligible Person the Trustee shall refund to the Member, or to the other person making the same as the case may be, any contributions made to the Fund in respect of the Member since he ceased to be an Eligible Person and for the purpose of determining the Member's interest in the Fund it shall be assumed that such contributions were not made to the Fund.
- 11.7 The Trustee may in its absolute discretion determine the amount (or such part) as contributed by an Employer or other person on behalf of the Employer in accordance with **Rule 11.5** in respect of a Member to be credited to that Member's Account or a Suspense Account subject to the Statutory Requirements.

12. BENEFITS

12.1 A Member who:

- (a) retires; or
- (b) reaches the age of 65 or such other age as is prescribed in the Statutory Regulations;

shall be entitled to receive their Member's Benefits.

- 12.2 A Member who Retires on the grounds of Permanent Incapacity shall be entitled to receive their Member's Benefit.
- 12.3 On the death of a Member the Member's Benefit shall become payable.
- 12.4 The Trustee may in its absolute discretion pay to a Member such other benefits as are permitted by the Statutory Requirements.
- 12.5 The Trustee may in its absolute discretion augment the benefits of a Member.
- 12.6 Where a Member has unrestricted non-preserved benefits, the Member may request the payment of those benefits or part thereof at any time and the Trustee must comply with such request.
- 12.7 Notwithstanding the above Rules, the whole or any part of the Accumulated Contributions must be paid to a Member or a Non-Member Spouse in accordance with the Statutory Requirements.

13. PAYMENT OF BENEFITS

- 13.1 Subject to **clause 13.2** and **clause 13.3**, a Member's Benefit shall be paid by way of annuities, pensions or other periodical payments or lump sum payments or any combination of such methods of payment as the Trustee and the Member shall agree.
- 13.2 In the event of the payment of any Benefit which is paid in the form of a pension, annuity or other series of periodical payments the terms and conditions shall be

agreed between the Member and the Trustee and shall be set out in writing prior to the commencement of the payment of the Benefit provided that in the case of payment of:

- (a) an Allocated Pension – the terms and conditions of the payment of an allocated pension must comply with Regulation 1.06(4);
 - (b) a Non-Complying Pension – the terms and conditions of the payment of a fixed term pension must comply with Regulation 1.06(6);
 - (c) a Complying Lifetime Pension - the terms and conditions of the payment of a complying lifetime pension must comply with Regulation 1.06(2);
 - (d) a Complying Life Expectancy Pension - the terms and conditions of the payment of a complying life expectancy pension must comply with Regulation 1.06(7).
- 13.3 The terms and conditions of a pension, annuity or other series of periodical payments as agreed between the Member and the Trustee in accordance with clause 13.2 shall form part of these Rules.
- 13.4 Any Benefit paid in the form of an annuity, pension or other periodical payments may incorporate payments to one or more Reversionaries on the death of the Member, subject to the Statutory Requirements.
- 13.5 In respect of payment of a Benefit on the death of a Member pursuant to Rule 12.3:
- (a) A Member may designate a Dependant or legal personal representative of the Member as the person entitled to payment of the Benefit in writing to the Trustee in such form as the Trustee may from time to time approve;
 - (b) A Member may make a binding death benefit nomination in the form required to satisfy the Statutory Requirements;
 - (c) A Member may revoke a nomination by completing a new form in the case of a non-binding nomination or in the method set out in the Statutory Requirements in the case of a binding death benefit nomination.
- 13.6 Where a Member has made a valid binding death benefit nomination in accordance with **Rule 13.5** the Trustee must pay the Benefit to the nominated legal personal representative or Dependant of the Member.
- 13.7 Where a Member does not have a binding death benefit nomination in force, any Benefit shall be paid as the Trustee in its absolute discretion decides to such one or more of the nominated beneficiaries (if any) or other Dependents or legal personal representative of the Member.
- 13.8 The Benefit paid under **Rules 13.6** or **13.7** shall be paid by way of annuities, pensions or other periodical payments or lump sum payments or any combination of such methods of payment as the Trustee in its absolute

discretion may determine provided that where a Member has made a binding death benefit nomination and has also nominated the method of payment of such Benefit then the Trustee must pay the Benefit in the manner and for at least the term nominated by the Member.

