

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/02/2022 9:16:47 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD747/2021  
File Title: IN THE MATTER OF THE FORUM GROUP OF COMPANIES PTY LIMITED ACN 151 964 626 (ADMINISTRATORS APPOINTED) & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 8/02/2022 2:09:14 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

### Affidavit

No. NSD747/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**THE FORUM GROUP OF COMPANIES PTY LIMITED (ADMINISTRATORS APPOINTED)** and  
others named in the schedule  
Plaintiff

Affidavit of: **Melissa Passarelli**  
Address: Level 6, 140 William Street, Melbourne 3000  
Occupation: Legal practitioner  
Date: 6 February 2022

#### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Melissa Passarelli sworn 6 February 2022	1-31	1-10
2	Exhibit MP-1 being a paginated bundle of documents	-	1-142

I, Melissa Passarelli, of Level 6, 140 William Street Melbourne in the State of Victoria hereby make Oath and Say:

- I am a legal practitioner in the sole employment of Madgwicks Lawyers. Madgwicks represents the Applicant, Mr Vincenzo Tesoriero, and his associated entities in the present proceeding, and I have the care and conduct of this matter subject to the supervision of the Partners.

Filed on behalf of (name & role of party) Vincenzo Frank Tesoriero, Applicant  
 Prepared by (name of person/lawyer) Sazz Nasimi  
 Law firm (if applicable) Madgwicks Lawyers  
 Tel 03 9242 4720 Fax 03 9242 4777  
 Email sazz.nasimi@madgwicks.com.au  
 Address for service Level 6, 140 Williams Street, Melbourne 3000 VIC  
 (include state and postcode)

*A Lawrence*

2. I make this affidavit from my own knowledge save where otherwise indicated. Where I depose to matters that I have been informed of by others, I believe those matters to be true and correct.
3. I have read the affidavit of Sarwar (Sazz) Nasimi sworn 3 February 2022 ('**Second Nasimi Affidavit**') and swear this affidavit in further support to the Applicant's urgent injunction application filed on 3 February 2022.
4. Annexed to this affidavit and shown to me at the time of swearing this affidavit is a paginated bundle of document marked "**MP-1**". This exhibit contains all the documents referred to in my affidavit. Where reference is made to a specific document or part of a document, contained within "MP-1", it will be referred to by my initials followed by the page number on which that document or reference appears, ie **MP-#**.

### **Orders of 3 September 2021**

5. On 3 September 2021 Justice Lee made orders in proceeding NSD747/2021 that Jason Ireland and Jason Preston of McGrathNicol (the **Liquidators**) be appointed as receivers of the motor vessel known as the XOXO Yacht, and authorised to take possession of, preserve, maintain and sell those real properties.

A true copy of the Orders made on 3 February 2022 are exhibited to the Second Nasimi Affidavit at SN-1 at pages 2 to 9.

6. The XOXO Yacht is owned by Mangusta (Vic) Pty Ltd (In Liquidation) ('**Mangusta company**') as trustee of the Mangusta Trust. Mr Tesoriero was the sole director and shareholder of the Mangusta Company.

A true copy of the title search for Mangusta (Vic) Pty Ltd (In Liquidation) is exhibited at **MP-1** at pages 2 to 13.

### **Ownership of the XOXO Yacht**

7. The Mangusta Trust is a discretionary trust with Mr Tesoriero and Mr Papas as primary beneficiaries.

A true copy of the trust deed of the Mangusta Trust is exhibited at **MP-1** at pages 14 to 75.

### **Correspondence leading up to 3 September Orders**

8. On 2 September 2021, Fortis Law sent an email to Allens with respect to the real properties and the XOXO Yacht which stated, *inter alia*, the following:

A Lawrence



*“Further, as previously indicated in our letter of 16 August 2021, our client wishes to be involved in the sale process of all property subject of this application. As such, we seek for the inclusion in the orders or by way of a separate date, a regime that outlines inter alia the method of sale, the nomination, of the sales agent, the appropriate deductions and sale reserves.*

*If the Liquidators consent, could provide us with us short minutes of order that take into account the above matters.”*

A true copy of the email from Fortis Law dated 2 September 2021, is exhibited at **MP-1** at pages 76 to 77.

9. On 3 September 2021, Allens sent an email to Fortis Law with respect to the real properties and the XOXO Yacht which stated, *inter alia*, the following:

*“As to the sales process, our clients are content to consult with your client about that process. For example, if there are particular agents that your client recommends, our clients would be interested in receiving that information. However, with a view to maximising the price that can be achieved through the sales process, they do not agree to orders which restrict the basis upon which the sale could occur.”*

A true copy of the email from Allens dated 3 September 2021, is exhibited at **MP-1** at pages 78 to 79.

10. Attached to the email exhibited at paragraph 9 above, was a letter from Allens once again making the same assurances with respect to the Receivers’ willingness to engage with Mr Tesoriero regarding the sales of process of the real properties and the XOXO Yacht.

A copy of the letter dated 3 September 2021 is exhibited at SN-1 at pages 244 to 245.

11. I am informed by Mr Tesoriero that it was on the basis of these assurances that he instructed Fortis Law to consent to the 3 September Orders with respect to the sale of the XOXO Yacht and refrain from taking steps to replace the trustee of the various trusts which own the Properties.

### **Events since 3 September Orders**

12. On or about 17 November 2021, I was informed by Mr Tesoriero that the XOXO Yacht had been listed for sale. The advertisement confirmed that the yacht was docked in Miami Beach but specifically stated the following:

“Not for sale to US residents while in US Waters”

A true copy of the advertisement is exhibited at **MP-1** at page 80.

*A Lawrence*



13. Madgwicks had received no communications from Allens seeking to consult with Mr Tesoriero, as promised, in relation to the sale of the XOXO.
14. On 26 November 2021, Madgwicks sent a letter to Allens requesting an explanation as to why the XOXO Yacht had been advertised as not available to US residents.

A true copy of the letter from Madgwicks dated 26 November 2021 is exhibited at **MP-1** at page 81.

15. On 29 November 2021, Allens sent Madgwicks an email asserting that the XOXO Yacht had suffered damage which the Receivers estimated the cost of repair would be between \$300,000 to \$500,000. That letter stated, *inter alia*, the following:

*“Unless further information is provided to the Receivers and that information leads to a successful claim with the Insurer for a significant portion of the works required, the Receivers will have no option but to sell the XOXO Yacht in its current condition.”*

As stated at paragraph 13 above, the XOXO Yacht was already being advertised for sale by the Receivers as at the date of this email.

A true copy of the email and attachments from Allens dated 29 November 2021 is exhibited at **MP-1** at pages 82 to 128.

16. On 8 December 2021, Allens sent a letter to Madgwicks which stated, *inter alia*, that the reason the Receivers had advertised the XOXO Yacht as not for sale to US residents was because it was initially unclear to the Receivers whether there was any duty owing in respect of the yacht. The letter confirmed that there was no duty and the notation on the advertisement was removed on 26 November 2021. It appears from this letter that there was never any duty owing on the yacht but it was not until 26 November 2021 that the Receivers confirmed this.

A true copy of the letter from Allens dated 8 December 2021 is exhibited at **MP-1** at page 129.

17. On 5 January 2022, I was informed by Mr Tesoriero that a new advertisement had been posted for the XOXO Yacht which indicated that the Receivers were selling the yacht by way of fire sale. The new advertisement stated the following:

*“Must Go Immediately, Bring All Offers”*

A true copy of the advertisement is exhibited at MP-1 at pages 130 to 135.

18. On 25 January 2022, Madgwicks sent an email to Allens which stated, *inter alia*, the following:

*A Lawrence*



*“In your letter of 3 September 2021 to our predecessors you stated that “the liquidators would be content to engage with [our] client regarding the sales process, including the proposed method of sale and the provision of updates”. To date this has not occurred.*

*We note that the Receivers’ advertisement which is **attached** has explicitly stated that sale of the yacht is a forced sale. Plainly, the Receivers are not going to realise its true or full market value as a result.”*

A true copy of the email from Madgwicks dated 25 January 2022 is exhibited at **MP-1** at pages 136 to 140.

19. I am informed by Mr Tesoriero with respect to the XOXO Yacht that:
- (a) the liquidators have not sought to contact him, consult him or otherwise inform him in relation to the sale of the XOXO Yacht referred to in the 3 September Orders;
  - (b) since changing solicitors, he has reconsidered his position in relation to the the XOXO Yacht, including having regard to Liquidators' breach of the assurances given to him in advance of the 3 September Orders being made; and
  - (c) he no longer agrees for the XOXO Yacht to be sold.

### **James Street Properties**

20. In addition to the correspondence referred to at paragraphs 12 to 14 of the Second Nasimi Affidavit, I wish to highlight to the Court correspondence between Fortis Law and Allens with respect to the James Street Properties which passed between those solicitors on 2 September and 3 September 2021. I provide relevant extracts as follows:

Extract from email from Fortis to Allens sent on 2 September 2021:

*“We are instructed however, to expressly indicate that our client reserves his right to apply to the Court to discharge the orders in respect of 14 James St. As previously indicated, it is our client’s preference to preserve the 14 James St properties during the course of these proceedings in accordance with the Freezing Orders, particularly noting that the properties are capable of servicing the mortgages.*

*In this regard, we seek a notation or an order to the effect that there is to be a moratorium for a reasonable period of time to enable our client to take the appropriate steps to obtain the consent of Westpac and the Mortgagee in order to replace the former trustee with a new trustee and to transfer title such new trustee thereafter.”*

A true copy of the email from Fortis to Allens sent on 2 September 2021 is exhibited at MP-1 at pages 76 to 77.

A Lawrence



Extract from response email from Allens to Fortis sent on 3 September 2021:

*"1. In relation to 14 James Street:*

- a. *The Liquidators note that your client may seek to discharge the orders in respect of 14 James Street. We aren't proposing to include an express note of that in the orders, but recognise that your client would be entitled to bring that application;*
- b. *The Liquidators aren't willing to agree to a formal moratorium. They are happy to discuss the proposed sales process and likely timing – that would include seeking submissions from agents, so we would expect that in practical terms your client would have ample time to take any steps he is proposing."*

A true copy of the email from Allens to Fortis sent on 3 September 2021 is exhibited at MP-1 at pages 78 to 79.

### **No prejudice to delay the sale of the XOXO Yacht**

21. As there is a dispute as to who is entitled to the proceeds of sale of the XOXO Yacht, if the yacht is sold, the proceeds of sale will be held until the resolution of proceeding NSD616/2021.
22. On 14 January 2022, Allens sent an email to Madgwicks forwarding correspondence it had received from the solicitors of Mark Ribeiro who claims he is owed money for services rendered to and on the credit of the XOXO Yacht. Mr Ribeiro claims he is owed the amount of "\$190,000 exclusive of interest, fees and costs, plus \$1,358.57 in costs he personally advanced for the Vessel." I am informed by Mr Tesoriero that Mr Ribeiro is the captain of the XOXO Yacht. The debt claimed by Mr Ribeiro is such that Mr Ribeiro has liberty to arrest the vessel at any time. I understand from the email provided by Allens that Mr Ribeiro wishes to come to an agreement without arresting the vessel however, neither Madgwicks nor Mr Tesoriero have had any involvement in the discussions with Mr Ribeiro. I responded to this letter on 25 January 2022 (which is referred to at paragraph 18 above, which is exhibited at pages X to X at MP-1).

A true copy of the email sent by Allens to Madgwicks forwarding the email outlining Mr Ribeiro's claim is exhibited at **MP-1** at pages 141 to 142.

### **Prejudice to Mr Tesoriero**

23. As set out in paragraphs 13 to 20 above, contrary to the statements in the letters from Allens to Fortis Law set out in paragraphs 10 and 11 above, the liquidators did not inform Mr Tesoriero of the details of the proposed sale of the XOXO Yacht, or consult him in any way regarding the sale.

