
Lloyd's Australian Joint Asset Trust Deed (No. 2)

This Deed of Trust

is made on 6 June 2000 between the following parties:

1. **Lloyd's**, the Society incorporated under Lloyd's Act (UK) 1871 having its principal office at
One Lime Street, London, England
(**Lloyd's**)
2. **National Australia Trustees Limited**, a company incorporated in Victoria, Australia ACN 007 350 405 whose registered office is at 271 Collins Street, Melbourne, Victoria, Australia
(**Trustee**)

Recitals

- A. Each of the Relevant Underwriters is engaged in insurance business and has or will have Policyholders in Australia.
- B. Each of the Relevant Underwriters desires to provide security for the Policyholders in Australia and to meet among other things the requirements of the Act .
- C. The form of this trust deed has been approved by the APRA and the trust fund constituted by this deed will be a "designated security trust fund" on and from the commencement of Schedule 2 of the Amending Act within the meaning of section 69 of the Act.
- D. The Trustee agrees to act as trustee of security provided to it by or on behalf of Lloyd's and the Current Contributors.
- E. The Trustee agrees to administer such security principally from an office in Australia, on the terms of this deed and in accordance with the requirements of the Act.
- F. Lloyd's enters into this trust deed to ensure compliance with the Act as amended by the Amending Act and has the requisite authority to do so.

This deed witnesses

that in consideration of, among other things, the mutual promises contained in this deed, the parties agree:

1 Interpretation

1.1 Definitions

The following terms, unless the context otherwise requires, have the following meanings:

1992 and Prior Business means in relation to an underwriter, all liabilities under contracts of insurance underwritten at Lloyd's (other than Life Business) and originally

allocated to the 1992 year of account or any earlier year of account including, without limitation, any such liabilities reinsured to close into the 1993 or any later year of account but excluding any liabilities re-signed, or re-allocated pursuant to a premium transfer, into 1993 or any later year;

Act means the Insurance Act 1973;

Amending Act means the Insurance Laws Amendment Act 1998;

APRA means the Australian Prudential Regulation Authority, a body corporate established by the Australian Prudential Regulation Authority Act, 1998 and includes any successor body appointed to carry out the functions of the Commissioner under the Act;

Auditor means the auditor of the accounts of the Trust Fund from time to time;

Australian Liabilities means the liabilities of the Relevant Underwriters under the Australian Policies;

Australian Policy means an Australian Policy for the purposes of the Lloyd's Australian Trust Deed;

Authorised Officer means:

- (a) in relation to Lloyd's, any officer of Lloyd's authorised by Lloyd's from time to time in writing and accompanied by a specimen signature of that officer, as an officer authorised to sign on behalf of Lloyd's at that time; and
- (b) in relation to the Trustee, any officer of the Trustee authorised by the Trustee from time to time in writing and accompanied by a specimen signature of that officer, as an officer authorised to sign on behalf of the Trustee at that time;

Bank means a corporation authorised under the Banking Act 1959 to carry on banking business in Australia;

binding authority means an authority given by or on behalf of a Lloyd's underwriter to any person, (including an insured or reinsured but excluding the active underwriter of the syndicate in relation to which such authority is given), to enter into, as agent for the Lloyd's underwriter, contracts of insurance or reinsurance on behalf of the Lloyd's underwriter as insurer or reinsurer, in accordance with the rules or practice of Lloyd's;

Business Day means a day on which banks are open for business in Sydney, Melbourne and London excluding a Saturday, Sunday or public holiday;

Continuing Underwriter means a Relevant Underwriter who is a reinsuring member within the meaning of the definition of "Reinsurance to Close";

Council means the Council of Lloyd's or (in relation to any power or discretion which is hereby vested in the Council but which has for the time being been delegated by the Council to the Committee of Lloyd's or to the Chairman or a Deputy Chairman of the Committee of Lloyd's pursuant to the provisions of section 6(6) of Lloyd's Act (UK) 1982) the Committee of Lloyd's or the Chairman or a Deputy Chairman of the Committee of Lloyd's (as the case may be) or (except only for the purposes of clause 10.4) such other person or persons as are for the time being authorised by the Council of Lloyd's to exercise any power or discretion which is hereby vested in the Council;

Current Contributors means those persons (whether individuals, bodies corporate or other legal persons and whether or not Underwriters) whose contributions to the Trust Fund constitute all or part of the principal of the Trust Fund for the time being;

Determination means the Insurance (Lloyd's Security Trust Fund Arrangements) Determination 1998 (as amended from time to time).

Distributable Income means, in respect of a Financial Year, the amount determined in accordance with the following formula

$$DI = NI + AI$$

where

DI is the Distributable Income for the Financial Year;

NI is the Net Income for the Financial Year; and

AI is the amount determined by the Trustee on a direction from Lloyd's under clause 5.5(f) for the Financial Year;

Effective Date means the date on which Schedule 2 of the Amending Act (other than Item 27) comes into force.

Equitas Limited means the limited company of that name registered in England and Wales with company No. 3173352 whose registered office is at 33 St Mary Axe, London, England;

Equitas Reinsurance Contract means:

- (a) the reinsurance and run-off contract dated 3 September 1996 and entered into by Equitas Reinsurance Limited, Equitas Limited, Lloyd's, Additional Underwriting Agencies (No. 9) Limited (for itself and on behalf of the members for whom it is appointed as substitute agent) and others; and
- (b) the Lioncover Reinsurance Contract;

Equitas Reinsurance Limited means the limited company of that name registered in England and Wales with company No. 3136300 whose registered office is at 33 St Mary Axe, London, England;

Equitas Reinsured Business means all liabilities under contracts of insurance (whether direct or otherwise) or reinsurance underwritten at Lloyd's from time to time reinsured directly or indirectly by Equitas Reinsurance Limited and retroceded to Equitas Limited, which liabilities do not constitute 1992 and Prior Business;

Financial Year means a period of 12 months commencing on 1 July and ending on 30 June next following;

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Investment Income means any income derived from any investment made pursuant to clause 5.3, including but not limited to interest, distributions and dividends;

Judicial Trustee means a person appointed as judicial trustee of the Trust Fund under Division 5 of Part VII of the Act;

Letter of Credit means an unconditional, irrevocable letter of credit in favour of the Trustee which

- (a) provides for immediate payment at the written direction of the Trustee;
- (b) satisfies the requirements under the Act; and
- (c) which is issued or confirmed by a Bank;

Life Business has the meaning ascribed to "long term business" in the Insurance Companies Act (UK) 1982 as in force on the date of commencement of the Determination;

Lioncover Insurance Company Limited means the limited company of that name registered in England and Wales with company number 2094618 whose registered office is One Lime Street, London, England, EC3M 7HA;

Lioncover Reinsurance Contract means the reinsurance contract dated 18 December 1997 and entered into between, inter alia, Equitas Reinsurance Limited, Equitas Limited, Lloyd's and Lioncover Insurance Company Limited in relation to the reinsurance and run-off by Equitas Reinsurance Limited of the liabilities of Lioncover Insurance Company Limited arising in relation to contracts of insurance underwritten at Lloyd's by the PCW Syndicates, as defined therein;

Lloyd's Agent in Australia means the individual resident in Australia appointed by Lloyd's as the agent of Lloyd's for the purposes of the Act;

Lloyd's Australian Trust Deed means the deed dated between Lloyd's and Trustee so entitled;

Lloyd's Premiums Trust Deed means in relation to a Relevant Underwriter, the Lloyd's Premiums Trust Deed or Trust Deeds approved pursuant to the Insurance Companies Act (UK) 1982 and executed by the Relevant Underwriter in respect of the Relevant Underwriter's insurance business at Lloyd's other than LifeBusiness;

Matured Claim means a Transitional Claim which the Trustee must pay pursuant to clause 4.4(d);

Minimum Amount means an amount equal to the funding requirement calculated in accordance with the Determination.