- 13.9 The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any Accumulated Contributions 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 the Trustee shall have proper regard to any costs (including taxation) incurred in effecting, or as a consequence of, the transfer of the assets.
- 13.10 The Trustee may at the request of a person entitled pay all or part of any Accumulated Contributions payable pursuant to the provisions of the Rules to such Rollover Fund or for the purchase of such annuity as permitted by the Statutory Requirements as the person so entitled may request.
- 13.11 (a) The Trustee may offer Members the option of making a binding death benefit nomination;
- (b) Where a Member takes up the offer to make a binding death benefit nomination, the Trustee must give the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to make the binding death benefit nomination;
- (c) The binding death benefit nomination must be in the form approved by the Statutory Requirements;
- (d) If the information provided by the Member in the binding death benefit nomination form is not sufficiently clear to allow the Trustee to pay the Benefit on the death of the Member, the Trustee must seek from the Member a written statement to clarify the information provided as soon as practicable after the Trustee receives the binding death benefit nomination form;
- (e) The Trustee must each year in accordance with the Statutory Requirements notify the Members who have made binding death benefit nominations of the matters required by the Statutory Requirements to enable the Members to confirm, update or revoke the binding death benefit nominations.

14. FORFEITED BENEFITS

14.1 Accumulated Contributions payable out of the Fund shall be:

- (a) forfeited if, without the prior approval of the Trustee, the person entitled purports to assign, alienate or charge such Accumulated Contributions or part thereof;

- (b) suspended if the person entitled, being either under the Statutory Age or not yet having Retired at the relevant time, becomes or is:
 - (i) bankrupt;
 - (ii) insolvent (including, without limiting the generality of the foregoing, if he signs an authority under Section 188 of, or enters into any deed of assignment or deed of 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 his own affairs; or
- (c) forfeited upon the occurrence, in respect of the person entitled, not being a Member or being a Member but over the Statutory Age and having retired at the relevant time, of any of the events mentioned in **Rule 14.1(b)**.

14.2 The whole of the Accumulated Contributions forfeited by a person under **Rule 14.1(a)** or **Rule 14.1(c)** shall be applied by the Trustee as the Trustee may think fit for the benefit of such person and his Dependants or any one or more of them, provided that while such person is a Member the Trustee shall not make any payment to or for the benefit of the person or his Dependants until the Member attains the Statutory Age other than for personal maintenance and support in case of hardship.

- 14.3 The whole of the Accumulated Contributions to which a person would otherwise have been entitled but which have been suspended under **Rule 14.1(b)** 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 Accumulated Contributions.
 - (b) If, prior to the date upon which the person ceases to be a Member for any reason whatsoever, the person ceases to be one to whom any of **Rule 14.1(b)** applies then the suspension of such Accumulated Contributions shall cease and the Trustee shall thereafter hold such Accumulated Contributions in respect of the person as if the suspension had not intervened.
 - (c) If such Accumulated Contributions remain suspended at the time when the person ceases to be a Member for any reason whatsoever, such Accumulated Contributions shall thereupon be forfeited.
 - (d) While such Accumulated Contributions are suspended the Trustee may pay amounts to or for the benefit of the relevant person or his Dependants for, but only for, personal maintenance and support in the case of hardship.

- 14.4 The Trustee shall subject to the Statutory Requirements be entitled to treat as unclaimed and to forfeit and use for the general purpose of the Fund, any moneys in the Fund to which any person may be entitled whose whereabouts are unknown to it and if after making such enquiries as it deems appropriate it is unable positively to trace any person entitled to the benefit of such moneys.
- 14.5 Where any part of Accumulated Contributions in respect of a Member cannot by reason of the Statutory Requirements be paid to the Member it shall be applied in the provision of additional benefits for or in respect of other Members.
- 14.6 The Trustee may in its absolute discretion determine that a Member's Accumulated Contributions at any point in time shall not include an amount or amounts that may have been previously accounted for as Accumulated Contributions for that Member and apply such an amount or amounts to such other Member's Account or to a Suspense Account pending specific appropriation to any Member's Account as the Trustee may decide provided that the Accumulated Contributions of a Member may not be reduced under this clause unless:
- (a) the Member concerned consents; and
 - (b) the reduction does not reduce benefits of a Member below the required minimum benefit as determined under the Statutory Requirements.
- 14.7 Amounts standing to the credit of a Suspense Account subject to the Statutory Requirements, may be paid to an Employer (not being the reimbursement for Expenses incurred by the Employer on behalf of the Fund).