*A Lawrence*





24. For the reasons set out in paragraphs 13, 17 and 18 above, Mr Tesoriero has reason to believe that the Liquidators are not able, and/or not motivated, to obtain the best price reasonably available for the Properties.
25. I am informed by Mr Tesoriero that he bought the XOXO Yacht in or around 2018. Mr Tesoriero has confirmed that prior to the commencement of this proceeding, he would go to the US where his sister resides 2-3 times a year. He has spent significant time on the yacht with family and friends and at times spent up to 3 months on the yacht. As a result, the yacht has sentimental value to Mr Tesoriero and he therefore wishes to retain it.
26. Proceeding NSD616/2021 is at a very early stage, with Mr Tesoriero's strike out application due to be heard on 10 March 2022. If Mr Tesoriero's strike out application is successful, or if he is otherwise successful in the proceeding, then he will have a strong claim to recover possession of the XOXO Yacht.
27. I am informed by Mr Tesoriero that, whilst in his possession, from time to time the XOXO Yacht was chartered. This allowed the yacht to defray ongoing maintenance and crew expenses. I am told by Mr Tesoriero that, as far as he is aware, the XOXO Yacht has not been made available for charter by the Liquidators since they seized the vessel. As such, income that could have been derived in order to defray ongoing maintenance and crew costs has not been earned.
28. Further, on or about 24 September 2020, an insurance claim was lodged with Pantaenius Sail and Motor Yacht Insurance ('Insurer') following significant damage (estimated in the claim to be worth \$100,000) sustained to the bottom of the XOXO Yacht. I am informed by Mr Tesoriero that the damage was sustained during a charter. I understand that Mr Tesoriero was informed by the Insurer that if he could not provide details of who was on the vessel at the time of damage that the insurance claim would be rejected. I am informed by Mr Tesoriero that he tried to contact the person who had chartered the yacht in order to obtain the relevant information (as to the persons who were on board and other details relating to the charter at the time the boat was damaged), but was unable to do so. The insurance claim was subsequently rejected.
29. I am informed by Mr Tesoriero that it has always been his intention to press the insurance claim with the Insurer, however, he has been unable to do so given the Liquidators have been in possession of the yacht since about early September 2021. If the restraining orders are lifted in respect of the XOXO Yacht, I am informed by Mr Tesoriero that he will further press his claim to recover damages sustained to the yacht from the Insurer and the charter party if appropriate. If Mr Tesoriero's claim for indemnity is rejected, I am informed that he may issue legal proceedings against the Insurer and also against the charter-party.

A Lawrence






30. If the Liquidators are permitted to sell the XOXO Yacht, then in addition to any loss which may be sustained by Mr Tesoriero if the yacht is sold at an undervalue, Mr Tesoriero will also lose the opportunity to retain and continue to use the yacht.

31. For the above reasons, I believe that it is in the interests of justice that the Liquidators be prevented from selling the Properties (with the exception of 26 Edmonstone Road, which has already been sold) and the XOXO Yacht until the resolution of proceeding NSD616/2021.

The contents of this my affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

Sworn by Melissa Passarelli )   
at Melbourne on 6 February 2022 ) -----

Before me:  

As a witness, I certify the following matters concerning the person who made this affidavit (deponent):

1. I saw the face of the deponent.
2. I observed the deponent signing a copy of this affidavit in real time.
3. I attest or otherwise confirm witnessing the deponent's signature by signing this affidavit.
4. I am reasonably satisfied this affidavit signed by me is a copy of the affidavit signed by the deponent.
5. I has confirmed the person's identity based on the following identification document presented to me: Drivers Licence
6. This affidavit is witnessed over audio visual link in accordance with Part 2B of the Electronic Transactions Act 2000 (NSW)

## Schedule of Parties

No. NSD747/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Applicant: JASON PRESTON

Applicant: JASON IRELAND

Second Plaintiff: 14 JAMES STREET PTY LTD ACN 638 449 206 (ADMINISTRATORS APPOINTED)

Third Plaintiff: 26 EDMONSTONE ROAD PTY LTD ACN 622 944 129 (ADMINISTRATORS APPOINTED)

Fourth Plaintiff: 5 BULKARA STREET PTY LTD ACN 630 982 160 (ADMINISTRATORS APPOINTED)

Fifth Plaintiff: 6 BULKARA STREET PTY LTD ACN 639 734 473 (ADMINISTRATORS APPOINTED)

Sixth Plaintiff: ARAMIA HOLDINGS PTY LTD ACN 114 958 717 (ADMINISTRATORS APPOINTED)

Seventh Plaintiff: EROS MANAGEMENT PTY LTD ACN 622 298 346 (ADMINISTRATORS APPOINTED)

Eighth Plaintiff: FORUM DIRECT PTY LTD ACN 054 890 710 (ADMINISTRATORS APPOINTED)

Ninth Plaintiff: FORUM FLEET PTY LIMITED ACN 155 440 994 (ADMINISTRATORS APPOINTED)

Tenth Plaintiff: FORUM GROUP PTY LTD ACN 153 336 997 (ADMINISTRATORS APPOINTED)

Eleventh Plaintiff: FORUM GROUP (QLD) PTY LTD ACN 103 609 678 (ADMINISTRATORS APPOINTED)

Twelfth Plaintiff: FORUM GROUP (VIC) PTY LTD ACN 153 062 018 (ADMINISTRATORS APPOINTED)

Thirteenth Plaintiff: IMAGETEC FINANCIAL SERVICES PTY LTD ACN 111 978 182 (ADMINISTRATORS APPOINTED)

Fourteenth Plaintiff: IMAGETEC SOLUTIONS AUSTRALIA PTY LTD ACN 074 715 718 (ADMINISTRATORS APPOINTED)

Fifteenth Plaintiff: INTRASHIELD INVESTMENT GROUP PTY LTD ACN 645 578 829 (ADMINISTRATORS APPOINTED)

Sixteenth Plaintiff: INTRASHIELD PTY LTD ACN 133 426 534 (ADMINISTRATORS APPOINTED)

Seventeenth Plaintiff: IUGIS INVESTMENTS PTY LTD ACN 647 627 745  
(ADMINISTRATORS APPOINTED)

Eighteenth Plaintiff: IUGIS PTY LTD ACN 632 882 243 (ADMINISTRATORS APPOINTED)

Nineteenth Plaintiff: IUGISWASTE SOLUTIONS PTY LTD ACN 647  
212 299 (ADMINISTRATORS APPOINTED)

Twentieth Plaintiff: ONESOURCE AUSTRALIA HOLDINGS PTY LIMITED ACN 120  
463 541 (ADMINISTRATORS APPOINTED)

Twenty First Plaintiff: ORCA ENVIRO SOLUTIONS PTY LTD ACN 626  
552 645 (ADMINISTRATORS APPOINTED)

Twenty Second Plaintiff: ORCA ENVIRO SYSTEMS PTY LTD ACN 627  
597 782 (ADMINISTRATORS APPOINTED)

Twenty Third Plaintiff: SMARTPRINT FLEET MANAGEMENT PTY LTD ACN 132  
807 080 (ADMINISTRATORS APPOINTED)

Twenty Fourth Plaintiff: SPARTAN CONSULTINGGROUP PTY LTD ACN 168  
989 544 (ADMINISTRATORS APPOINTED)

Twenty Fifth Plaintiff: FORUM FINANCE PTY LTD ACN 153 301 172 (IN LIQUIDATION)

Twenty Sixth Plaintiff: FORUM GROUP FINANCIAL SERVICES PTY LTD ACN 623  
033 705 (PROVISIONAL LIQUIDATORS APPOINTED)

Twenty Seventh Plaintiff: FORUM ENVIRO PTY LTD ACN 168 709 840  
(PROVISIONAL LIQUIDATORS APPOINTED)

Twenty Eighth Plaintiff: FORUM ENVIRO (AUST) PTY LTD ACN 607 484 364  
(PROVISIONAL LIQUIDATORS APPOINTED)

## Exhibit certificate

Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD747/2021

**THE FORUM GROUP OF COMPANIES PTY LIMITED (ADMINISTRATORS APPOINTED)**

and others named in the schedule

Plaintiff

This is the exhibit marked "**MP-1**" now produced and shown to Melissa Passarelli at the time of swearing her affidavit on 6 February 2022 before me:



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Solicitor



**Alexandra Lawrence**  
6th Floor, 140 William St, Melbourne, Vic, 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria).

ASIC EXTRACT SNAPSHOT

CURRENT ORGANISATION DETAILS

Date Extracted	06/11/2021
ACN	631 520 682
ABN	-
Current Name	MANGUSTA (VIC) PTY. LTD.
Registered In	Victoria
Registration Date	08/02/2019
Review Date	08/02/2022
Company Type	ACN (Australian Company Number)
Current Directors	1
Current Secretaries	1

Start Date	03/09/2021
Name	MANGUSTA (VIC) PTY. LTD.
Name Start Date	08/02/2019
Status	<b>** Under External Administration And/Or Controller Appointed **</b>
Type	Australian Proprietary Company
Class	Limited By Shares
Sub Class	Proprietary Company
Disclosing Entity	No
Document No.	

Share Structure (Displaying Top 4 Only)

[Go to Full ASIC Results](#)

Class	Class Type	Shares Issued	Amount Paid
ORD	ORDINARY SHARES	2	\$2.00

(creditor)watch - Credit Score (0)

[Go to Full Credit Report](#)

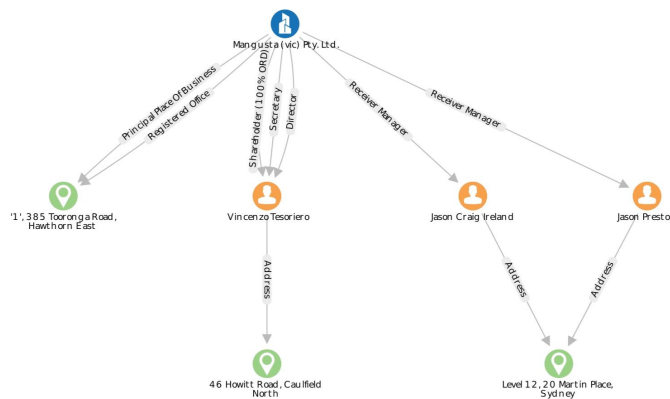


Risk Data Summary

Court Judgments	0	Payment Defaults	0	Insolvency Notices	0	Mercantile Enquiries	0	Credit Enquiries	11
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REVEAL - Company Visualisation

[Go to full workspace](#)



# ASIC

## Current & Historical Organisation Extract



**ASIC Data Extracted 05/11/2021 at 09:29**

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

### - 631 520 682 MANGUSTA (VIC) PTY. LTD. -

<b>ACN (Australian Company Number):</b>	631 520 682	<b>Document No.</b>
<b>ABN:</b>		
<b>Current Name:</b>	MANGUSTA (VIC) PTY. LTD.	
<b>Registered in:</b>	Victoria	
<b>Registration Date:</b>	08/02/2019	
<b>Review Date:</b>	08/02/2022	
<b>Company Bounded By:</b>		

### - Current Organisation Details -

<b>Name:</b>	MANGUSTA (VIC) PTY. LTD.
<b>Name Start Date:</b>	08/02/2019
<b>Status:</b>	** Under External Administration And/Or Controller Appointed **
<b>Type:</b>	Australian Proprietary Company
<b>Class:</b>	Limited By Shares
<b>Sub Class:</b>	Proprietary Company

### - Former Organisation Details from 08/02/2019 to 02/09/2021 -

<b>Name:</b>	MANGUSTA (VIC) PTY. LTD.
<b>Name Start Date:</b>	08/02/2019
<b>Status:</b>	Registered
<b>Type:</b>	Australian Proprietary Company
<b>Class:</b>	Limited By Shares
<b>Sub Class:</b>	Proprietary Company

### - Company Addresses -

#### - Registered Office

<b>Address:</b>	'1' 385 TOORONGA ROAD HAWTHORN EAST VIC 3123		5EAS92171
<b>Start Date:</b>	08/02/2019		

#### - Principal Place of Business

<b>Address:</b>	'1' 385 TOORONGA ROAD HAWTHORN EAST VIC 3123		5EAS92171
<b>Start Date:</b>	08/02/2019		

**- Company Officers -****Note:**

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

\* Check documents listed under ASIC Documents Received for recent changes.

**Director**

**Name:** VINCENZO TESORIERO 5EAS92171  
**Address:** 46 HOWITT ROAD CAULFIELD NORTH VIC 3161  
**Birth Details:** 21/12/1980 MALVERN VIC  
**Appointment Date:** 08/02/2019  
**Cease Date:** //

**Secretary**

**Name:** VINCENZO TESORIERO 5EAS92171  
**Address:** 46 HOWITT ROAD CAULFIELD NORTH VIC 3161  
**Birth Details:** 21/12/1980 MALVERN VIC  
**Appointment Date:** 08/02/2019  
**Cease Date:** //

**Receiver Manager**

**Name:** JASON CRAIG IRELAND 7EBL12103  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 03/09/2021  
**Cease Date:** //

**Name:** JASON PRESTON 7EBL12103  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 03/09/2021  
**Cease Date:** //

**- Share Structure -****Current**

**Class:** ORDINARY SHARES 5EAS92171



<b>Number of Shares Issued:</b>	2
<b>Total Amount Paid / Taken to be Paid:</b>	\$2.00
<b>Total Amount Due and Payable:</b>	\$0.00

**Note:**

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**- Share/Interest Holding -****Current****- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	2	5EAS92171
<b>Beneficially Owned:</b>	Yes	<b>Fully Paid:</b>	Yes	

**- Members -**

<b>Name:</b>	VINCENZO TESORIERO
<b>Address:</b>	46 HOWITT ROAD CAULFIELD NORTH VIC 3161
<b>Joint Holding:</b>	No

**- External Administration Documents -****Note:**

Documents relating to External Administration and/or appointment of Controller.  
This extract may not list all documents relating to this status. State and Territory records should be searched.