Net Income means, in respect of any Financial Year, the operating profit of the Trust Fund for that Financial Year which shall:

- (a) include abnormal and extraordinary items;
- (b) be calculated before tax; and
- (c) be determined in accordance with generally accepted Australian accounting principles;

Net Taxable Income means, in respect of any Financial Year, the net income of the Trust Fund for that Financial Year, determined in accordance with the principles applicable under section 95(1) of the Tax Act;

Operational Agreement means any agreement entered into between Lloyd's and the Trustee pursuant to clause 3.2;

Policyholder means, in relation to a Relevant Underwriter, the holder of an Australian Policy in respect of which the Relevant Underwriter has a liability to:

- (a) the holder; or
- (b) another underwriter in relation to whom the Underwriter is a Continuing Underwriter;

Premiums Trust Fund means, in relation to a Relevant Underwriter, a trust fund set up with respect to the Relevant Underwriter which is constituted or regulated under a Lloyd's Premiums Trust Deed;

Qualified Entity means a Bank or any other corporation approved by the APRA to be appointed Trustee hereunder;

Qualifying Claim means a claim on the Trust Fund which becomes a Qualifying Claim pursuant to clause 4.1;

Recognised Depository means any securities depository or clearing agency which operates a central system in Australia or a transnational system for handling securities in a physical or book entry form and which is authorised so to do under any applicable law;

registered office has the meaning given in the Corporations Law;

Reinsurance to Close means any one or more of:

- (a) an agreement under which underwriting members (the "reinsured members") who are members of a syndicate for a year of account (the "closed year") agree with underwriting members who constitute that or another syndicate for a later year of account (the "reinsuring members") that the reinsuring members will discharge or procure the discharge of, or indemnify the reinsured members against, all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through that syndicate and allocated to the closed year of account, in consideration of:
 - (1) a premium; and
 - (2) either:
 - (A) the assignment, or agreement to assign, to the reinsuring members of all the rights of the reinsured members arising out of or in connection with that insurance business (including without limitation the right to receive all future premiums, recoveries and other monies receivable in connection with that insurance business); or
 - (B) an agreement by the reinsured members that the reinsuring members shall collect on behalf of the reinsured members the proceeds of all such rights and retain them for their own benefit so far as they are not applied in discharge of the liabilities of the reinsured members;
- (b) an agreement underwritten by members of one or more syndicates and complying with requirements made under paragraph 2(3) of Lloyd's Syndicate

Accounting Byelaw (No.18 of 1994) or other requirements made by the Council;

- (c) in relation only to the 1993 year of account, 1994 year of account or 1995 year of account of any syndicate whose members have underwritten general business, the Equitas Reinsurance Contract, taken together with an agreement such as is referred to in sub-paragraph (a) modified so as to reinsure the reinsured members in relation only to such of the insurance business and underwritten through that syndicate and allocated to that year of account as has not been reinsured under the Equitas Reinsurance Contract;
- (d) in the case of a syndicate consisting only of a single corporate member which is not closed by reinsurance to close by another person, the inclusion in the underwriting account of that syndicate for the next following year of account of an amount representing a provision for all known and unknown liabilities attributable to the year of account which is closing;

Relevant Underwriter means each underwriter who has Australian Liabilities at the date hereof and includes any underwriter who has Australian Liabilities at any time thereafter;

Requirements and Directions of the Council means any requirements or directions of the Council (whether comprised in any byelaw, regulation, direction or any other written instrument);

Rules means the Insurance (Designated Security Trust Funds) Rules 1998 (as amended from time to time);

Security Deposit has the meaning given in the Act ;

syndicate means a member or a group of members of Lloyd's underwriting insurance business at Lloyd's through the agency of a managing agent to which a particular syndicate number is assigned by the Council;

Tax means any withholding tax, income tax, duty, (including financial institutions duty paid or reimbursed to other financial institutions), or any other taxes, duties, levies, imposts, deductions and charges and any interest, penalties or fines imposed in connection with any of them, of whatever nature and however named.

Tax Act means the Income Tax Assessment Act 1936;

Transitional Claim means a claim made on the Trustee by a Policyholder in accordance with the provisions of clause 4.3;

Transitional Liabilities means liabilities of underwriters under the Transitional Policies;

Transitional Policy means, in relation to an underwriter, any contract or policy of insurance or reinsurance incepting on or after 1 July 1998, (including any contract or policy underwritten after that date under a binding authority commencing on or before that date) and incepting before the Effective Date:

- (a) which is not comprised in the 1992 and Prior Business of any underwriter;
- (b) which has not been reinsured by Equitas Reinsurance Limited;
- (c) which is not Equitas Reinsured Business;

- (d) which is not an Australian Policy;
- (e) where the amount of premiums received by, or due to, the underwriter are premiums to which Division 15 of Part III of the Tax Act as in force on the day preceding the commencement of Schedule 2 of the Amending Act (as modified by paragraph 10 of the Schedule to the Act)applies; and
- (f) which is underwritten by the underwriter as a member of a syndicate or in respect of which the underwriter is liable as a member of a syndicate for a year of account of the syndicate to members of the same syndicate or any other syndicate for an earlier year of account pursuant to any Reinsurance to Close,

but does not include:

- (g) any such contract of insurance or reinsurance the premiums in respect of which are or were paid or payable in United States of America dollars;

Treasurer means the Treasurer of the Commonwealth of Australia;

Treasurer Demand means a demand by the Treasurer pursuant to clause 4.6;

Trust Fund means the property, including cash, held by the Trustee under the provisions of this deed;

Trustee means the person appointed as the trustee hereunder from time to time and includes any judicial trustee appointed under Division 5 of Part VII of the Act;

Trustee Claim means, in relation to the Trust Fund, a claim by the Trustee for all fees and expenses of the Trustee, including without limitation its legal fees and expenses and other disbursements properly incurred in negotiating and entering into this trust deed and the Operational Agreement, and all liabilities and expenses properly incurred in the execution of purported execution of the trusts contained in this deed and the or the exercise or attempted exercise of any of the powers, authorities and discretions vested in it under this deed;

underwriter means a member of Lloyd's, whether an individual, a body corporate or another legal person and any former member of Lloyd's and includes, in respect of a natural person who has died or become bankrupt, the personal representatives or trustee in bankruptcy of such member or former member and in respect of a body corporate in receivership, administration under part 5.3C of the Corporations Law or liquidation, the receiver, administrator or liquidator of that member or former member or any other person by law entitled or bound to administer the affairs of the member concerned.; and

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental or semi-governmental agency;
- (e) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, rules and determinations issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (i) in calculating the day on or by which any thing is to be done, a reference to days shall be calculated as clear days and without counting the day on or by which that thing is to be done;
- (j) references to sums of money are to amounts in Australian dollars.

2 The Trust Fund

2.1 Creation of Trust Fund

- (a) The Trust Fund is established by the transfer to the Trustee of property in accordance with clause 2.1(b) and otherwise by the transfer to the Trustee by or on behalf of the Current Contributors of property to be held by the Trustee on trust pursuant to the terms of this deed and the Trustee declares that it will hold such property and all other property so transferred to it at any time after the establishment of the Trust Fund on trust pursuant to the terms of this deed to the intent that there is only one Trust Fund established pursuant to the terms of this deed.
- (b) Any property (including cash) which is transferred or paid to the Trustee to be held on the terms of this deed before the day on which Schedule 2 of the Amending Act commences will be held on the trusts of this deed on and from the day Schedule 2 of the Amending Act commences and if Schedule 2 of the Amending Act has not commenced before 4pm Australian Eastern Standard Time on 31 July 2000, the trust will be deemed to have failed and that property will remain the property of the person by whom that property was so transferred or paid absolutely and must be dealt with by the Trustee in accordance with the directions of that person.
- (c) Any property (including cash) which is transferred or paid to the Trustee to be held on the terms of this deed before the day on which Schedule 2 of the Amending Act commences must continue to be held by the Trustee and not otherwise dealt with until, in accordance with clause 2.1(b), that property is held on the trusts of this deed or the trust is deemed to have failed.