15. TRANSFERS FROM AND TO OTHER FUNDS

- 15.1 The Trustee may make such arrangements as it thinks proper with any Member, Non-Member Spouse or any previous Employer of the Member or the trustees of any superannuation fund or retirement saving account of which the Member or Non-Member Spouse was or is a member or any of them for any transfer of assets to and/or from the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the transfer of such assets to and/or from the Fund.
- 15.2 Should a Member:
- (a) become eligible to join another Complying Superannuation Fund;
 - (b) open a complying retirement savings account;

the Trustee may, if requested by the Member, in lieu of part or all of to which the Member may be entitled under these Rules, transfer to the trustees of such fund or retirement saving account such portion of the assets of the Fund as the Trustee considers equitable having regard to the Accumulated Contributions of the Member at the date of transfer and also to any costs (including taxation) incurred in effecting, or as a consequence of, the transfer of the assets.

15.3 Any transfer pursuant to this **Rule 15** shall be made in accordance with the Statutory Requirements.

16. TERMINATION OF TRUST

16.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if it shall appear to the Trustee that the Fund is insolvent and it resolves to terminate the Fund;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (d) the eightieth anniversary of the Commencement Date unless the laws governing the Fund provide that the law against perpetuities shall not apply to it.

16.2 Upon the trusts hereof ceasing and terminating in accordance with **Rule 16.1** the Trustee shall give notice in writing to each Employer and the Members, 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 16.1(d)** to be terminated (the "**Closing Date**"). As from the Closing Date the following shall apply:

- (a) no further contributions shall be made by any Employer or any Member, other than arrears of contributions due to the Closing Date; and
- (b) arrears of contributions, if any, shall be called in immediately.

16.3 Upon the trusts ceasing and terminating in accordance with **Rule 16.1** the Trustee shall, after making such provision out of the Fund as is necessary for Expenses and liabilities, provide for the payment of the following Accumulated Contributions in the following order of priority:

- (a) payments which on or before the Closing Date have become payable to Members;
- (b) in respect of each Member, payments to another Complying Superannuation Fund, eligible rollover fund or complying retirement savings account equal to his Accumulated Contributions provided that the payment may be made directly to the Member if the Member so requests and such a payment is permitted by the Statutory Requirements.

16.4 Where a Member dies before receiving Accumulated Contributions to which he has become entitled pursuant to **Rule 16.3** such benefit shall be paid to such of

the Member's legal personal representatives and Dependants and in such proportions as the Trustee determines.

16.5 If after providing Accumulated Contributions for Members and their Dependants in terms of **Rule 16.3** a surplus remains, such surplus shall be paid by the Trustee, to or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of any such Members or former Members;
- (d) the legal personal representatives (in their capacities as such) of any such Members, former Members or Dependants; or
- (e) any Employer or former Employer who has contributed,

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, in the case of **Rules 16.5(a)** and **16.5(d)** to **Rule 14.5**.

16.6 Subject to **Rule 13.9** the payment to be provided under **Rules 16.3** and **16.5** shall be in cash, life insurance policies, or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless permitted by the Statutory Requirements.

17. AMENDMENT OF RULES

- 17.1 (a) Subject to **Rules 17.1(b)**, **17.1(c)** and **17.1(d)** the Trustee may at any time by resolution or by instrument in writing amend all or any of the provisions of these Rules.
- (b) No reduction of the accrued Accumulated Contributions of a Member shall be made without his consent in writing.
- (c) No amendment may be made pursuant to **Rule 17.1(a)** which would cause the trusts contained in the Deed and these Rules to fail by reason of the application of the law against perpetuities.
- (d) No amendment may be made pursuant to **Rule 17.1(a)** which would:
- (i) permit an individual to be appointed as Trustee unless the Rules provide, and will continue to provide after the amendment that the Fund has, as its sole or primary purpose, the provision of old age pensions; or
 - (ii) provide that 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 that the Trustee must be a company.

- 17.2 Where the Fund is not a Self Managed Superannuation Fund and the Statutory Requirements require, the Trustee shall give to each Member affected by the amendment a written statement explaining the nature and purpose of the amendment.

18. SUPERANNUATION STANDARDS

- 18.1 Notwithstanding anything expressed or implied to the contrary within the Deed and Rules but subject always to the right of the Trustee to elect otherwise having regard to such advice as it may deem appropriate the Trustee will in the execution and administration of these presents at all times comply in all respects with the Statutory Requirements. This requirement overrides all other provisions of the Deed and Rules.
- 18.2 Where the Deed and Rules do not deal with a matter permitted by the Statutory Requirements, the Trustee may act in accordance with the Statutory Requirements notwithstanding the absence of a power in this Deed and Rules.
- 18.3 In the event of any inconsistency between the provisions of the Deed and Rules and the Statutory Requirements, the Trustee shall unless otherwise determined by it act in accordance with the Statutory Requirements.