Form Type	Description	Date Lodged	Processed	No. Pages	Document No.
507		03/11/2021	03/11/2021	12	7EBM90302
507G	REPORT ON COMPANY ACTIVITIES AND PROPERTY FROM MANAGING CONTROLLER WHO IS ALSO A RECEIVER/MANAGER				
504		16/09/2021	17/09/2021	4	031439135
504B	NOTIFICATION OF APPOINTMENT OF A RECEIVER AND MANAGER				
505		07/09/2021	07/09/2021	3	7EBL12103
505B	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPOINTMENT OF RECEIVER AND MANAGER				

**- Charges -**

**There are no charges held for this organisation.****Notes:**

On 30 January 2012, the Personal Property Securities Register (PPS Register) commenced.

At that time ASIC transferred all details of current charges to the PPS Registrar.

ASIC can only provide details of satisfied charges prior to that date.

Details of current charges, or charge satisfied since 30 January 2012 can be found on the PPS Register, [www.ppsr.gov.au](http://www.ppsr.gov.au).

InfoTrack may cap documents for on-file searches to 250.

**- Document List -****Notes:**

\* Documents already listed under Registered Charges are not repeated here.

\* Data from Documents with no Date Processed are not included in this Extract.

\* Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.

\* The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.

\* In certain circumstances documents may be capped at 250.

<b>Form Type</b>	<b>Date Received</b>	<b>Date Processed</b>	<b>No. Pages</b>	<b>Effective Date</b>	<b>Document No.</b>
201	08/02/2019	08/02/2019	3	08/02/2019	5EAS92171
201C	Application For Registration as a Proprietary Company				

**- Company Contact Addresses -****- Contact Address for ASIC use only**

**Address:** PO BOX 2442 TEMPLESTOWE LOWER VIC 3107

**Start Date:** 12/02/2019

\*\*\* End of Document \*\*\*

## Risk Data

### Summary

Organisation Status:	Under External Administration And/Or Controller Appointed
Court Actions:	0
Payment Defaults:	0
ASIC Published Notices:	0
Mercantile Enquiries:	0
Critical ASIC Documents:	3
Credit Score:	0
Credit Enquiries - Last 5 Years:	11
Credit Enquiries - Last 12 Months:	10

## Status Changes

### ASIC Entity Status Changes

Change Date	ASIC Changes
03-09-2021	Under External Administration And/Or Controller Appointed (Current status)
08-02-2019	Registered

## Credit Report

### Court Actions

Plaintiff	Action	Action Amount	Action Date	Nature of claim	Proceeding #	Location
-----------	--------	---------------	-------------	-----------------	--------------	----------

There are currently no court actions registered.

Court action information is supplied to CreditorWatch by the courts. We rely on the courts to provide up to date and accurate information and therefore CreditorWatch cannot guarantee that all actions are included. This report includes action information from the Magistrates courts in NSW, QLD, SA, VIC, and WA.

### Payment Defaults

Default Posted By	Document Type	Amount Outstanding	Date Added	Payment Due Date	Part Payment Made	Default Settled
-------------------	---------------	--------------------	------------	------------------	-------------------	-----------------

There are currently no defaults registered.

### ASIC Published Notices

Date	Title
------	-------

There are currently no ASIC Published Notices registered.

## Registered Mercantile Enquiries

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Enquiry Date	Mercantile Agent
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There are no mercantile enquiries registered.

## Credit Score

The score is a statistically based score indicating an entity's credit worthiness. The score ultimately ranks entities based on their riskiness and is designed to assist you in making more informed and consistent credit decisions.

The score is based between 0 and 850 index points with a higher score considered lower risk while lower scores are deemed to be riskier entities. It should be used in partnership with your internal credit procedures and policies.

**Credit Rating Grade:** F

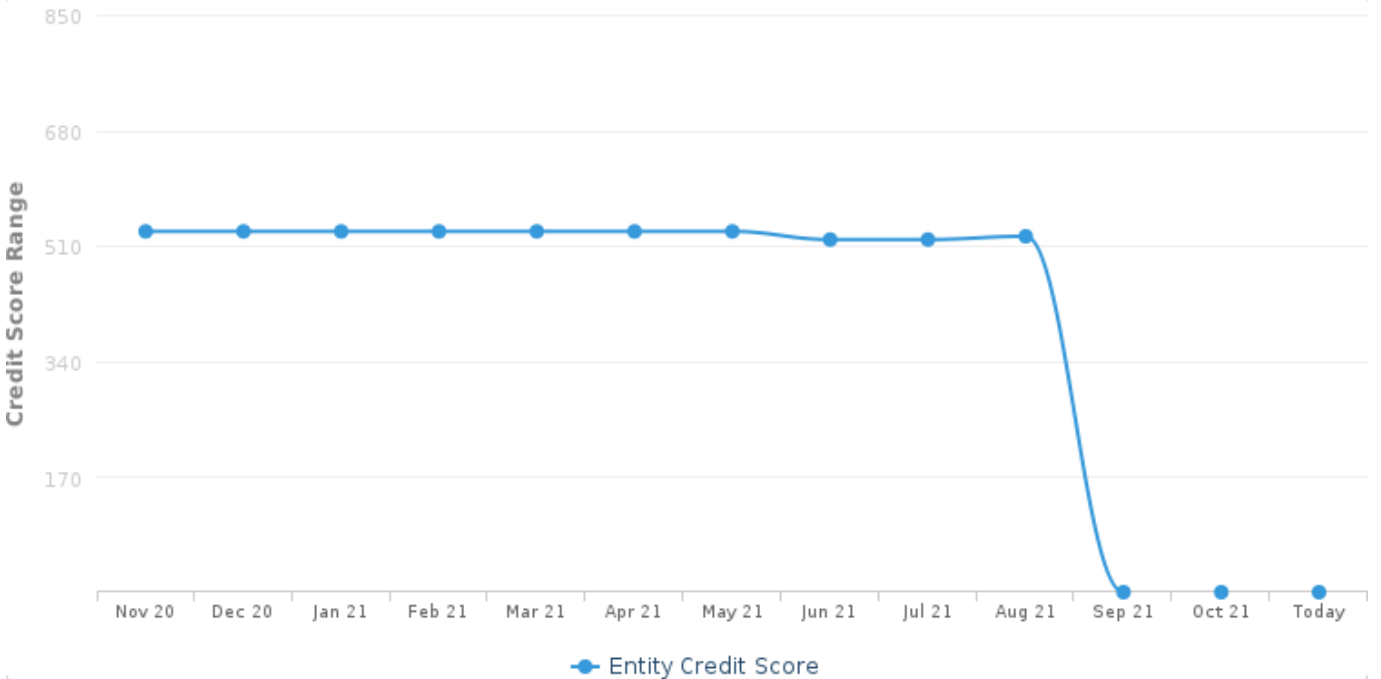
**Risk Level:** Default

**Credit Advice for F rating:** Entity has become insolvent or does not have the ability to trade

Entity has a 100.00% chance of failure within the next 12 months



### Historical Credit Scores



### Recommendations

Credit Rating	Risk Category	Recommendation
A1, A2, A3	Very Low	Entity has a very strong aptitude to meet credit commitments. Extend terms within consideration.
B1, B2	Low	Entity has a strong aptitude to meet credit commitments. Unfavourable economic conditions may lead to a weakened capability to meet financial commitments. Extend terms within consideration.
B3, C1	Neutral	Entity currently has the aptitude to meet credit commitments. Unfavourable business, financial, or economic conditions may impair ability to meet financial commitments. Extend terms and monitor ongoing payment behaviour.
C2	Acceptable	Entity has an adequate aptitude to meet credit commitments. Unfavourable business, financial, or economic conditions will likely impair the capacity or willingness to meet financial commitments. Extend terms, closely monitor ongoing payment behaviour.

### Credit Rating Risk Category Recommendation

C3	Borderline	Entity is vulnerable and the aptitude to meet credit commitments is dependent upon favourable business, financial, and economic conditions. Trade with caution, closely monitor and consider your payment terms.
D1, D2, D3	High	Entity is currently highly vulnerable. COD trading highly recommended.
E	Impaired	Entity is currently highly vulnerable to non-payment and default. Trading eligibility must be considered.
F	Default	Entity has become insolvent or does not have the ability to trade

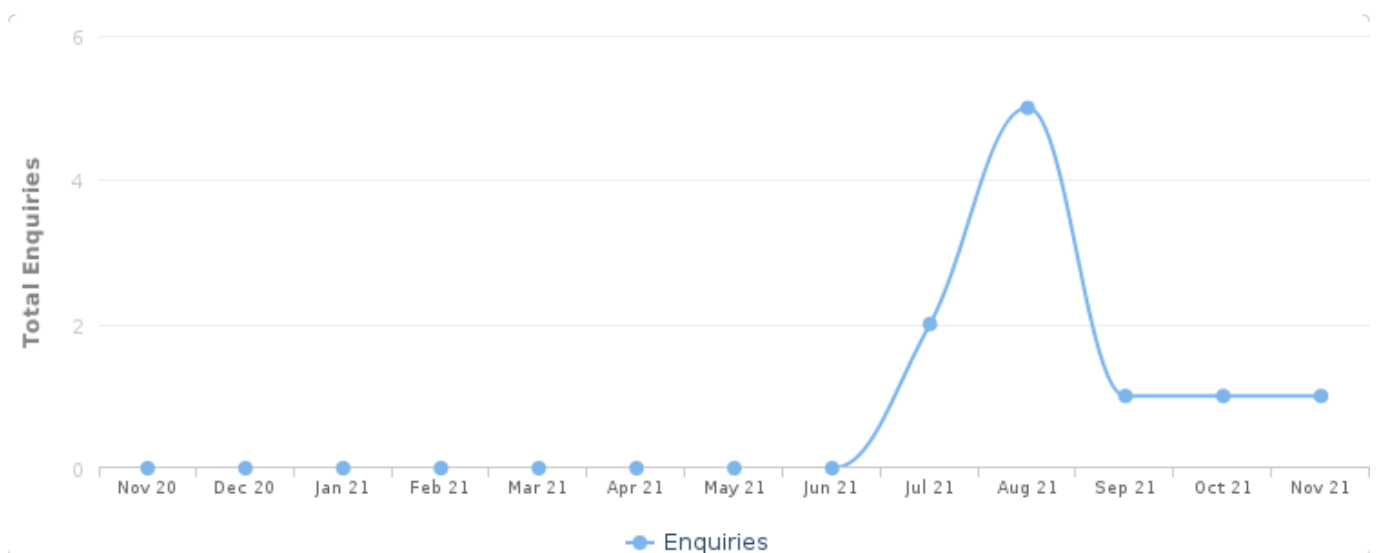
score v.20150123a

Please note that the score and recommendation should be used in partnership with your company's internal credit procedures and policies. The score should not be used as the sole reason in making a decision about the entity.

## Credit Enquiries

Entity has 11 credit enquiries within the last 5 years.  
Entity has 10 credit enquiries within the last 12 months.

### Credit Enquiries (Last 12 Months)



### Ordered by Industry (Last 12 Months)

Industry	Number of Enquiries
Professional, Scientific and Technical Services (M)	10
<b>TOTAL ENQUIRIES</b>	<b>10</b>

### Ordered by Date (Last 12 Months)

Industry	Date
Professional, Scientific and Technical Services (M)	05-11-2021
Professional, Scientific and Technical Services (M)	15-10-2021
Professional, Scientific and Technical Services (M)	06-09-2021

Industry	Date
Professional, Scientific and Technical Services (M)	29-08-2021
Professional, Scientific and Technical Services (M)	19-08-2021
Professional, Scientific and Technical Services (M)	07-08-2021
Professional, Scientific and Technical Services (M)	06-08-2021
Professional, Scientific and Technical Services (M)	04-08-2021
Professional, Scientific and Technical Services (M)	14-07-2021
Professional, Scientific and Technical Services (M)	06-07-2021