2.2 Perpetuities

- (a) The Trust Fund established under this deed is terminated on the first to occur of the following:
 - (1) 80 years from the date of execution of this deed; or
 - (2) the expiration of the earliest perpetuity period applicable to any Relevant Underwriter with outstanding Australian Liabilities under the terms of the Lloyd's Premiums Trust Deed.
- (b) Lloyd's must, not more than 42 days and not less than 21 days prior to the expiration of the perpetuity period applicable to a Relevant Underwriter under the terms of the Lloyd's Premiums Trust Deed, notify the Trustee of the impending expiration of that perpetuity period and the date on which such perpetuity period will expire.
- (c) Notwithstanding any other provision of this deed, the Trustee must pay to Lloyd's the amount standing to the credit of the Trust Fund (less an appropriate reserve for payment of its final fees and expenses) within 7 days of receiving a notice from Lloyd's pursuant to clause 2.2(b).
- (d) Notwithstanding the transfer of the Trust Fund to Lloyd's pursuant to clause 2.2(c), the Trustee remains entitled to the settlement of its account in accordance with this deed and the Operational Agreement.

3 The Trustee

3.1 Trustee's Qualification

The Trustee must always be a Qualified Entity and the Trustee shall immediately notify Lloyd's if it ceases to be a Qualified Entity or if it becomes aware that it will cease to be a Qualified Entity.

3.2 Operational Agreement

- (a) The Trustee and Lloyd's must enter into an Operational Agreement governing the methods and operational practices to be employed in carrying out the terms of this deed and specifying the fees which may be charged by the Trustee to Lloyd's.
- (b) It will be a term of the Operational Agreement that the Operational Agreement may only be varied by agreement in writing between Lloyd's and the Trustee.
- (c) The Operational Agreement takes effect subject to this deed and has no effect on any rights or obligations of any person arising out of this deed.

3.3 Trustee's Duties

- (a) To the extent permissible by law and equity, the Trustee's duties and responsibilities are limited to those expressly provided under this deed and the Operational Agreement.

- (b) The Trustee must act in accordance with the reasonable written directions of Lloyd's in relation to any action or proposed action by any Governmental Agency in relation to the Trust or the Trust Fund, provided that the Trustee need not perform any act that is outside the scope of its duties and obligations under this deed and the Operational Agreement.
- (c) In addition to any powers the Trustee has under any applicable law or the Trust Deed and as between the parties to the Operational Agreement, the Trustee will have the benefit of the following provision in respect of its obligations under the Trust Deed and the Operational Agreement:
- (1) the Trustee may in relation to this deed act or decline to act on the opinion or advice of, or a certificate or any information obtained from, any banker, valuer, surveyor, securities company, broker, auctioneer, accountant or other expert and whether obtained by Lloyd's or the Trustee or any other person and any such opinion or advice can be conveyed by electronic or facsimile transmission and the Trustee is not responsible for any loss solely occasioned by so acting or declining to act or any error in such electronic or facsimile transmission or it not being authentic;
 - (2) the Trustee may, instead of acting personally or through its permanent employees employed in the carrying out of the trusts hereof, appoint an agent to transact all business and to do all acts required to be done under or pursuant to this deed (including the receipt and payment of money). The Trustee must obtain the prior written consent of Lloyd's to the appointment of any such agent, such consent not to be unreasonably withheld or delayed. The Trustee is taken to have done or refrained from doing anything that any agent of the Trustee has done or refrained from doing;
 - (3) Notwithstanding anything contained in this deed, the Trustee may refrain from doing anything which would in its reasonable opinion be contrary to any law of any applicable jurisdiction or any applicable direction or regulation of any agency of any state and may do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulation.
 - (4) The Trustee may delegate any of its rights, powers, authorities and discretions under this deed to one or more of its officers or employees and may revoke any such delegation whenever it thinks fit.

3.4 Trustee's Reliance upon Communications

The Trustee is entitled to rely upon any communication given in accordance with this deed or the Operational Agreement which it reasonably and in good faith believes to be genuine as conclusive evidence of the matters stated in it and the Trustee is not bound to call for further evidence or be responsible for any loss that may be occasioned thereby.

3.5 Proper Execution

- (a) Execution by an Authorised Officer on behalf of Lloyd's constitutes due execution of any instrument on behalf of Lloyd's and the Trustee is entitled to rely on such execution without recourse against it and without any obligation to make enquiry in relation to it.
- (b) Execution by an Authorised Officer on behalf of the Trustee constitutes due execution of any instrument on behalf of the Trustee and Lloyd's is entitled to rely on such execution without recourse against it and without any obligation to make enquiry in relation to it.

3.6 Trustee's Reliance on Opinions of its Counsel

- (a) The Trustee may select and consult with a barrister or solicitor and may, in good faith, take any action or make any omission in reliance on the opinion of such barrister or solicitor without recourse against it and without any obligation to make enquiry in relation to it.
- (b) The Trustee must promptly send to Lloyd's a copy of any opinion it obtains in its capacity as Trustee of the Trust Fund (other than an opinion obtained by the Trustee at its own expense) from a barrister or a solicitor in relation to the operation and administration of the Trust Fund or any action proposed to be taken or refrained from being taken in relation to the operation and administration of the Trust Fund (other than an opinion obtained by the Trustee at its own expense) .

3.7 Trustee's Fees and Expenses

- (a) Lloyd's must pay or arrange payment to the Trustee of the fees for administering the Trust Fund. The level and nature of the fees shall be contained in the Operational Agreement between Lloyd's and the Trustee.
- (b) A Trustee Claim becomes enforceable against the Trust Fund when all of the following have occurred:
 - (1) the Trustee has given written notice to Lloyd's containing details of a Trustee Claim and how it became due;
 - (2) a period of 30 days has elapsed since the date of the notice in 3.7(b)(1) without discharge of that Trustee Claim;
 - (3) the Trustee has given Lloyd's and the APRA, after the period of 30 days referred to in clause 3.7(b)(2) has elapsed, a notice that it intends to recover the amount of the Trustee Claim from the Trust Fund if Lloyd's does not discharge the amount in full; and
 - (4) 14 days have elapsed since the date of the notice in 3.7(b)(3) without discharge of the relevant Trustee Claim.
- (c) Nothing in this deed shall be construed as requiring that the Trustee's fees and expenses be satisfied solely from the corpus of the Trust Fund and not otherwise satisfied by or on behalf of Lloyd's. Where a Trustee Claim is paid out of the

Trust Fund the Trustee must first make the payment out of corpus and then out of any Distributable Income of the Trust not distributed pursuant to clause 5.5(b).

3.8 Maintenance and Inspection of Trustee's Records

- (a) The Trustee must keep or cause to be kept complete and accurate records of the Trust Fund and make them available for inspection in accordance with clause 3.8(c).
- (b) All records so kept by the Trustee must be kept in a manner consistent with the standards expected of a reasonably prudent trustee acting in the position of Trustee of the Trust Fund.
- (c) The Auditor, APRA or any persons duly authorised by Lloyd's may, on giving at least 10 days' written notice to the Trustee:
 - (1) examine (and if necessary or convenient take copies of) the records of administration of the Trust Fund during normal business hours;
 - (2) where assets comprising the Trust Fund are physically held by the Trustee or any custodian, have access to inspect and count such assets; and
 - (3) where assets comprising the Trust Fund are held in an account with a Recognised Depository, have access to the statements and records pertaining to such account.
- (d) Lloyd's must provide to the Trustee on a timely basis, all information, certifications, proofs and other applicable documentation required under any applicable law.
- (e) Subject to the terms of this deed, the Trustee is not required to furnish information with respect to amounts on deposit in the Trust Fund to any Current Contributor or any other person other than the APRA, the Auditor or Lloyd's and is not otherwise required to account to the Current Contributor, Relevant Underwriter or any other person.

3.9 Trustee's Resignation or Removal and Appointment of Successor

- (a) The succeeding provisions of this clause 3.9 (except for clause 3.9(k)) have no effect whilst and so long as the Trust Fund is under judicial trusteeship in accordance with Division 5 of Part VII of the Act.
- (b) Notwithstanding clause 2.1, the Trustee may resign as trustee at any time by sending at least 180 days' written notice of resignation (or such shorter notice period as Lloyd's may accept), to Lloyd's specifying the date on which the resignation is to take effect. The Trustee must send a copy of any such notice of resignation to the APRA forthwith.
- (c) Lloyd's may remove the Trustee or any successor Trustee by sending at least 30 days' written notice of removal to the Trustee specifying the date on which the removal is to take effect or forthwith if:

- (1) the Trustee ceases to be a Qualified Entity;
- (2) the Trustee has acted in breach of trust, negligently, fraudulently or made wilful default in respect of its duties under this deed, the Operational Agreement or the general law;
- (3) a receiver, receiver and manager, statutory manager, trustee, administrator or similar official, is appointed, or steps are taken for such appointment over any of the assets or undertaking of the Trustee; or
- (4) the Trustee is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Law or the equivalent provisions in any other equivalent legislation to which the Trustee is subject, or is presumed to be insolvent under the Corporations Law or the equivalent provisions in any other equivalent legislation to which it is subject,

and Lloyd's must send a copy of any such notice to the APRA forthwith.

(d) In the event either:

- (1) of the provision by the Trustee to Lloyd's of a notice of resignation; or
- (2) the provision by Lloyd's to the Trustee of a notice of removal:
 - (A) Lloyd's must as soon as reasonably practicable use all reasonable endeavours to appoint a Qualified Entity as successor Trustee; and
 - (B) the outgoing Trustee shall do all things necessary or convenient to effect the resignation or removal of the outgoing Trustee.

Acceptance of appointment as successor Trustee must be in writing delivered to Lloyd's and Lloyd's must forthwith send a copy of the acceptance to the Trustee. The successor Trustee must send a copy of such notice of acceptance to the APRA forthwith.

- (e) As soon as reasonably practicable after the Trustee is informed of the acceptance of appointment by a successor Trustee pursuant to clause 3.9(d), the outgoing Trustee must:
- (1) transfer all assets then comprising the Trust Fund (less an appropriate reserve for payment of its final fees and expenses) to the successor Trustee;
 - (2) deliver the books and records of the Trust Fund to the successor Trustee; and
 - (3) render a final account of its fees and expenses as Trustee to Lloyd's.
- (f) Notwithstanding the appointment of a successor Trustee, the outgoing Trustee remains entitled to:
- (1) the settlement of its account in accordance with this deed and the Operational Agreement; and

- (2) reimbursement from the Trust Fund of any expenses or other disbursements or indemnities (whether arising before or after its removal or resignation) to which it would have been entitled had it continued to be the Trustee.
- (g) The outgoing Trustee is absolved and released from complying with all further obligations from the date of acceptance of appointment by the successor Trustee but:
- (i) the outgoing Trustee is not entitled to and will not ask for any release or indemnity other than those provided for in this deed or the Operational Agreement;
 - (ii) any release shall not extend to any liability the outgoing Trustee has in relation to this deed or the transactions contemplated by this deed for which the outgoing Trustee is not entitled to an indemnity under clause 9 of this deed; and
 - (iii) the outgoing Trustee retains the rights and remedies available to it under this deed or at law in relation to the performance and exercise of its powers and obligations while Trustee;
- (h) Notwithstanding the preceding provisions of this clause, the resignation or removal of the Trustee does not take effect until a successor Trustee is appointed. Any successor Trustee shall and may from the date of appointment exercise all the powers, enjoy all the rights and be subject to all duties and obligations of the Trustee under this deed as though the successor Trustee had been originally named as a party to this deed but the successor Trustee has no liability in respect of any act or event that occurs prior to the successor Trustee accepting appointment as trustee.
- (i) If no prospective successor Trustee accepts an appointment within 30 days of the notice of resignation or removal made under this clause 3.9 taking effect, and the outgoing Trustee wishes to be relieved of responsibility as trustee under this deed, the Trustee or Lloyd's may apply to the Federal Court of Australia pursuant to Division 5 of Part VII of the Act for the appointment of a Judicial Trustee.
- (j) If an outgoing Trustee takes the action specified in clause 3.9(i), it must give notice of such action forthwith:
- (1) the APRA;
 - (2) Lloyd's or the Trustee (as the case may be); and
 - (3) in the case of the Trustee only such Policyholders which have notified the Trustee in writing that they have an actual or potential claim against the assets of the Trust Fund; and
- (k) On the appointment of a Judicial Trustee, the Trustee shall have no further responsibility under this deed as trustee other than:
- (1) to deliver the books and records of the Trust Fund to the Judicial Trustee.

- (2) To do all things necessary to transfer any assets or rights in respect of the Trust Fund to the Judicial Trustee;
- (3) to render a final account of its fees and expenses as Trustee to Lloyd's; and
- (4) liability under the deed for which it is not entitled to an indemnity under clause 9.

3.10 Trustee's Obligations

No provision of this deed requires the Trustee to expend or risk its own funds or to otherwise incur any financial liability in the performance of any of its duties or in the exercise of its rights including, but not limited to, prosecuting, defending or otherwise enforcing any claims by or against the Trust Fund.

3.11 Electronic Access

Where instructions are given by Lloyd's by electronic means, Lloyd's must operate the means of electronic access in accordance with the Operational Agreement so as to prevent unauthorised access.

3.12 Provision of information and notification

- (a) The Trustee must provide Lloyd's, its auditors or agents:
 - (1) sufficient information as Lloyd's may request to allow Lloyd's to comply with its obligations under the Act, including its reporting obligations provided that the Trustee need only supply such information if it possesses that information in its capacity as Trustee; and
 - (2) such information and access to the books and records of the Trustee relating to the Trust Fund as Lloyd's may from time to time request.
- (b) Lloyd's must provide the Trustee with such information as the Trustee may reasonably request to assist the Trustee in operating and administering the Trust Fund in accordance with this deed, the Operational Agreement and the requirements of the Act provided the requested information is in Lloyd's possession at the time of request.
- (c) The Trustee must promptly inform Lloyd's of:
 - (1) any action or proposed action by any Governmental Agency in respect of the Trust Fund of which the Trustee is aware; and
 - (2) any notice, direction or other communication sent to it by APRA or any Governmental Agency or received by it from APRA or any Governmental Agency in relation to or in connection with the Trust or the Trust Fund

and must provide Lloyd's with copies of all communications, notices or directions received from any Governmental Agency, including APRA in relation to the Trust or the Trust Fund.

- (d) If any notice or document is served on the Trustee in relation to the appointment of a Judicial Trustee of the Trust Fund under Division 5 of Part VII of the Act then the Trustee must immediately provide a copy of that notice to Lloyd's and the Trustee must take such steps and do such things as Lloyd's may reasonably request in respect of any such direction.

4 Payment of Claims

4.1 Qualifying Claims

A claim against the Trust Fund by a Policyholder is only enforceable and becomes a Qualifying Claim when each of the following two conditions has been satisfied:

- (a) a claim has become a "Matured Claim" within the meaning of that expression in the Lloyd's Australian Trust Deed ; and
- (b) the claim remains unsatisfied in whole or in part out of the assets held by the trustee of the trust fund established under the Lloyd's Australian Trust Deed because of an insufficiency of funds.