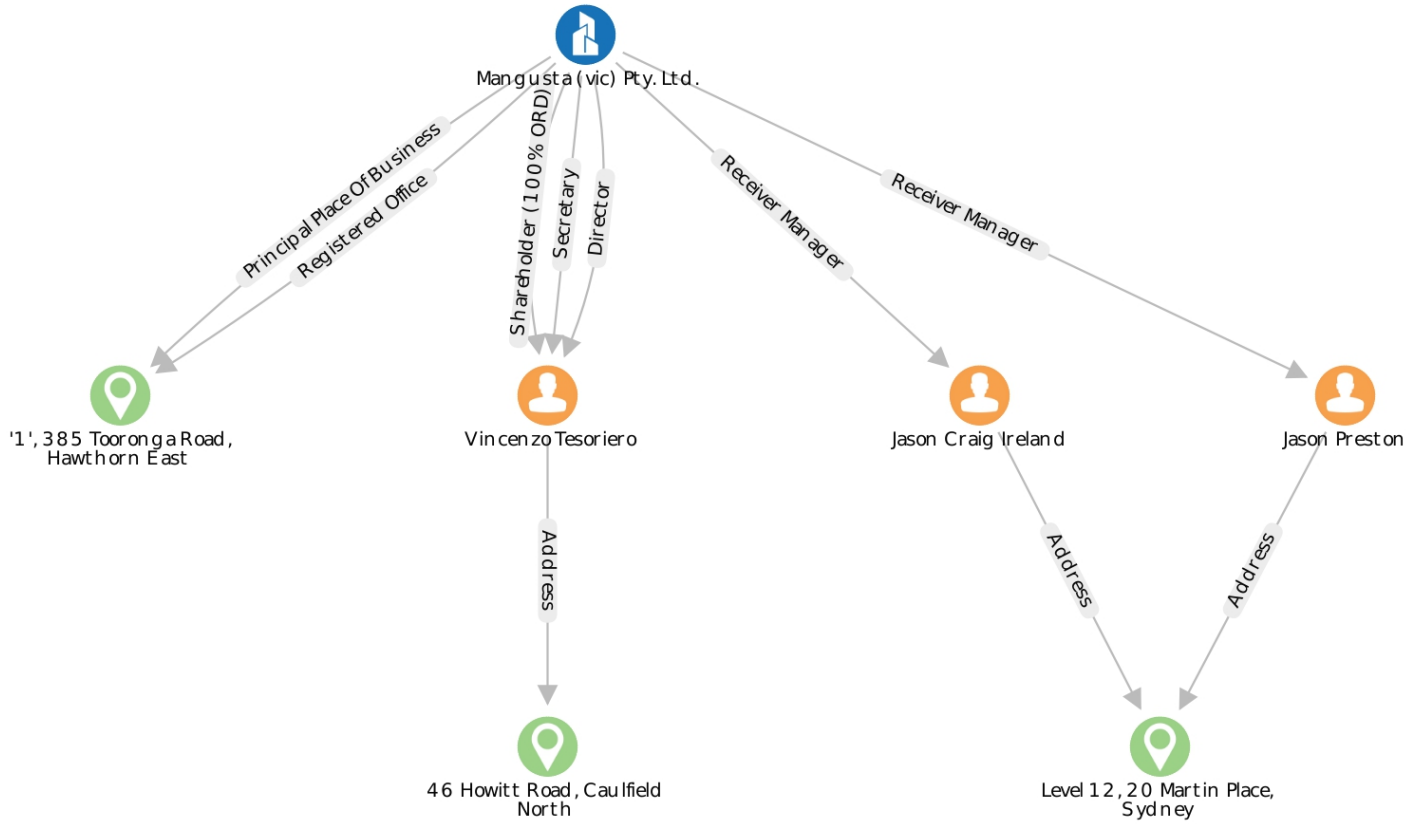


## Historical Timeline

Date	Type	Notes
03-09-2021	Status	The ASIC status was changed to Under External Administration And/Or Controller Appointed
03-09-2021	ASIC Document	#7EBM90302 Form 507 Report on Company Activities And Property From Managing Controller Who Is Also a Receiver/manager #031439135 Form 504 Notification of Appointment of a Receiver And Manager #7EBL12103 Form 505 Notice By External Administrator/controller-Appoint/cease Appointment of Receiver And Manager
08-02-2019	ASIC Document	#5EAS92171 Form 201 Application For Registration as a Proprietary Company

## Disclaimer

CreditorWatch is committed to ensuring that the information provided is accurate and comprehensive however due to data being received from sources not controlled by CreditorWatch we cannot guarantee that it is complete, verified or free of errors. The information should therefore be used in conjunction with your own investigations and you should not rely solely on this information when making credit or financial decisions. To the extent permitted by law, CreditorWatch will not be held responsible for any errors or omissions therein concerning the information sourced and published in its publications, websites, API or emails.



## **Mangusta Trust**

Drawn by:

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Solicitors for:

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This Trust Deed was executed and settled in Queensland.  
No stamp duty is payable on the settlement of this trust.

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This Deed is made on the Deed Date.

**BETWEEN** The Settlor named in Item 3 in the Schedule.

**AND** The Trustee named in Item 4 in the Schedule.

## RECITALS

- A. The Settlor intends to establish a trust to be applied and administered for the benefit of the Beneficiaries.
- B. The Settlor has paid, or will pay, the Settlement Sum to the Trustee and the Trustee has consented to hold the Trust Fund on the terms contained in this Deed.

## OPERATIVE PART:

### 1. DEFINITIONS & INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the context or subject matter requires otherwise:

**Act** means both the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 and, where the context requires, either of them;

**Alternative Appointor** means the person named in Item 9 in the Schedule (if any) and/or any other person who is appointed to or holds that office at the relevant time. The Alternative Appointor may be one or more persons at any time;

**Applicable Law** means the proper law applicable to the Trust being:

- (a) at the Deed Date, the law of the place which is specified in Item 7 in the Schedule; and
- (b) at all other times the proper law of the Trust or the law of another place determined by the Trustee;

**Beneficiaries** means and includes, the Primary Beneficiaries, the Secondary Beneficiaries, the Tertiary Beneficiaries and the Default Beneficiaries, whether named or described in this Deed or appointed or becoming a Beneficiary after the Deed Date, even if:

- (a) any of them may not be in existence or do not come within the meaning of any of those expressions at the Deed Date; and
- (b) in the case of the trustee of any trust or settlement, the trust or settlement has not been formed or is not in existence or does not come within the relevant category of Beneficiary at the Deed Date,

and **Beneficiary** means any of them. The expression excludes all Excluded Persons;

**Capacity** means, in relation to a person, the person acting personally or in another capacity including (without limitation) as any one or more of a member, promoter, shareholder,



director, partner, joint venturer, Appointor, agent, employee, independent contractor, consultant, adviser, trustee, beneficiary, unit holder, lender, supplier, grantor, licensor, franchisor, creator, owner or part owner or any other capacity;

**Child** includes a natural child, stepchild, foster child or adopted child and **Children** will be interpreted accordingly;

**Claim** means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

**Deed** means this Deed and includes the Schedule;

**Deed Date** means the date specified in Item 1 in the Schedule;

**Default Beneficiary** means each person in the class of Default Beneficiary at the relevant time. The initial members of that class are named or described in Item 13 in the Schedule;

**Excluded Person** means the following (even if any of them is named or would otherwise be or be included in a class of Beneficiary):

- (a) each person named or described in Item 14 in the Schedule or nominated by the Trustee to be an Excluded Person;
- (b) the Settlor and any Child of the Settlor who is at the relevant time under the age of 18 years;
- (c) any corporation in which a person in (a) or (b) above is a director or member or in which any of them has a beneficial interest in any share;
- (d) any trust in which a person in (a) or (b) above has a beneficial interest whether vested, contingent or otherwise; and/or
- (e) any Foreign Person;

**Foreign Person** means:

- (a) a foreign person for the purposes of Chapter 4 of the Duties Act 2001 (Qld);
- (b) a foreign person or a foreign trust for the purposes of Chapter 2A of the Duties Act 1997 (NSW);
- (c) a foreign natural person, a foreign corporation or a foreign trust as defined in section 3 of the Duties Act 2000 (Vic);
- (d) a person holding a controlling interest in a foreign corporation or a substantial interest in a foreign trust for the purposes of sections 3A and 3B of the Duties Act 2000 (Vic) respectively;
- (e) an absentee person as defined in section 3 of the Land Tax Act 2005 (Vic);
- (f) an absentee person holding an absentee controlling interest in a corporation for the purposes of section 3A of the Land Tax Act 2005 (Vic) (unless an exemption under section 3B of that Act applies);

- (g) any potential Beneficiary of this Trust who would or might cause this Trust to be or become a foreign person or a foreign trust for the purposes of any of the above provisions;
- (h) any potential Beneficiary of this Trust who would or might cause this Trust to be or become a foreign person or a foreign trust for the purposes of any other statute,

and who, by being a Beneficiary, would or might cause this Trust to be assessed to additional or increased duty or land tax (in excess of any amount which the Trust would be required to pay had the person, corporation or trust not been so classified) in respect of the acquisition or holding of any direct or indirect interest in real property to which any of the provisions above apply, but only while:

- (i) the foreign person, corporation or trust continues to be so classified under the relevant provision; and/or
- (j) the Trust acquires or holds any direct or indirect interest in real property to which any of the provisions above apply;

**Income** means at any relevant time:

- (a) the net income of the Trust as defined in section 95 of the Act excluding Notional Amounts; or
- (b) the income of the Trust determined by the Trustee using any other method selected by the Trustee which (for the avoidance of doubt) may include gross income or a determination based on ordinary concepts of trust income or on generally accepted accounting principles or on any other method or any combination of methods determined by the Trustee and in any case, the Trustee may, at its discretion, include in or exclude Notional Amounts;

**Notional Amounts** means:

- (a) notional amounts or credits which are included as income for the purposes of the Act but not actually paid or payable to the Trustee;
- (b) income or credits in the nature of income (including, without limitation, tax off-sets or franking off-sets);

**Obligation** means any legal, equitable, contractual, statutory or other obligation, restriction, agreement, contract, covenant, commitment, debt, duty, undertaking, trust, claim, demand, guarantee, indemnity or liability;

**Outgoings** means all costs, expenses and disbursements, commissions, fees, taxes including land tax and income tax, amounts payable by the Trustee and other proper outgoings attributable to the administration of the Trust and the investment of the Trust Fund and includes (without limitation):

- (a) any tax or other impost imposed on or payable in relation to Income accumulated by the Trustee under this Deed and whether imposed under section 99A of the Act or otherwise;
- (b) the remuneration and charges of the Trustee (if any);
- (c) expenses associated with the investment and re-investment of any part of the Trust Fund; and/or

(d) expenses incurred in the collection of Income and other sums;

**Personal Interest** means an interest of a person being, or arising out of, or which could arise out of any one or any combination of more than one of:

- (a) a position as Trustee or Beneficiary;
- (b) any office, position or employment held in or relating to the Trust;
- (c) any office, position or employment held in or relating to any person, company, body corporate, association or partnership;
- (d) membership of, or an interest in, or relating to, any company, trust, body corporate, association or partnership;
- (e) any relationship as debtor or creditor to any person, trust, company, body corporate, association or partnership;
- (f) any Transaction to which any person is a party or is in any way interested;
- (g) without limitation, any other interest or duty to another person which conflicts with, or may possibly conflict with, another Obligation,

regardless of whether the relevant person is acting personally or in another Capacity and/or whether the person is acting in more than one Capacity at a relevant time;

**Primary Beneficiary** means each person in the class of Primary Beneficiary at the relevant time. The initial members of that class are named or described in Item 10 in the Schedule;

**Appointor** means the person named or described in Item 8 in the Schedule and/or any other person who is appointed to or holds that office at the relevant time. The Appointor may be one or more persons at any time. The expression includes any person appointed as a Appointor in respect of a part of the Trust Fund;

**Property** means property (including statutory Rights and/or entitlements) of any description wherever situated and whether:

- (a) tangible or intangible;
- (b) choses in action;
- (c) real or personal;
- (d) movable or immovable;
- (e) reversionary or deferred;
- (f) legal or equitable;
- (g) present or future;
- (h) intellectual or otherwise;
- (i) contingent or otherwise; or
- (j) whole or partial;

**Right** includes a legal, equitable, contractual, statutory or other right, power, provision, authority, benefit, privilege, remedy, trust, entitlement, discretion or cause of action;

**Schedule** means the Schedule included in this Deed;

**Secondary Beneficiary** means each person in the class of Secondary Beneficiary at the relevant time. The initial members of that class are named or described in Item 11 in the Schedule;

**Sell** or **Sold** include sell, agree to sell, transfer, lease, assign, grant options and/or any other form of disposing of, or creating an interest in, the thing being considered whether or not consideration passes or is given, and **Buy** or **Purchase** will be interpreted correspondingly;

**Set Aside** or **Setting Aside** in relation to a Beneficiary includes placing sums to the credit of that Beneficiary;

**Settlement Sum** means the amount specified in Item 5 in the Schedule;

**Spouse**, in relation to another person, includes:

- (a) a person legally married to the other person;
- (b) a person who, at the relevant time, lives in a relationship with the other person on a bona fide domestic basis even though not legally married to that person; and/or
- (c) a widow or widower (however described) having been in any such relationship described in (a) or (b);

**Term** means:

- (a) where the Applicable Law excludes the operation of the rule against perpetuities, the period commencing on the Deed Date and ending on a date determined by the Trustee; or
- (b) where the Applicable Law does not exclude the operation of the rule against perpetuities, the period commencing on the Deed Date and ending on the first to occur of:
  - (i) the date that is 80 calendar years after the Deed Date; or
  - (ii) the date calculated by reference to the Applicable Law relating to perpetuities;

**Tertiary Beneficiary** means each person in the class of Tertiary Beneficiary at the relevant time. The initial members of that class are named or described in Item 12 in the Schedule;