4.2 Amount of and Payment of Qualifying Claims

- (a) The amount of a Qualifying Claim is the amount of the Matured Claim referred to in clause 4.1(a) less so much of that claim (if any) that was satisfied pursuant to the terms of the Lloyd's Australian Trust Deed .
- (b) The Trustee must pay to, or to the order of, the Policyholder who made the Qualifying Claim within 10 days after the last day for payment pursuant to the terms of the Lloyd's Australian Trust Deed.
- (c) The Trustee must notify the APRA and Lloyd's that it has paid a Qualifying Claim within 10 days after making payment.
- (d) If the Trustee is not the trustee of the trust fund constituted under the Lloyd's Australian Trust Deed when a claim becomes a Qualifying Claim the Trustee may rely on a written communication from the trustee of the trust fund constituted under the Lloyd's Australian Trust Deed purporting to have been given pursuant to clause 4.2(g) of the Lloyd's Australian Trust Deed.

4.3 Transitional Claims

If:

- (a) a Policyholder obtains a judgment in any court of competent jurisdiction within Australia (or an Australian court has made an order for the enforcement in Australia of a judgment of a court of another country or for the enforcement in Australia of the award of an arbitrator whether or not the arbitration was held in Australia or was conducted in accordance with Australian law) in respect of a liability under an Transitional Policy; and
- (b) such judgment or order has become final in the sense that the particular litigation has been concluded, either through failure to appeal within the time permitted or

through exhaustion of all possible avenues of appeal or review permitted by applicable law,

the Policyholder may make a claim on the Trustee for payment out of the Trust Fund of an amount equal to the amount of the judgment (excluding any amount not expressly covered by the Transitional Policy) by serving on the Trustee a statutory declaration or affidavit from the Policyholder's legal advisers stating that to the best of the adviser's knowledge, information and belief but without further qualification:

- (1) that the copy of the judgment or order attached or exhibited to the statement is a true copy of the judgment or order of which it purports to be a copy and that the judgment or order satisfies the requirements of paragraphs (a) and (b) above;
- (2) the syndicate and year of account of the Transitional Policy in respect of which the judgement or order was obtained or if the judgment or order relates to more than one syndicate or more than one year of account, the portion (as a sum of money) that is allocated to each such syndicate and each such year of account; and
- (3) that the judgment or order:
 - (A) does not include any amount not expressly covered by the Transitional Policy; or
 - (B) includes amounts not expressly covered by the Transitional Policy and that the amount or amounts thereof are not included in the amount claimed.
- (c) The Trustee may rely on any statutory declaration or affidavit served on it by a Policyholder's legal adviser pursuant to clause 4.3(a) without the need for further enquiry and there will be no recourse against the Trustee for any such reliance.

4.4 Payment of Transitional Claims

- (a) Upon receipt of a Transitional Claim, the Trustee must within 7 Business Days:
 - (1) notify Lloyd's; and
 - (2) provide copies of the documents received under clause 4.3 to Lloyd's.
- (b) Lloyd's must determine and advise the Trustee not later than 15 Business Days after service on the Trustee of a claim made under clause 4.3 (or, in the case of the termination date of the Trust Fund being less than 20 days following such date of service, the day before that termination date), whether the judgment or order is one in respect of:
 - (1) underwriters' respective liabilities under a Transitional Policy; and
 - (2) the syndicate and year of account to which the Transitional Claim relates,

and if Lloyd's fails so to advise of such determination, the judgment or order is deemed to be one in respect of underwriters' respective liabilities under a

Transitional Policy and in respect of the syndicate and year of account specified in the statutory declaration or affidavit from the Policyholder's legal advisers referred to in clause 4.3.

- (c) Lloyd's may at any time prior to the payment by the Trustee of a Transitional Claim notify the Trustee if such claim has been satisfied.
- (d) The Trustee must (subject to clause 4.4(e)) pay to, or to the order of, the Policyholder who made the Transitional Claim within 20 days after the expiration of the period referred to in clause 4.4(b) an amount equal to the amount of the judgment or order (excluding any amounts not expressly covered by the Transitional Policy) if:
 - (1) a Transitional Claim has been made on it pursuant to clause 4.3; and
 - (2) Lloyd's has not, within the period specified in clause 4.4(b), advised the Trustee that:
 - (A) the underwriters' respective liabilities are not under a Transitional Policy; or
 - (B) the judgment or order provided to the Trustee by the Policyholder relates to a syndicate or year of account which differs from that specified in the claim on the Trustee made in accordance with clause 4.3; or
 - (3) Lloyd's has not, prior to the payment by the Trustee of the Transitional Claim, notified the Trustee that the judgment or order has been satisfied
- (e) The Trustee must notify the APRA that it has paid all or part of a Matured Claim within 10 days after making payment.

4.5 Limitations

- (a) No Policyholder has any right of any nature or description under this deed to seek to enforce a claim or otherwise bring an action against the Trustee or Lloyd's except as provided in this deed.
- (b) A Policyholder may bring proceedings in any court of competent jurisdiction in Australia to challenge:
 - (1) a determination of Lloyd's under clause 4.4(b); or
 - (2) a notification by Lloyd's under clause 4.4(c);
- (c) A Policyholder may bring proceedings in any court of competent jurisdiction in Australia to compel the Trustee to make a payment in accordance with clause 4.4(d).
- (d) No Policyholder may:
 - (1) require an accounting from the Trustee ; or
 - (2) enquire into the administration of the Trust Fund.

4.6 Treasurer Demand

- (a) The Trustee must pay out of the Trust Fund on receipt of a written demand from the Treasurer in accordance with clause 4.6(b) the amount specified in that demand.
- (b) Any demand made pursuant to clause 4.6(a) must be signed for or on behalf of the Treasurer and must state that:
 - (1) the demand is made pursuant to this clause;
 - (2) the Treasurer would have been entitled to exercise his or her rights pursuant to section 94 of the Act as in force immediately prior to the Effective Date to obtain the amount demanded; and

in the opinion of the Treasurer, the demand is made in respect of a right privilege obligation or liability acquired accrued or incurred under the Act as in force immediately prior to the Effective Date.

4.7 Sale of Trust Fund Assets

- (a) Unless otherwise directed in writing by Lloyd's and subject to the provisions of this clause 4.7, the Trustee must not dispose of any assets of the Trust Fund.
- (b) Payment of a Qualifying Claim under clause 4.2(c) or a Matured Claim under clause 4.4(d) must be made to, or to the order of, the Policyholder by whom, or on whose behalf, the claim was made.
- (c) Payment of a Treasurer Demand under clause 4.6 must be made to, or to the order of, the Treasurer.
- (d) Payment of Qualifying Claims, Matured Claims, Treasurer Demands and Trustee Claims must be made to the extent available and practical and out of the following assets in the following order to the extent that assets are available for that purpose:
 - (1) from any cash in the Trust Fund (other than amounts which form part of the Distributable Income of the Trust Fund);
 - (2) from the proceeds of the sale by the Trustee of any or all of the marketable securities or other investments (other than Letters of Credit) in the Trust Fund;
 - (3) from the proceeds of the sale of any other assets in the Trust Fund (other than Letters of Credit); and
 - (4) from the proceeds of drawings against any Letter of Credit; and
 - (5) from the Distributable Income of the Trust which has not been distributed pursuant to clause 5.5(b)
- (e) The Trustee may, subject to clause 4.7(d), in its sole discretion, sell all or part of the Trust Fund at the prevailing market price, in order to effect timely payment of any Qualifying Claim, any Matured Claim, any Treasurer Demand or any Trustee Claim (for which the Trustee is entitled to be reimbursed or paid out of the Trust Fund) and other than as provided in clause 9 the Trustee is not liable

for any loss incurred in the sale of assets or for its selection of the assets to be sold or the timing of sale.

4.8 Priority of Payments Out of Trust Fund

- (a) Any obligation on the Trustee pursuant to this deed or the Operational Agreement to pay any sum to Lloyd's or the trustees of a Premiums Trust Fund is satisfied by payment of that sum to the Lloyd's Clearing Account, Australia or to such other account as Lloyd's may notify the Trustee in writing from time to time.
- (b) The following priority applies to payments to be made out of the Trust Fund:
 - (1) the payment of Trustee Claims;
 - (2) the payment of any Taxes;
 - (3) the payment of Qualifying Claims, Matured Claims and Treasurer Demands;
 - (4) the payment of Distributable Income; and then
 - (5) the payment of any other monies required to be paid in accordance with this deed.