**Transaction** includes, but is not limited to, any contract, agreement, arrangement, Obligation, understanding or dealing and whether:

- (a) formal or informal;
- (b) written or oral;
- (c) legal or equitable; or
- (d) enforceable or not;

**Trust** means the Trust established by this Deed;

**Trustee** means the person named in Item 4 in the Schedule and/or any other person who:

- (a) is appointed as an addition to or replacement or substitute for that person; or
- (b) holds that office at the relevant time,

and the Trustee may be one or more persons at any time. The expression includes any person appointed as a Trustee in respect of a part of the Trust Fund;

**Trust Fund** means:

- (a) the Settlement Sum;
- (b) any further or additional Property which any person may donate to, Sell to or vest in the Trustee to be held under this Trust;
- (c) all accretions and additions to the Trust Fund and any other Property held by the Trustee upon and subject to the trusts contained in this Deed;
- (d) any Property acquired by the Trustee with moneys of the Trust or otherwise for the purposes of the Trust;

**Vesting Day** means the last day of the Term or any other date appointed by the Trustee.

## 1.2 Interpretation

- (a) In the interpretation of this Deed, unless the context or subject matter requires otherwise, references to:
  - (i) **singular** words include the **plural** and vice versa;
  - (ii) any **gender** include every gender;
  - (iii) **persons** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, charities, associations, partnerships, government authorities, and other legal entities. It will include references to that person's estate, personal representatives, executors, administrators, substitutes, successors and assigns;
  - (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and/or **signing** mean due execution of a document and include signing by an agent or attorney or representative;
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, re-enacting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;

- (ix) an **agreement** or **document** (including this Deed) mean that agreement or document as varied, amended, novated or supplemented and include all recitals, schedules, appendices and exhibits to it;
  - (x) **clauses** or **schedules** are references to the clauses or schedules of this Deed.
- (b) The following rules apply, unless the context or subject matter requires otherwise:
- (i) **headings** and the **table of contents** are used for convenience only and must be disregarded in the interpretation of this Deed;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning.

## 2. CREATION OF TRUST

### 2.1 Establishment of Trust

The Settlor and the Trustee acknowledge that contemporaneously with the execution of this Deed, the Settlor has paid the Settlement Sum to the Trustee to be held on trust in accordance with this Deed.

### 2.2 Trustee

The Trustee accepts the appointment as trustee and covenants and agrees to hold the Trust Fund upon the trusts, and subject to, the Rights and Obligations in this Deed. The Trustee may accept the trusteeship personally or through an attorney.

### 2.3 Settlement Sum

The Trustee acknowledges that it has received or will receive the Settlement Sum from the Settlor.

### 2.4 Place of settlement

The Trust is established and settled at the place specified in Item 2 in the Schedule.

### 2.5 Trust name

The Trust will be known by the name in Item 6 in the Schedule.

## 3. INCOME PROVISIONS

### 3.1 Determine Income

The Trustee must determine the Income and will collect, receive and get in all Income from the investments of the Trust.

### 3.2 Classification of Income

- (a) The Trustee may classify any amount derived, received, or deemed to have been or treated as received, by the Trustee, as Income and may classify Income into one or more classes or partly as Income and partly as capital without limitation, as the Trustee decides, and may account separately for each class of Income or part of it.

- (b) Without limiting clause 3.2(a), the Trustee may identify and account separately for any amount derived, received or deemed to have been or treated as received by the Trustee or any part of the Income in any of the following (or any other) classes:
- (i) capital gains or profits including notional capital gains or profits;
  - (ii) franked or unfranked distributions;
  - (iii) distributable Income;
  - (iv) Australian or foreign source Income;
  - (v) Income to which a foreign tax or other credit attaches;
  - (vi) Income from primary production;
  - (vii) exempt Income or Income which is subject to differing rates of tax or tax treatment;
  - (viii) interest;
  - (ix) royalties;
  - (x) rents;
  - (xi) notional amounts received or treated as received by the Trustee; or
  - (xii) Income which has or gives rise to any other separately identifiable taxation consequence or benefit.

### **3.3 Income retains character**

Any amount which is characterised by the Trustee under clause 3.2, retains its character in the class ascribed to it by the Trustee whether or not it is:

- (a) accumulated by the Trustee or paid, applied or Set Aside for the benefit of a Beneficiary;
- (b) attributed with a special status or character under the Act; and/or
- (c) mixed, blended or joined with any other amount.

### **3.4 Trustee makes determinations**

- (a) The Trustee may determine, in relation to all, or any part of, the Income:
  - (i) to pay, apply or Set Aside any amount for one or more of the Beneficiaries;
  - (ii) to accumulate any amount of Income.
- (b) The Trustee may make a determination under clause 3.4(a) in relation to any particular class or classes of Income and may pay, apply or Set Aside any amounts of Income of a class to any one or more of the Beneficiaries to the exclusion of any other Beneficiary or Beneficiaries or in any amount between the Beneficiaries in the proportions and in the manner as the Trustee decides.

### **3.5 Default distribution**

- (a) If:
- (i) the Trustee has not exercised the discretion in clause 3.4(a); or
  - (ii) the whole or any part of the income of the Trust (however described or defined), has not been accumulated or distributed or made the subject of a determination under clause 3.4,

on or before the 30th day of June in any year or any later date permitted by the Act, the Commissioner of Taxation or by law for the distribution of taxable income of a trust, then the Trustee is deemed to have made a determination to distribute and Set Aside any Income remaining to, and is deemed to hold that Income on trust absolutely for, the Default Beneficiaries as at 12.00 midnight on that day and, if more than one, in equal shares.

- (b) If and only if there are no Default Beneficiaries alive or in existence at 12.00 midnight on the 30th day of June in any year (or the later date referred to in clause 3.5(a)), the Trustee will be deemed to have accumulated the remaining Income referred to in clause 3.5(a).

### **3.6 Interim distributions**

The Trustee may make one or more distributions of Income at any time and during any period as the Trustee decides.

### **3.7 Rules for accumulation/determination**

In making any determination under clause 3.4:

- (a) the determination of the Trustee to pay, apply or Set Aside Income will be irrevocable and the Income will be dealt with as required by the determination;
- (b) if the aggregate amount of determinations made under clause 3.4 exceeds the Income for the relevant period, the amount of the excess will be deducted from any amount which the Trustee has determined to accumulate. Only the balance of the amount determined to be accumulated (if any) will be accumulated;
- (c) if the amount of any excess is greater than any amount to be accumulated, then the Trustee will be deemed to have applied an amount of the capital of the Trust Fund which is equal to that excess.

### **3.8 Beneficiaries Rights**

Each of the Beneficiaries in whose favour the Trustee pays, applies or Sets Aside any Income (or is deemed to do so) have an immediate and indefeasible vested interest in that Income and is presently entitled to the relevant share of the Income.

### **3.9 Amounts Set Aside**

Any amount Set Aside or held by the Trustee on behalf of a Beneficiary under this Deed, will no longer form part of the Trust Fund, but will be held by the Trustee as a separate trust fund upon trust for the relevant Beneficiary absolutely. The Trustee has the Right (but not the Obligation), pending payment to the Beneficiary, to invest or apply that amount for the benefit



of the Beneficiary or deal with that fund, or any resulting Income, in any manner provided for in this Deed in relation to the Trust Fund.

### **3.10 Restricted disposition**

Regardless of any other provision in this Deed, the Trustee must not make any disposition of Income (whether by distribution, payment, Setting Aside or otherwise) to or in favour of any Beneficiary if the disposition would breach, or be void by the application of, the rule against perpetuities or to or in favour of an Excluded Person.

## **4. CAPITAL PROVISIONS**

### **4.1 Classification of capital**

The Trustee may classify any amount derived, received, or deemed to have been or treated as received by the Trustee, as capital and may classify capital into one or more classes of capital without limitation, as the Trustee decides, and may account separately for each class of capital or part of it.

### **4.2 Discretion on distribution**

At any time prior to the Vesting Day and upon the termination and vesting of the Trust, the Trustee has the Right to pay, apply or Set Aside the whole, or any part, of the capital of the Trust Fund to, or for the benefit of, any one or more of the Beneficiaries to the exclusion of any other Beneficiary or Beneficiaries or in any amount between the Beneficiaries in the proportions and in the manner as the Trustee decides.

### **4.3 Default distribution**

- (a) If, on the Vesting Day, there remains any capital of the Trust Fund which has not been distributed or made the subject of a determination under clause 4.2, then the Trustee is deemed to have made a determination to pay, apply or Set Aside any capital remaining to and is deemed to hold that capital on trust absolutely for the Default Beneficiaries then living or in existence and, if more than one, in equal shares.
- (b) If and only if there are no Default Beneficiaries alive or in existence at 12.00 midnight on the Vesting Day, the Trustee will be deemed to have made a determination to pay, apply or Set Aside any capital remaining to and is deemed to hold that capital on trust absolutely for the Primary Beneficiaries then living or in existence and, if more than one, in equal shares;
- (c) If and only if there are no Primary Beneficiaries alive or in existence at 12.00 midnight on the Vesting Day, the Trustee will be deemed to have made a determination to pay, apply or Set Aside any capital remaining to and is deemed to hold that capital on trust absolutely for:
  - (i) the Children, then living or in existence, of the Primary Beneficiaries and, if more than one, in equal shares; or
  - (ii) if none are living, the Children, then living or in existence, of the Children of the Primary Beneficiaries and, if more than one, in equal shares; or
  - (iii) if none are living, the persons entitled by the Applicable Law to the property of the last Primary Beneficiary to die and, if more than one, in the shares determined by the Applicable Law.

#### **4.4 Beneficiaries Rights**

Each of the Beneficiaries in whose favour the Trustee pays, applies or Sets Aside any capital or is deemed to do so have an immediate and indefeasible vested interest in that capital and is absolutely entitled to the relevant share of the capital.

#### **4.5 Transfer in specie**

The Trustee has the Right to discharge in whole, or part, any Obligation to pay, apply or Set Aside the capital of the Trust Fund, or Income, to a Beneficiary by transferring, in specie, any Property of the Trust to the Beneficiary. When that is done:

- (a) the Trustee may determine the value of any Property to be transferred; and
- (b) without limiting any of the Trustee's Rights, the Trustee may make any appropriation of the Property of the Trust in its existing condition or state of investment, without obtaining any consent or a valuation; but
- (c) without any Obligation on the part of the Trustee to do so or to Sell, call in or convert any part of the Trust Fund to do so.

#### **4.6 Transfer to other entity**

- (a) The Trustee has the Right, with or without consideration, to pay, transfer, assign or dispose of the whole or any part of the capital of the Trust Fund:
  - (i) to the trustees of any trust or settlement in which any Beneficiary has a beneficial interest, to be held by the other trustees on the trusts in the relevant trust or settlement; or
  - (ii) to any company or corporation of which any Beneficiary is a director, or in which any Beneficiary has a beneficial interest in any share.
- (b) The Trustee has the Right, with or without consideration, to declare that the whole or any part of the capital of the Trust Fund is held on a separate or other trust or settlement in which any Beneficiary has a beneficial interest, to be held on the trusts in that separate or other trust or settlement.
- (c) A Beneficiary's beneficial interest referred to in this clause may be absolute, contingent, presumptive or prospective.
- (d) The Trustee's Right under clause 4.6(a) or (b) must not be exercised if, as a result, any Excluded Person will or may become entitled to or acquire a beneficial interest in any part of the Trust Fund.
- (e) Any part of the Trust Fund dealt with under clause 4.6(a) or (b), will be free from and discharged from the trusts, Rights and Obligations of this Trust.

#### **4.7 Restricted disposition**

Regardless of any other provision in this Deed, the Trustee must not make any disposition or transfer of capital of the Trust Fund (whether by distribution, payment, Setting Aside or otherwise) to or in favour or for the benefit of any Beneficiary if the disposition would breach, or be void by the application of, the rule against perpetuities or to or in favour of an Excluded Person.

## **5. ACCOUNTING**

### **5.1 Trustee's discretion**

- (a) The Trustee may determine:
- (i) whether any amount derived, received or deemed to have been or treated as received by the Trust, or to which it is entitled, or the increase in value of any Property which accrues or to which it becomes entitled, is to be treated as Income or capital and to determine the applicable accounting period or procedures for that amount; and
  - (ii) whether any loss or outgoing or any charge or provision of any kind is to be treated as being on income or capital account and to determine the applicable accounting period or procedures for that amount.
- (b) The Trustee will, as far as it is reasonably possible, exercise this discretion in a manner determined to minimise the Trustee's and the Beneficiaries' liability to income tax and any other taxes.

### **5.2 Accumulations**

The Trustee may deal with and treat any Income accumulated by the Trust as Income and, if so, that Income will retain its character as income of the Trust. Otherwise, the amount accumulated will be dealt with as an accretion to the capital of the Trust Fund.

### **5.3 Set off losses**

- (a) The Trustee may determine the category or class of any amount derived, received or deemed to have been or treated as received by the Trustee against which any revenue or capital losses are set off.
- (b) If the Trust incurs a loss which is classified by the Trustee as a revenue loss, the Trustee may in any period:
- (i) carry forward and set off the loss against future Income; or
  - (ii) set off part of the loss against future Income and carry forward part of the loss; or
  - (iii) carry forward all of the loss without setting it off against available Income;
  - (iv) elect not to recoup losses; or
  - (v) recoup the loss from the capital of the Trust Fund.
- (c) If the Trust incurs a loss which is classified by the Trustee as a capital loss, the Trustee may:
- (i) carry forward and set off the loss against future capital gains until the loss is fully recouped and may apply or allocate all or any part of any such gain to all or any part of such loss at the Trustee's discretion; or
  - (ii) elect not to recoup losses.

#### **5.4 Classification of Outgoings**

- (a) The Trustee may classify Outgoings into one or more classes without limitation, as the Trustee decides, and may:
- (i) determine that Outgoings are to be classified and allocated against Income or capital or partly against Income and partly against capital;
  - (ii) determine that Outgoings are to be classified and allocated against a class of Income or capital or partly against one class and partly against another or others; and
  - (iii) account separately for each class or allocation of Outgoings.
- (b) The Trustee will pay and discharge Outgoings allocated to Income account out of the Income of the Trust and Outgoings allocated to capital account out of the capital of the Trust. If the Income is insufficient to discharge the Outgoings charged to Income account, then those Outgoings may be charged against the capital of the Trust Fund to the extent required to make up the deficiency.

#### **5.5 Remuneration of Trustee**

- (a) If the Trustee is a company authorised by the laws of any state or territory of Australia to take, in its own name, a grant of probate of the will of a deceased person, the Trustee may charge and be paid out of the Trust Fund and/or the Income, remuneration in accordance with its usual scale of fees. The Trustee may also act as banker and perform any service on behalf of the Trust Fund, and on the same terms as would be made with a customer of that company without accounting for any resulting profit.
- (b) If the Trustee is not a company referred to in clause 5.5(a), the Trustee may charge and be paid out of the Trust Fund and/or the Income, any remuneration which the Trustee considers reasonable.
- (c) If the Trustee is a Solicitor or Accountant the Trustee may elect to charge and be paid out of the Trust Fund and/or the Income, any usual professional and other charges for all business transacted, time spent and acts done in connection with this Trust.

### **6. PAYMENTS**

#### **6.1 Manner of payment**

- (a) Any part of the Trust Fund or the Income dealt with under this Deed, may be paid, applied or Set Aside as follows:
- (i) for a Beneficiary who is not under a legal disability:
    - A. by paying that amount to the Beneficiary or to any person on behalf of the Beneficiary, as the Beneficiary authorises or directs; or
    - B. by Setting Aside that amount to a separate account in the books of the Trust in the name of the Beneficiary;
  - (ii) for a Beneficiary who is a minor or otherwise under a legal disability:

- A. by payment to an account with a bank or financial institution in the name of the Beneficiary or in the name of a person, who may be the Trustee, operating that account on behalf of, or in trust for, the Beneficiary;
  - B. by payment to a parent or guardian of the Beneficiary to be applied for the benefit of the Beneficiary;
  - C. by payment to any person, to be applied directly for, or towards the benefit of, the Beneficiary;
  - D. by Setting Aside an amount to a separate account in the books of the Trust in the name of the Beneficiary; or
  - E. by paying an amount to any person who is by law, entitled to receive moneys on behalf of, or to administer the Property or affairs of, the Beneficiary.
- (b) Any payment may be made to a Beneficiary not being a natural person, even though the Beneficiary may have a liquidator (including a provisional liquidator), receiver, manager, receiver and manager or administrator appointed to it, or in respect of its assets.
- (c) Any payment may be made or paid, applied or Set Aside for the maintenance, education or advancement of the relevant Beneficiary.

## **6.2 Effective discharge**

The payment, application or Setting Aside of any amount to, or for, a Beneficiary will be effective and constitute a full and final discharge to the Trustee without a requirement for the Trustee to obtain a receipt. Where moneys are paid, applied or Set Aside, the Trustee is not bound to see to their application. Where moneys are invested on behalf of a Beneficiary, that investment constitutes a discharge to the Trustee.

## **6.3 Payment of tax**

Where the Trustee is required by law to pay tax in relation to:

- (a) Income or capital paid, applied or Set Aside, or
- (b) any entitlement or benefit of a Beneficiary in, or to, Income or the capital of the Trust Fund or moneys held by the Trustee on trust for the Beneficiary,

the Trustee may pay the tax out of any amount to which the Beneficiary is entitled, or deduct tax out of moneys which come into the hands of the Trustee, or over which the Trustee has control, and to which the Beneficiary is, or becomes, entitled. Where the Trustee is liable to pay tax on an accumulation of Income, it may pay the tax out of that Income, or from the capital of the Trust as the Trustee decides.

## **6.4 Set off**

Regardless of any other provision in this Deed, the Trustee may, at its discretion, retain any amounts which are payable to or for the benefit of a Beneficiary and apply or set off those amounts against any amounts owing by the Beneficiary to the Trustee on any account.

## **7. ADMINISTRATION**

### **7.1 Records**

The Trustee must keep proper records using generally accepted accounting principles:

- (a) recording the Property of the Trust and the Income derived by the Trust;
- (b) that enable true and fair accounts of the Trust to be prepared.

### **7.2 No auditor**

The Trustee is not obliged to appoint an auditor, or to cause the records of the Trust to be audited.

## **8. TERMINATION OF TRUST**

### **8.1 On Vesting Day**

- (a) The Trust will terminate, and the Trust Fund will vest absolutely, on the Vesting Day.
- (b) The Trustee may appoint any other date to be the Vesting Day in substitution for the last day of the Term. The Trustee must not appoint any other date as the Vesting Day if it would infringe the rule against perpetuities.
- (c) If the Trustee appoints any date under clause 8.1(b), that date will be the last day of the Term and the Trust will terminate and vest absolutely on that date.

### **8.2 After Vesting Day**

Regardless of anything else in this Deed, all Rights or Obligations created by and all dispositions under this Deed, which would or might vest, take effect or be exercisable after the Vesting Day, will vest and take effect on, and be exercisable only until, the Vesting Day.

## **9. TRUSTEES PERSONAL INTERESTS**

### **9.1 No breach**

A Trustee may have and hold any Personal Interest:

- (a) without being in breach of any Obligation, including, without limitation, any breach of trust; and
- (b) without the consent or approval of any Beneficiary or Beneficiaries or any other person.

### **9.2 Trustees contracts with itself**

For the avoidance of doubt, the Trustee may be a party to or interested in any Transaction with any other person (including the Trustee acting in its personal or in any other Capacity), and may, without limitation:

- (a) contract with and/or exercise any of the Trustee's Rights in favour of the Trustee acting in any Capacity;

- (b) Purchase any Property from the Trustee acting in any Capacity;
- (c) Sell the whole or any part of the Trust Fund to the Trustee acting in any Capacity;
- (d) borrow any money from the Trustee acting in any Capacity;
- (e) lend any money forming part of the Trust Fund to the Trustee acting in any Capacity; or
- (f) otherwise deal with the Trust Fund under any Transaction, to which it is a party or is interested in more than one Capacity.

### **9.3 Transaction not avoided**

A Transaction will not be vitiated, avoided or voidable, merely because a Trustee has a Personal Interest in it.

### **9.4 No liability**

No person (including the Trustee) is liable to:

- (a) account for any profit or benefit received by them;
- (b) hold any Property on any trust for any Beneficiary; or
- (c) compensate the Trust or any Beneficiary for any loss suffered,

merely because a Trustee has a Personal Interest.

### **9.5 Corporate/Multiple Trustees**

- (a) If the Trustee is a company, this clause will apply for the benefit of each director and shareholder of the company as though the directors and shareholders of the Trustee were Trustees.
- (b) Where there is more than one Trustee, this clause will apply for the benefit of each of them severally with each other Trustee.
- (c) This clause will also apply for the benefit of each Spouse, Child or relative of each Trustee and/or each director or shareholder of a corporate Trustee as though those persons were Trustees.

## **10. ORAL DECLARATIONS**

- (a) Regardless of anything to the contrary in this Deed, any Right vested in the Trustee, Appointor or any other person may, at the discretion of the person exercising it, be exercised by making an oral declaration of the manner in which it is exercised.
- (b) A statutory declaration sworn by a person in whose presence the Right is exercised, declaring that the Right has been exercised by oral declaration in his or her presence and setting out the terms of that oral declaration, will be conclusive evidence of the exercise of that Right.
- (c) Where a Right is vested in a company, it may be exercised by oral declaration by any officer of the company.

## **11. EXERCISE OF RIGHTS**

- (a) If and when the Trustee, or the Appointor, exercises any Right under this Deed:
- (i) the Right may be exercised by deed or by resolution or in any other manner determined by the person exercising the Right or authorised by this Deed;
  - (ii) unless otherwise expressed in this Deed, the Right is exercisable absolutely and with unfettered discretion;
  - (iii) neither the Trustee nor the Appointor will be liable for any loss or damage occurring as a result of its exercising or refusing or failing to exercise any Right;
  - (iv) neither the Trustee nor the Appointor will be liable for any breach of trust, except to the extent that the breach results from its own wilful default or neglect; and
  - (v) neither the Trustee nor the Appointor will be personally liable for the consequences of any error or omission, whether of law or of fact, or forgetfulness on the part of the Trustee, the Appointor or their legal or other advisers or generally.
- (b) Neither the Trustee nor the Appointor will be obliged to exercise or refrain from the exercise of any Right, unless this Deed or any Applicable Law requires it.
- (c) Nothing in this Deed will be read in a way that restricts or limits any provision in this clause or vice versa.

## **12. WHO EXERCISES APPOINTOR'S RIGHTS**

### **12.1 On the demise of a sole Appointor**

If a sole Appointor, being a natural person:

- (a) dies;
- (b) loses physical or mental capacity and it becomes necessary to have his or her personal estate administered or dealt with by any other person due to illness, infirmity or injury,

and there is no Alternative Appointor, the Appointor's legal personal representative has the Right to appoint any other person or persons to be the Appointor.

### **12.2 Appointor appointed**

In exercising the Right to appoint a Appointor, the Appointor's legal personal representative:

- (a) must appoint any person or persons nominated by the will of the deceased Appointor on the death of a sole Appointor; or
- (b) must appoint any person or persons nominated in writing by the Appointor in any other case in clause 12.1; and
- (c) if none is nominated, the Appointor's legal personal representative may appoint himself or herself or any other person to be the Appointor.



### **12.3 More than one Appointor**

Where more than one person holds the office of Appointor, any Right may only be exercised by all holders of that office jointly or any of them severally but only with the prior authority of a unanimous resolution of all of them.

### **13. WHO EXERCISES TRUSTEE'S RIGHTS**

Where more than one person holds the office of Trustee, any Right may only be exercised by all holders of that office jointly or any of them severally but only with the prior authority of a unanimous resolution of all of them.

### **14. NO LIMIT ON RIGHTS**

Each of the Trustee's Rights or Obligations, may be exercised or performed:

- (a) individually or in support of or in conjunction with any one or more of the Trustee's other Rights or Obligations respectively; and
- (b) by the Trustee alone or jointly and/or severally together with any other person or persons; and
- (c) at any time, and may be exercised or performed as many times as the Trustee respectively decides.

### **15. EXERCISE BY COMPANY**

Where any person referred to in this Deed is a corporation or company, any of that person's Rights or Obligations may be exercised by:

- (a) a resolution of its directors; or
- (b) any one or more officers to whom that exercise is delegated by the directors.

### **16. INDEMNITY**

- (a) Neither the Trustee nor any other person is entitled to any indemnity, reimbursement or recompense from the Settlor or any Beneficiary.
- (b) The Trustee and, where the Trustee is a company, its officers, will be entitled to be indemnified out of the Trust Fund against all liabilities incurred in the execution or attempted execution of or as a consequence of the failure to execute any Rights or Obligations in relation to the Trust, and/or all Claims relating to any matter or thing done, or omitted to be done, concerning the Trust Fund or incurred by virtue of being a Trustee or a director of a Trustee and notwithstanding any Personal Interest.
- (c) The Trustee does not have any Right to enter into any Transaction that binds or purports to bind or affect any Beneficiary personally, or to call upon any Beneficiary for the payment of any amount. Any person having any Claim against the Trustee may only have recourse against the Trust Fund for the payment of any Obligation or Claim so that neither the Trustee nor any Beneficiary, present or future, will be personally liable.

- (d) The indemnity in this clause is in addition to any Right of indemnity implied by law and any other Right arising by operation of law (including any lien).