5 Administration and Use of Trust Fund

5.1 Trustee's Powers

In connection with the management and investment of the Trust Fund, but subject to the provisions of this deed and the Operational Agreement, the Determination and Rules, the Trustee has all of the powers of a natural person with respect to that person's own assets.

5.2 Commingling

- (a) The Trustee may commingle the assets of the Trust Fund with those of any trust fund established under the Lloyd's Australian Trust Deed and also with any assets of the trust fund established under the trust deed dated 6 June 2000 between Lloyd's and the Trustee and entitled Lloyd's Australian Joint Asset Trust Deed (No. 1).
- (b) The Trustee will not commingle (or allow to be commingled) the assets of the Trust Fund with assets belonging to itself or any custodian.
- (c) The Trustee will not allow the assets of the Trust Fund to be commingled in any registered name, or account, at any custodian or Recognised Depository with those of any other client of the Trustee.
- (d) The names in which the assets may be registered and the names of the accounts at any custodian or Recognised Depository in which assets comprising the Trust Fund may be held will be listed in the Operational Agreement.

5.3 Management of Trust Fund

- (a) Lloyd's may, subject to Part 7.3 of the Corporations Law, from time to time direct the Trustee (or such other person as the Trustee may nominate from time to time for the purpose) in accordance with the Operational Agreement and this deed to invest or reinvest any part of the Trust Fund (except to the extent that that part of the Trust Fund consists of Letters of Credit) in a manner permitted under the Act:
- (1) in any stocks, bonds and securities;
 - (2) by making or changing any deposit; or
 - (3) by selling or disposing of any negotiable assets of the Trust Fund,
- and the Trustee must, subject to any direction or rule made under the Act in relation to any asset of the Trust Fund, act on such direction.
- (b) Unless Lloyd's directs the Trustee under clause 5.3(a) and subject to clause 5.3(e), the Trustee must not make, and has no responsibility to make, and has no liability for omitting to make, any investment of the Trust Fund other than depositing the Trust Fund (except to the extent the Trust Fund consists of Letters of Credit) with a Bank.
- (c) The Trustee is under no duty to give, and has no liability for omitting to give, any investment advice to any person in connection with the Trust Fund.
- (d) The Trustee must notify Lloyd's in accordance with the Operational Agreement, as soon as reasonably practical after it becomes aware of any rights to conversion, subscription, voting or other rights pertaining to that part of the Trust Fund referred to in clause 5.3(a) and of any default in the payment of principal or interest. The Trustee must execute all such rights in accordance with the instructions of Lloyd's.
- (e) In the absence of instructions from Lloyd's pursuant to clause 5.3(d) the Trustee may but is not obliged to:
- (1) in the case of any rights or similar entitlement of a renounceable nature which bear an expiration date,
 - (A) sell, or authorise or direct the issuer to sell, the entitlement; and
 - (B) if the entitlement is sold, promptly deposit the proceeds of sale into the Trust Fund;
 - (2) in the case of:
 - (A) the right to elect whether or not to participate in a dividend reinvestment plan:
 - (B) a right to elect to convert of a security to shares or cash; or
 - (C) the right to elect to receive a dividend in cash or in some other form of property (such as shares),

elect for cash.

- (3) in the case of:
- (A) the right to exercise a call or a put option or a warrant;
 - (B) the right to accept a takeover or similar offer; or
 - (C) a call being made in respect of any security comprising the Trust Fund,
- take any action the Trustee considers appropriate.
- (f) Lloyd's must ensure that any direction to the Trustee to invest or reinvest any part of the Trust Fund pursuant to clause 5.3(a) will not prevent the Trustee from paying any Qualifying Claim or any Transitional Claim within the time period specified in clauses 4.2 and 4.4 respectively.

5.4 Borrowings

The Trustee must not:

- (a) borrow or raise any money for the purposes of the Trust Fund;
- (b) charge any part of the Trust Fund; or
- (c) incur, or allow to be incurred, a liability that is not connected with the administration of the Trust Fund in accordance with this deed, the Operational Agreement or the Act.

5.5 Distributable Income

- (a) The Trustee must collect all Investment Income paid or receivable in respect of the Trust Fund and reinvest the same as an asset of the Trust Fund as directed in writing by Lloyd's.
- (b) The Trustee must, subject to any direction made under the Act, distribute the Distributable Income in respect of a Financial Year:
 - (1) in accordance with instructions in writing from Lloyd's from time to time;
 - (2) to the trustees of the Premiums Trust Funds of the Current Contributors or such other persons as directed by Lloyd's (as notified by Lloyd's);
 - (3) in shares notified by Lloyd's from time to time.
- (c) As at the end of each Financial Year:
 - (1) the Trustee holds the Distributable Income which has not then been distributed on trust for the trustees or persons referred to in clause 5.5(b); and
 - (2) those trustees (in their capacity as trustees of each of the Premiums Trust Funds of such members) or those persons have an absolute vested and indefeasible interest in that amount;

in shares as directed by Lloyd's and, failing such direction, in equal proportions.
- (d) If at the expiration of 90 days after the end of a Financial Year, Distributable Income in relation to that Financial Year has not been distributed, the Trustee

must distribute that income to the trustees of each of the Premiums Trust Funds of the members of the Relevant Syndicates in equal shares.

- (e) The Trustee must notify Lloyd's of the extent to which the distribution is composed of, and the types of, income and capital.
- (f) If in respect of any Financial Year, the amount of the Net Taxable Income exceeds the amount of the Net Income, the Trustee must act on direction from Lloyd's in determining whether or not any or all of that excess amount is to form part of the Distributable Income for that Financial Year.
- (g) To the extent there is an amount payable to a person otherwise than in accordance with clause 5.5(b) the Trustee must first make that payment out of corpus and thereafter make the payment by application of the income of the Trust which has not been distributed pursuant to clause 5.5(b);
- (h) On the termination of the Trust, any money remaining after satisfaction by the Trust of all its obligations in respect of the Trust Fund that is referable to a Relevant Underwriter must be paid to the trustees of the relevant Premiums Trust Fund for that Relevant Underwriter.
- (i) Any amount of Distributable Income which has not been distributed pursuant to this clause 5.5 is available to meet any Trustee Claim or Matured Claim.

5.6 Letters of Credit

- (a) If the assets of the Trust Fund consist in whole or in part of a Letter of Credit (which Letter of Credit may be issued by the Trustee or an affiliate in its commercial capacity and not its capacity as Trustee) the Trustee must;
 - (1) in the absence of notice from Lloyd's at least 30 days in advance of any termination of the Letter of Credit to the effect that:
 - (A) the Letter of Credit will be renewed or extended before its expiry date;
 - (B) other assets will be substituted for the Letter of Credit before its expiry date; or
 - (C) failure to draw down the letter of credit will not result in the amount held in the Trust Fund falling below the Minimum Amount; or
 - (2) if the Trustee receives notice pursuant to clauses 5.6(1)(A) or (B) and the Trustee does not receive any such renewed or extended Letter of Credit or substitution of assets as the case may be at least 14 days prior to any termination of the Letter of Credit;

draw down the Letter of Credit and hold the proceeds as an asset of the Trust Fund pursuant to the terms of this deed.
- (b) The Trustee must within 14 days of receipt of a written notice from Lloyd's to that effect :

- (1) surrender any Letter of Credit where at the time the Letter of Credit is surrendered, the Trustee receives as an asset of the Trust Fund property (including another Letter of Credit) having a value not less than the face value of the Letter of Credit that is being surrendered;
- (2) surrender or vary any Letter of Credit if the Trustee is satisfied that the consequences of such surrender or variation are such that the value of the property in the Trust Fund will not, as a result of the surrender or variation, be less than the Minimum Amount.

5.7 Contributions to the Trust Fund

The Trustee may receive further contributions to the Trust Fund from time to time to be held on the terms and conditions of this deed. Lloyd's must advise the Trustee at the time any further contribution is made of the amount of such contribution.

5.8 Payment of Distributable Income

- (a) Lloyd's must not give the Trustee a direction to distribute any Distributable Income referable to any year until Lloyd's has given the Trustee a notice pursuant to clause 6.1(a) in relation to that year.
- (b) If Lloyd's directs the Trustee to distribute any Distributable Income and at that time the value of the assets of the Trust Fund:
 - (1) is less than the Minimum Amount as at such date; or
 - (2) would be less than the Minimum Amount if that distribution was made;

the Trustee is hereby irrevocably directed by the trustees of the Premiums Trust Funds of the Current Contributors to apply so much of an amount equal to the distribution as is specified in a notice in writing from Lloyd's in making good or reducing that deficiency as the case may be and the Trustee must apply the amount so specified.

5.9 Transfer of Funds

Subject to any direction under the Act, Lloyd's may at any time and from time to time direct the Trustee in writing to transfer any funds in excess of the Minimum Amount as reported in the latest required notice given pursuant to clause 6.1(a) to Lloyd's or to the trustees of the Premiums Trust Funds of the Current Contributors or other persons in such proportions as may be set out in the direction or otherwise in accordance with the Operational Agreement. If the latest required notice has not been given, no transfer may be made.

5.10 Trustee's Authority to Hold Investments

The Trustee is authorised to delegate from time to time the safekeeping of any of the assets held in the Trust Fund to such custodians as the Trustee and Lloyd's may agree from time to time in writing, on the following basis:

- (a) The custodian must be a Bank, a subsidiary of a Bank, or a Recognised Depository;

- (b) The Trustee must notify Lloyd's of the appointment and dismissal of any custodian;
- (c) The Trustee's liability hereunder with respect to the duties and functions so performed by such custodians shall be the same as if such duties and functions were performed by the Trustee itself;
- (d) The custodian may be permitted to delegate the safekeeping of any of the assets held in the Trust Fund to further custodians on the same terms as in this clause 5.10;
- (e) The delegation is consistent with the requirements of the APRA in relation to custodians and managers as set out in the relevant APRA circulars;

5.11 Assets of the Trust Fund

The Trustee is under no duty or obligation to require, and has no liability for omitting to require Lloyd's or the Current Contributors to make any transfers or payments of additional assets to the Trust Fund and it is to be conclusively presumed that any and all such transfers or payments to Trustee have been properly made.

5.12 Tax

The trustee must pay out of the Trust Fund all Taxes which are by law payable by it in the execution of the trusts contained in this deed. In the case of any withholding Tax, the Trustee must deduct any withholding Tax due or which may become due in respect of any amount payable or which may become payable to the trustees of the Premiums Trust Funds of the Current Contributors and must remit the same to the Australian Taxation Office in accordance with the relevant provisions of the Tax Act.

5.13 Audit

- (a) The Trustee must appoint a registered company auditor or (if permitted by APRA) a firm at least one of whose members is a registered company auditor (in either case approved by Lloyd's), to be Auditor of the Trust Fund.
- (b) The Trustee may after consultation with Lloyd's remove the Auditor.
- (c) The terms of appointment of the Auditor must specify that the Auditor may retire by giving not less than 3 months' notice to the Trustee (or such shorter notice agreed to by the Trustee and Lloyd's).
- (d) The remuneration of the Auditor must be set by the Trustee and approved by Lloyd's.
- (e) The Trustee must keep or cause to be kept proper books and records relating to the Trust Fund. The Trustee may establish such accounts and records as shall be reasonable and otherwise as it may determine. The Trustee must ensure that the accounts are audited by the Auditor in respect of each calendar year and each Financial Year.
- (f) Graeme Mark McKenzie, a partner in the firm of Ernst & Young, is the first Auditor of the Trust Fund and is deemed to have been appointed by the Trustee

and approved by Lloyd's in accordance with clause 5.13(a) by the execution of this deed.

5.14 Judicial Trustee

If at any time the Trustee is a Judicial Trustee appointed pursuant to the provisions of Division 5 of Part VII of the Act, notwithstanding any provisions of this deed to the contrary, and in connection with the management and investment of the Trust Fund:

- (a) the Trustee has all of the powers of a natural person with respect to that person's own assets;
- (b) the Trustee is under no obligation to act in accordance with the directions of Lloyd's, or any other person;
- (c) the Trustee is not bound by the Operational Agreement; and
- (d) the Trustee may not make any distributions pursuant to clauses 5.5(b) and 5.5(d).

6 Valuation and Reporting

6.1 Notice of Minimum Amount

- (a) Subject to clause 6.1(b), Lloyd's must determine, as at 31 December next following the Effective Date and as at 31 December in each year thereafter, the Minimum Amount and Lloyd's must advise the Trustee of the amount so determined within 52 days as at which the determination is made.
- (b) Subject to any contrary direction of the APRA, the Trustee may rely on the most recent statement from Lloyd's as to the Minimum Amount, without any recourse against the Trustee and without any obligation to make enquiry in relation to the statement.

6.2 Trustee to Certify Value of Trust Fund

- (a) The Trustee must within 30 days after 31 December in each year promptly certify as at 31 December that year to Lloyd's and, if so directed by either Lloyd's or the APRA, to the APRA:
 - (1) the existence of the Trust Fund and;
 - (2) the value of each of the assets of the Trust Fund;
 - (3) the aggregate value (net of any charges, liens or encumbrances held by the Trustee or Trustee Claims or Qualifying Claims) of the Trust Fund.
- (b) The Trustee must make the certifications contained in clause 6.2(a)(2) and (3) based on the most recent values available to the Trustee whenever so directed by the APRA, Lloyd's or the Lloyd's Agent in Australia within 10 days of being so directed.

- (c) Whenever the Trustee is required under this deed to value the assets of the Trust Fund, it may do so itself or employ an agent for such valuation (which agent may be a subsidiary, affiliate or associate of the Trustee).
- (d) The valuation of any assets of the Trust Fund under this clause 6.2 must be carried out in accordance with the Rules.

6.3 Provision of Information to the APRA

Lloyd's and the Trustee must make available to the other or to the APRA (as the case may require) such information as is reasonably necessary or reasonably required to enable any of them to provide information to the APRA or to undertake or cause to be undertaken any actuarial investigation required by the APRA at any time and from time to time.

7 Deficiency in Trust Fund Assets

The Trustee must give notice to Lloyd's, the Lloyd's Agent in Australia and the APRA forthwith if, on the expiration of 60 days after the date as at which the most recent valuation of a Trust Fund as provided for in clause 6.2 was made;

- (a) the value of the property in that Trust Fund is less than the Minimum Amount as at that date; and
- (b) if such deficiency has not been subsequently made good by a transfer of property to the Trustee by or on behalf of the Relevant Underwriter of an amount that is equal to or greater than the amount of the deficiency.

8 Formulation of Scheme

The principles in the Schedule are those set out for the purposes of section 92M(2) of the Act.

9 Limitation of liability and indemnity of Trustee

- (a) The Trustee has no liability in relation to this deed or the transactions contemplated by this deed except for any loss arising from :
 - (1) its fraud, negligence or breach of trust; or
 - (2) any fraud, negligence, breach of trust committed by any officers, employees or agents.
- (b) Lloyd's must indemnify the Trustee against Taxes payable by the Trustee in its capacity as trustee of the Trust Fund and any stamp duty in respect of this deed or the Operational Agreement (including all penalties in respect thereof not caused by the fraud, negligence or breach of trust of Trustee or any of its employees) and Lloyd's agrees that payment of any such duty by the Trustee is not a condition precedent to the enforcement of such indemnity.
- (c) The Trustee may, in any case where it is entitled to be indemnified or paid by Lloyd's if it incurs a cost, charge, liability or expense (including all duties, taxes,

finances or penalties in respect thereof not caused by the Trustee or any of its employees) require Lloyd's to advance to it before that cost, charge, liability or expense is incurred a sum sufficient to cover that cost, charge, liability or expense. A certificate signed by an authorised officer of the Trustee stating the amount of any advance requested under this clause will, in the absence of manifest error, be conclusive and binding on Lloyd's.