## **17. TRUSTEE NOT LIABLE**

Without prejudice to any indemnity given to the Trustee:

- (a) the Trustee is not under any Obligation to appear in, prosecute or defend any action or suit in relation to the Trust Fund;
- (b) the Trustee will not incur any Obligation in relation to any action taken or any failure to act by the Trustee in reliance upon any instrument believed by the Trustee to be genuine and/or to have been passed or signed by the proper parties;
- (c) the Trustee will not incur any Obligation to anyone in relation to any failure to perform or to do any act or thing which the Trustee is hindered, prevented or forbidden from doing or performing;
- (d) the Trustee will not be liable to account to any Beneficiary or otherwise for Outgoings paid by the Trustee in good faith to any person or otherwise charged upon the Trust Fund or upon:
- (i) this Deed; or
  - (ii) any Transaction under this Deed,
- regardless of whether the payment ought or need not have been made;
- (e) the Trustee is not responsible for any misconduct, mistake, oversight or judgment, forgetfulness or want of prudence by any attorney, banker, receiver, manager, legal practitioner or any other person acting as agent or adviser of or to the Trustee.

## **18. AMENDMENT OF DEED**

### **18.1 By Trustee**

- (a) The Trustee may (revocably or irrevocably):
- (i) revoke, add to, release, delete, resettle or vary all or any of the trusts or provisions in this Deed (including this clause 18);
  - (ii) revoke, add to, release, delete, resettle or vary all or any of the trusts or provisions contained in any variation, alteration or amendment to the Trust or this Deed; and/or
  - (iii) declare any new or other trusts, Rights or Obligations concerning the Trust or this Deed.
- (b) Any amendment to the Trust or this Deed may state the date upon which the amendment will take effect.
- (c) Regardless of any other provision in this Deed, the Trustee must not exercise any Right under clause 18.1(a) or under the Applicable Law:

- (i) if any revocation, addition, release, deletion or variation would breach the rule against perpetuities;
- (ii) if, as a result, any Excluded Person could or will become a Beneficiary, Appointor or Trustee of the Trust; or
- (iii) in a way which is inconsistent with clause 18.3.

## **18.2 Specific examples**

The following are specific examples of amendments which may be the subject of an exercise of the Trustee's Rights in clause 18.1 and should not be interpreted as limiting those Rights:

- (a) a revocation, addition, release, deletion or variation of the Trust or this Deed which is determined by the Trustee to be necessary or desirable due to any change in law or in the interpretation or application of the Act;
- (b) the reduction or extension of the Term or the variation of the Vesting Day to a day earlier or later than the original Vesting Day;
- (c) the appointment or removal of any Beneficiary (including a Default Beneficiary) or any class, description or category of Beneficiary;
- (d) the addition, removal or amendment of any clause or provision dealing with Income, capital or Outgoings or the Trustee's classification or treatment of any of them;
- (e) the addition, removal or amendment of any of the Trustee's Rights or Obligations under this Deed.

## **18.3 Exercise of later Right**

A determination to pay, apply or Set Aside Income or capital for a Beneficiary will not be affected by the subsequent exercise of any Right under clause 18.1.

## **18.4 Amendments affecting the Appointor**

The Trustee must not attempt to remove, or change the identity of, the Appointor or to revoke, add to, release, delete, resettle or vary any Right or Obligation of the Appointor under this Deed without the written consent of the Appointor.

## **18.5 Release by other persons**

Any person, upon whom any Right is conferred by this Trust, may, revocably or irrevocably disclaim, release and/or revoke the Right and, upon the exercise of any disclaimer, release or revocation under this clause, the Right disclaimed, released and/or revoked will be terminated.

# **19. APPOINTMENT AND REMOVAL OF BENEFICIARY**

## **19.1 By Trustee or Appointor**

Subject to clause 19.4, the Trustee or the Appointor may:

- (a) appoint an additional Beneficiary or Beneficiaries (including Default Beneficiaries) or any one or more classes of Beneficiary; and

- (b) remove a Beneficiary or Beneficiaries (including Default Beneficiaries) or any one or more classes of Beneficiary,

and may declare that the appointment or removal will operate for a limited period or otherwise as the Trustee or Appointor determines.

### **19.2 Specify date**

Any appointment or removal of a Beneficiary may state the date upon which the appointment or removal will take effect.

### **19.3 Appointee to be of a class**

- (a) Any Beneficiary appointed will, from the date of the appointment, become a Beneficiary in the class specified in the appointment.
- (b) If the appointment does not specify the class of Beneficiary to which the appointee belongs, the appointee will be a Tertiary Beneficiary.

### **19.4 Restriction on appointment**

The Rights in clause 19.1 must not be exercised:

- (a) to appoint any Excluded Person as a Beneficiary;
- (b) to appoint or remove as a Beneficiary any person if, as a result, any Excluded Person could or will become a Beneficiary or entitled to or acquire a beneficial interest in any part of the Trust Fund or any part of the Income of the Trust;
- (c) to appoint as a Beneficiary any person who is restricted or prohibited by the Applicable Law from being or becoming a Beneficiary; or
- (d) to appoint as a Beneficiary any trust which would, if appointed, result in a breach of the rule against perpetuities.

## **20. EXCLUSION OF BENEFICIARIES**

- (a) Any Beneficiary may, by giving notice to the Trustee, be excluded, revocably or irrevocably, from any class of Beneficiaries, and no further Income, or capital, will be allocated, Set Aside, paid to or otherwise applied to, or for the benefit of, that Beneficiary during the period of any exclusion. The Beneficiary's notice may be made by oral declaration recorded in the minutes or records of the Trustee or written.
- (b) The Trustee may, by written instrument, nominate any person (other than a Appointor) to be an Excluded Person.

## **21. APPOINTMENT AND REMOVAL OF TRUSTEE**

### **21.1 Trustee may resign**

Any Trustee may resign the office of Trustee by giving written notice to the Appointor. The Trustee does not have the Right to appoint a new Trustee upon resignation.

### **21.2 Appointor may remove**

The Appointor has the Right to remove any Trustee from office without the consent or approval of any person.

### **21.3 Appointor may appoint**

The Appointor has the Right to appoint a Trustee:

- (a) as a replacement to any Trustee who resigns or is removed or whose office is vacated for any reason; and/or
- (b) as an additional Trustee.

### **21.4 Specify date**

Any resignation, removal or appointment of a Trustee under this clause may state the date upon which the resignation, removal or appointment will take effect.

### **21.5 Simultaneous appointment**

The Appointor is not obliged to appoint a new Trustee unless, without an appointment, there would be no Trustee. If the resignation or removal of a Trustee would leave the Trust without a Trustee, then a new Trustee must be appointed immediately upon the resignation or removal of the Trustee.

### **21.6 Excluded Person not to be Trustee**

A Trustee may be any person or persons (not under a legal disability) except:

- (a) an Excluded Person; or
- (b) any person who is restricted or prohibited by the Applicable Law from being or becoming a Trustee.

### **21.7 Office vacated**

A Trustee is removed from that office if the Trustee:

- (a) is or becomes an Excluded Person;
- (b) dies;
- (c) loses physical or mental capacity and it becomes necessary to have his or her personal estate administered or dealt with by another person due to illness, infirmity or injury;
- (d) is (or states they are) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001);
- (e) makes any arrangement or enters into a composition with creditors generally;
- (f) being a corporation, has a receiver or receiver and manager appointed, or enters into official management, administration or liquidation;
- (g) being a corporation, has an event listed in section 459C(2) or 585 of the Corporations Act 2001 occur in relation to it;

- (h) being a corporation, is deregistered; or
- (i) being a corporation, has a petition for its winding up presented, or passes a resolution of its members for its winding up, or enters into a scheme or arrangement (not being merely for the purpose of amalgamation or reconstruction).

### **21.8 Trustee discharged**

When a Trustee has been removed, or has resigned in accordance with this Deed that Trustee will be discharged from the trusts in this Deed to the extent allowed by law from the effective date of removal or resignation.

### **21.9 Trustee may be one or more**

The number of Trustees may be one or more at any time. The number of Trustees may be increased or reduced at any time, provided that there is at all times at least one Trustee. For the avoidance of doubt, two or more Trustees may be replaced with one Trustee, or all Trustees except one may resign or be removed or replaced, and those Trustees that resign or are removed or replaced will be discharged from their Obligations.

### **21.10 Vest in new Trustee**

Upon the resignation or removal of a Trustee the Trust Fund will immediately vest in the person or persons holding the office of Trustee following the resignation or removal. Any Trustee resigning or being removed must deliver to the new Trustee all books, documents, records and other Property relating to the Trust Fund and must promptly do all acts, matters and things necessary to vest the Trust Fund in the new Trustee.

### **21.11 Separate Trustees**

Without limiting any of the preceding provisions, the Appointor may appoint separate Trustees in respect of separate parts of the Trust Fund. Where the Appointor does so:

- (a) the expression "Trustee" refers to each separate Trustee in respect of each part of the Trust Fund to which the relevant Trustee has been appointed;
- (b) clauses 24, 25 and 26 applies to each Trustee appointed to each part of the Trust Fund independently of each other Trustee;
- (c) the Appointor may exercise any of the Rights in clause 21 in respect of any such Trustee without also exercising any such Right or another Right in respect of any other Trustee appointed to or holding another part of the Trust Fund.

## **22. APPOINTMENT AND REMOVAL OF APPOINTOR**

### **22.1 Appointor may resign**

- (a) A Appointor may resign at any time by giving written notice to the Trustee. Where a sole Appointor resigns, that Appointor may appoint any person or persons to be a replacement for the resigning Appointor failing which the Alternative Appointor (if any) will be the Appointor.
- (b) The Appointor must appoint a replacement if upon resignation the Trust would not have a Appointor. If the resignation of a Appointor would leave the Trust without a Appointor,

then the resignation of the Appointor will only be effective when a new Appointor is appointed.

- (c) An Alternative Appointor may resign at any time by written notice to the Appointor. An Alternative Appointor does not have the Right to appoint a replacement or additional Alternative Appointor.
- (d) The Appointor may appoint any person or persons to be an additional Appointor or Alternative Appointor.
- (e) The Appointor may appoint an Alternative Appointor:
  - (i) if there is no Alternative Appointor at any time;
  - (ii) to replace an Alternative Appointor who resigns or is removed.
- (f) The Appointor may remove an Alternative Appointor.

## **22.2 Excluded Person not to be Appointor**

A Appointor or Alternative Appointor may be any person or persons (not under a legal disability) except an Excluded Person.

## **22.3 Office vacated**

A Appointor or Alternative Appointor is removed from that office if that Appointor or Alternative Appointor:

- (a) is or becomes an Excluded Person;
- (b) dies;
- (c) loses physical or mental capacity and it becomes necessary to have his or her personal estate administered or dealt with by another person due to illness, infirmity or injury;
- (d) is (or states they are) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001);
- (e) makes any arrangement or enters into a composition with creditors generally;
- (f) being a corporation, has a receiver or receiver and manager appointed, or enters into official management, administration or liquidation;
- (g) being a corporation, has an event listed in section 459C(2) or 585 of the Corporations Act 2001 occur in relation to it;
- (h) being a corporation, is deregistered; or
- (i) being a corporation, has a petition for its winding up presented to a Court having appropriate jurisdiction, or passes a resolution of its members for its winding up, or enters into a scheme or arrangement (not being merely for the purpose of amalgamation or reconstruction).

## **22.4 Replacement of Appointor**

- (a) If a sole Appointor is removed, the Appointor will be replaced by the Alternative Appointor (if any) who will become the Appointor and have all of the Rights and Obligations of the Appointor under this Deed.
- (b) On the occurrence of an event in clause 12.1, if there is no Appointor, a new Appointor must be appointed in accordance with clause 12.2. In any other case, if there is no Appointor, a new Appointor must be appointed by the following (in order of priority):
  - (i) by majority resolution of the Primary Beneficiaries with legal capacity; or
  - (ii) if there are no Primary Beneficiaries with legal capacity, by the oldest surviving Secondary Beneficiary (being a natural person) with legal capacity.

## **22.5 Separate Appointors**

Without limiting any of the preceding provisions, the Appointor may appoint a separate Appointor or Appointors in respect of separate parts of the Trust Fund. Where the Appointor does so:

- (a) the expression "Appointor" refers to each separate Appointor in respect of each part of the Trust Fund to which the relevant Appointor has been appointed;
- (b) a Appointor appointed for the purposes of a part of the Trust Fund may exercise any of the Rights in clause 21 in respect of any Trustee of the same part of the Trust Fund;
- (c) a Appointor appointed for the purposes of a part of the Trust Fund may exercise any of the Rights in clause 22 in respect of the office of Appointor or Alternative Appointor of that part of the Trust Fund.

## **23. TRUSTEE MAY BE A BENEFICIARY**

- (a) Regardless of anything in this Deed, the Trustee may also be a Beneficiary.
- (b) Where the Trustee is a Beneficiary, the Trustee has all of the Rights of a Beneficiary under this Deed and is entitled to receive Income and/or capital as a Beneficiary if any determination is made in its favour by the Trustee.