- (d) If any sum is advanced to the Trustee pursuant to clause 9(c) the Trustee must account for the manner in which that sum is used by providing to Lloyd's written evidence of the proper application of that sum toward payment of the relevant cost, charge, liability or expense and if any or all of such sum is not required or not used to pay such cost, charge, liability or expense then the Trustee must refund the difference to Lloyd's.

10 Miscellaneous

10.1 Breach of obligations

- (a) Each party must inform the other immediately it becomes aware of any breach by it of the terms of this deed or the obligations imposed by this deed.
- (b) Each party must inform the other immediately it becomes aware that any obligations imposed on it pursuant to this deed or the transactions contemplated by this deed cannot be fulfilled.

10.2 No Partnership

Nothing herein constitutes a partnership between the Current Contributors and any underwriter, or between any of the underwriters, the underwriting business of each Relevant Underwriter being carried on for that Underwriter's sole and separate account.

10.3 Governing Law

- (a) This deed is governed by and construed and enforced in accordance with the laws of the State of New South Wales.
- (b) The parties to this deed submit to the exclusive jurisdiction of the Supreme Court of New South Wales for the purpose of determining any dispute, question or difference (including, without limitation, its existence, validity or termination) arising under, out of, or in connection with it.

10.4 Amendment of this Deed

- (a) Lloyd's has power in its discretion to amend this deed with the written consent of the Trustee such consent not to be unreasonably withheld, provided that:
- (1) such power is exercised by the Council;
 - (2) amendments to this deed must be in writing and signed on behalf of the Council; and

- (3) no amendment becomes effective without the prior written consent of the APRA.
- (b) Lloyd's must advise the Trustee in writing when any such amendment becomes effective.

10.5 Notices

- (a) Lloyd's must provide the Trustee with:
 - (1) its mailing address;
 - (2) the mailing address of the APRA; and
 - (3) the name and mailing address of Lloyd's Agent in Australia,and must update this information from time to time as may be necessary to keep the information current. The Trustee may rely upon such information without the need to make further enquiry.
- (b) Any notice required by this deed to be given by any party or parties to any other party or parties must be given in the manner specified in the Operational Agreement.

10.6 Partial Invalidity Does Not Invalidate Entire Deed

If any provision of this deed is held invalid or unenforceable, the remainder of this deed shall be construed and enforced as if such provision had not been inserted herein.

10.7 Further assurances

Each party must do all things necessary to give full effect to this deed and the transactions contemplated by this deed.

10.8 Counterparts

- (a) This deed may be executed in counterparts.
- (b) Both counterparts, taken together constitute one instrument.

10.9 Attorneys

Each of the Attorneys executing this deed states that the Attorney has no notice of the revocation of the power of attorney appointing that Attorney.

Schedule - (Clause 8.1)

Section 92M(2) principles

- 1 The assets of the Trust Fund are available to meet a Relevant Underwriter's share of a liability under an Australian Policy;
 - (a) if on the day on which the Federal Court of Australia approved a scheme formulated under section 92M of the Act, property was held in respect of that underwriter under the Lloyd's Australian Trust Deed; and
 - (b) then only to the extent to which property which was held in respect of that underwriter under the Lloyd's Australian Trust Deed is insufficient to meet such liabilities (including the Underwriter's share of the costs of judicial management).
- 2 The assets of the Trust Fund we available to meet a Treasurer Demand.
- 3 Claims may be met when the scheme administrator has determined that the claim is payable, notwithstanding the fact that no judgment may have been entered in favour of the Policyholder.
- 4 Costs of winding-up or dissolution of the Trust Fund must first be met from the Security Deposit
- 5 No liabilities of an Underwriter which may be met from property held pursuant to the terms of this deed may be met from any property held pursuant to the terms of the Trust Deed made 6 June 2000 and entitled Lloyd's Australian Joint Asset Trust Deed (No. 1).

**Executed as a deed:
Signed sealed and delivered for
Lloyd's**

by its attorney in the
presence of:

Witness

Attorney

Name (please print)

Name (please print)

**Signed sealed and delivered for
National Australia Trustees Limited**

by its attorney in the
presence of:

Witness

Attorney

Name (please print)

Name (please print)

Table of contents

<i>Clause</i>	<i>Page</i>
1 Interpretation	1
1.1 Definitions	1
1.2 Interpretation	7
2 The Trust Fund	8
2.1 Creation of Trust Fund	8
2.2 Perpetuities	9
3 The Trustee	9
3.1 Trustee's Qualification	9
3.2 Operational Agreement	9
3.3 Trustee's Duties	9
3.4 Trustee's Reliance upon Communications	10
3.5 Proper Execution	11
3.6 Trustee's Reliance on Opinions of its Counsel	11
3.7 Trustee's Fees and Expenses	11
3.8 Maintenance and Inspection of Trustee's Records	12
3.9 Trustee's Resignation or Removal and Appointment of Successor	12
3.10 Trustee's Obligations	15
3.11 Electronic Access	15
3.12 Provision of information and notification	15
4 Payment of Claims	16
4.1 Qualifying Claims	16
4.2 Amount of and Payment of Qualifying Claims	16
4.3 Transitional Claims	16
4.4 Payment of Transitional Claims	17
4.5 Limitations	18
4.6 Treasurer Demand	19
4.7 Sale of Trust Fund Assets	19
4.8 Priority of Payments Out of Trust Fund	20
5 Administration and Use of Trust Fund	20
5.1 Trustee's Powers	20
5.2 Commingling	20
5.3 Management of Trust Fund	21
5.4 Borrowings	22
5.5 Distributable Income	22
5.6 Letters of Credit	23
5.7 Contributions to the Trust Fund	24
5.8 Payment of Distributable Income	24
5.9 Transfer of Funds	24
5.10 Trustee's Authority to Hold Investments	24

<i>Clause</i>	<i>Page</i>
5.11 Assets of the Trust Fund	25
5.12 Tax	25
5.13 Audit	25
5.14 Judicial Trustee	26
6 Valuation and Reporting	26
6.1 Notice of Minimum Amount	26
6.2 Trustee to Certify Value of Trust Fund	26
6.3 Provision of Information to the APRA	27
7 Deficiency in Trust Fund Assets	27
8 Formulation of Scheme	27
9 Limitation of liability and indemnity of Trustee	27
10 Miscellaneous	28
10.1 Breach of obligations	28
10.2 No Partnership	28
10.3 Governing Law	28
10.4 Amendment of this Deed	28
10.5 Notices	29
10.6 Partial Invalidity Does Not Invalidate Entire Deed	29
10.7 Further assurances	29
10.8 Counterparts	29
10.9 Attorneys	29
Schedule - (Clause 8.1)	1

**Lloyd's Australian Joint Asset Trust Deed
(No. 2)
LAusJATD (2)**

FREEHILL
HOLLINGDALE
& PAGE

MLC Centre Martin Place Sydney New South Wales 2000 Australia
Telephone (02) 9225 5000 Int + (61 2) 9225 5000 Facsimile (02) 9322 4000 DX 361 Sydney
Reference: JHG:31E

SYDNEY MELBOURNE PERTH CANBERRA BRISBANE SINGAPORE HANOI HO CHI MINH CITY
CORRESPONDENT OFFICE IN JAKARTA

Liability is limited by the Solicitors Scheme under the Professional Standards Act 1994 (NSW)