## **24. POWERS AND DUTIES OF TRUSTEE**

- (a) The Trustee has the widest possible discretion in the discharge of its Rights and Obligations and may (without limitation):
  - (i) exercise any Rights or Obligations in any way which the Trustee considers proper at any time;
  - (ii) exercise any Rights or Obligations in any way which the Trustee considers advantageous at any time;
  - (iii) decline to exercise any such Rights or Obligations,and this Deed will be interpreted consistently with this clause at all times.



- (b) The Trustee has all the Rights of a natural person and may do any thing, or engage in any Transaction or dealing, with or in relation to the Trust Fund as it could do if it were the beneficial owner of the Trust Fund and absolutely entitled to it.
- (c) In addition to the Rights and Obligations conferred by this Deed, the Trustee has all of the powers, discretions and authorities conferred on trustees by or permitted by the Applicable Law.
- (d) The Trustee may delegate any of the Trustee's Rights or Obligations to any person as the Trustee decides.

## 25. BANKING / FINANCIAL TRANSACTIONS POWERS

The following Rights are specific examples of the Trustee's Rights in clause 24 and should not be interpreted as limiting those Rights:

- (a) **Borrow money.** To borrow or raise any money or incur any liability. Any borrowing, raising or incurring of liability may be in any form or means of borrowing or raising money and on any terms as the Trustee decides and may include (without limitation):
  - (i) the negotiation or other dealing in bills of exchange, promissory notes, cheques or other negotiable instruments;
  - (ii) any option agreement relating to any lending or financing facility, agreement or Transaction;
  - (iii) hire purchase or lease Transactions;
  - (iv) borrowings for a fixed term or for an indeterminate term;
  - (v) facilities involving letter of credit or other financial or credit facilities;
  - (vi) facilities involving any overdraft or other fluctuating account;
  - (vii) security by any means over any part of the Trust Fund including mortgage, bill of sale, lien or charge, fixed or floating, equitable charge or by any other form of real or personal security;
  - (viii) security alone or jointly or jointly and severally with any other person;
  - (ix) borrowings or Obligations alone or jointly or jointly and severally with any other person;
  - (x) unsecured borrowings or liabilities;
  - (xi) any Transaction for any purpose connected with the Trust or to be used in deriving income or gain in augmentation of the Trust Fund,

whether or not the Trust Fund is already wholly invested or applied or that the moneys to be borrowed or raised may exceed the value of the Trust Fund. Any person including any bank or other financial institution who advances or lends money or extends credit to the Trustee is not required or bound to enquire as to the purpose for which those moneys are being borrowed or raised nor as to the extent of the Trustee's Rights and Obligations or the application by the Trustee of any moneys. Any person dealing in good faith with the Trustee will not be prejudiced by any act or

purported act of the Trustee in excess of the lawful Rights of the Trustee or by any breach of trust by the Trustee.

- (b) **Guarantees and indemnities.** To give any guarantee and/or indemnity. Any guarantee and/or indemnity may be:
- (i) for the discharge or performance of any Obligation or the payment of moneys;
  - (ii) given to secure the Obligations of any person, firm, company, corporation or association;
  - (iii) given even if no consideration, Right or other benefit accrues to the Trustee;
  - (iv) given even if there is no contractual, legal or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the Trustee gives the guarantee or indemnity;
  - (v) related to Obligations to which the Trustee is a party or in respect of which the Trustee has existing or contingent Obligations;
  - (vi) secured by any means over any part of the Trust Fund including mortgage, bill of sale, lien or charge, fixed or floating, equitable charge or by any other form of real or personal security;
  - (vii) given even if the Trustee does not hold an indemnity from any person in connection with the Trustee's liability under the guarantee and/or indemnity.

Any liabilities incurred or security created or purported to be created under this clause will be valid regardless of the purpose for which such guarantee or indemnity has been given. Any person dealing in good faith with the Trustee will not be prejudiced by any act or purported act of the Trustee in excess of the lawful Rights and Obligations of the Trustee or by any breach of trust by the Trustee. The Rights of the mortgagee or chargee will take priority in all respects over the Rights of the Beneficiaries and all other persons.

- (c) **Security.** To secure the performance of any Obligation or other dealing or engagement incurred or to be entered into by the Trustee or by any other person. The Trustee's Right includes the Right to grant any mortgage, charge or encumbrance over all or any of the Trust Fund.
- (d) **Negotiable instruments.** To draw, make, accept, endorse, discount, execute, negotiate, issue or otherwise deal with promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments and whether as principal or agent.
- (e) **Bank accounts.** To open any account with any bank, building society or other financial institution on its own behalf or solely or jointly with any person, upon terms as the Trustee decides. The Trustee may operate any accounts in any way that the Trustee decides. The Trustee may operate any account in overdraft and agree to the debiting of any account with interest, costs, charges and expenses incurred on behalf of the Trustee.
- (f) **Powers of attorney.** To give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any part of the Trust Fund. Without limitation, the Trustee may empower its attorney to take any action and/or perform any act on behalf of the Trustee and to sign

and execute any deed, agreement or document that the Trustee may lawfully do, including the exercise of any of the Trustee's Rights or Obligations and the execution of mortgage and security documents. The Trustee may in its absolute discretion, grant powers of attorney or proxies to any third party including any mortgagee, lender or financier, any creditor of the Trust or any other party who may have an interest in the Trust Fund, other than an Excluded Person.

(g) **Derivatives.** To enter into any derivative contract or Purchase, Sell, deal or trade in any derivatives product. This Right includes, without limitation, power for any purpose to enter into and perform or to deal with or in any:

- (i) options and futures contracts;
- (ii) warrants or instalment warrants;
- (iii) contracts for difference;
- (iv) certificates of deposit;
- (v) default swap contracts; and/or
- (vi) any other form of derivative contract,

and otherwise to do and perform all things to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.

(h) **Documents of title.** To deposit the securities or documents of title to any Property of the Trust with a bank, financial institution, trust company, investment broker or similar institution in any part of the world. The Trustee may delegate to that institution the trusts and Rights or Obligations of the Trustee which the Trustee considers expedient to delegate. The Trustee will not be liable or responsible for any loss to any Property unless caused by its own fraud.

(i) **Currency exchange Transaction.** To enter into and perform:

- (i) any Transaction involving, or in connection with, an exchange of streams of payment between counterparties whether directly or indirectly;
- (ii) any Transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date;
- (iii) any Transaction for managing, lessening, hedging, or protecting against movements in currency exchange, interest or discount rates or against costs of borrowing, lending or obtaining financial accommodation.

This Right includes, without limitation, power for any purpose to enter into and perform any:

- (iv) interest rate swap or exchange Transaction;
- (v) currency swap or exchange Transaction;
- (vi) rate cap, rate floor or rate collar;

- (vii) option contract relating to swaps;
- (viii) futures contract;
- (ix) currency option;
- (x) forward rate agreement; or
- (xi) interest and/or currency protection,

or any combination of those Transactions or any other Transactions, financial arrangements or contracts of a kind or class similar to those Transactions.

- (j) **Futures Contracts and Options.** To enter into and perform and futures contract or option including the power to:
  - (i) engage brokers and commission agents and to vary and determine the terms of any such engagement;
  - (ii) either directly or through any broker or agent in any market in any part of the world to buy, sell, open, close out or otherwise deal in futures contracts of all kinds;
  - (iii) enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle switch and stop-loss orders;
  - (iv) tender for and take delivery of commodities and currencies which are the subject of any futures contract or option; and
  - (v) otherwise do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

## 26. ADDITIONAL POWERS OF TRUSTEE

The following Rights are additional specific examples of the Trustee's Rights in clause 24 and should not be interpreted as limiting those Rights:

- (a) **Invest.** To apply and invest any moneys of the Trust Fund in any investments and to exercise all Rights and perform all Obligations attaching or incidental to those investments. Investments may be made:
  - (i) whether or not involving liabilities;
  - (ii) upon personal or other form of credit;
  - (iii) with or without security;
  - (iv) upon any terms which the Trustee decides;
  - (v) in any form authorised by the law of any State or Territory of the Commonwealth to invest trust funds;
  - (vi) by subscribing or taking up any allotment or purchasing any shares, units, stocks, bonds, mortgages, debentures, obligations or securities of any government authority or company wherever incorporated;

- (vii) by purchasing any interest in any real or personal property;
  - (viii) whether or not they are income producing;
  - (ix) whether or not they may be of a wasting or speculative nature; or
  - (x) whether or not they represent a minority part or share or interest.
- (b) **Acquisitions.** To acquire or Purchase any Property or any Right whether for cash or other consideration. The Trustee may acquire or Purchase any Property for an amount greater than the Trust Fund and may agree to pay for any Property wholly or partly from future receipts including dividends, profits, interest or other income payable in relation to any Property.
- (c) **Real and personal Property.** To deal in any way with any Property of the Trust and without limitation to:
- (i) Buy or Sell or in any way acquire or dispose of any interest in any Property;
  - (ii) take or accept any Property on licence or lease;
  - (iii) grant any lease, sub-lease or other Rights in relation to any Property of the Trust for any term or terms and whether or not that term or terms exceeds 21 years or any other term allowable under the Applicable Law;
  - (iv) construct, demolish, maintain, repair, renovate, reconstruct, develop and/or improve any Property whether income producing or not,
- on any terms which the Trustee decides.
- (d) **Advance moneys.** To advance and lend moneys to any person (including any Beneficiary and with or without security) in any manner or form.
- (e) **Vary investments.** To vary or transpose any investments into or for any other or others of any nature and to vary the terms of, or the Property comprised in, any security.
- (f) **Insurance policies.** To Purchase, take out or acquire an interest in any policy of insurance of any nature in the name of the Trust or of any other person. Any insurance policy may:
- (i) insure the life of any person including the Trustee and/or any Beneficiary;
  - (ii) insure any Property including a Beneficiary's Property or any part of the Trust Fund for its full insurable value or any other amount the Trustee decides;
  - (iii) be in or cover any amount the Trustee decides;
  - (iv) relate to any business carried on by the Trustee and/or any Beneficiary;
  - (v) be of a business or private nature;
  - (vi) name any person as an interested party to the extent of their interest;
  - (vii) be a life endowment, sinking-fund, term or any other type of policy;

- (viii) be subject to any premium or premiums whether single or payable periodically;
- (ix) be subject to any options, rights benefits, conditions or provisions.

The Trustee may pay out of the Income or capital of the Trust Fund all sums payable for premiums or otherwise in order to effect or maintain any insurance policy (whether owned by the Trustee or not) or for the exercise or enjoyment of any option, right or benefit under any policy. The Trustee may also surrender, exchange, convert or cancel any insurance policy.

- (g) **Pay management costs.** To pay all costs, charges and expenses incidental to the management of the Trust Fund out of the Income or the capital of the Trust Fund. Those amounts include but are not limited to those incurred:
  - (i) in the exercise of any Right;
  - (ii) in carrying out or performing the trusts of this Deed;
  - (iii) in income tax or other taxes payable in respect of the Trust Fund;
  - (iv) in the preparation and execution of this Deed;
  - (v) to pay any settlement, probate, estate, gift, stamp or other revenue duties including stamp, gift or settlement duties payable in relation to the Trust Fund or this Deed.
- (h) **Exercise Rights.** To exercise all Rights in relation to any shares, stock, notes or debentures in any corporation forming part of the Trust Fund. This Right includes the power in relation to them to:
  - (i) perform any Obligations;
  - (ii) assent to any arrangements modifying those Rights or Obligations;
  - (iii) agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation;
  - (iv) make any agreement in respect of or in the course of the winding up of any corporation;
  - (v) deposit, surrender or exchange any of them or the title to them; and
  - (vi) pay any calls or contributions or other necessary expenses in connection with them or any title to them.
- (i) **Employ.** To employ, retain or consult any person (including any Trustee or Beneficiary) in connection with any trade or business carried on by the Trustee or anything required to be done under this Deed. The Trustee may:
  - (i) delegate any Right or Obligation to that person;
  - (ii) decide the remuneration to be paid to any person and the amount of all charges and expenses; and

- (iii) create or arrange any scheme of superannuation, retirement benefit or pension for the benefit of any person.

All bona fide payments made by the Trustee to any Beneficiary in the form of remuneration for services rendered or to be rendered or on account of expenses in connection with their employment will not be or be deemed to be payment to that Beneficiary of or on account of that Beneficiary's share in the Trust Fund or the Income.

- (j) **Partition.** To partition or subdivide any Property which may be subject to the Trust and to pay any moneys by way of equality of partition.
- (k) **Acquire companies.** To acquire any company or companies or join in the acquisition of any company or companies.
- (l) **Determine property.** To determine whether any Property, or any change in amount, number or value of any Property or any receipts or payments in connection with any Property, will be treated as capital or Income.
- (m) **Give receipts.** To give receipts and discharges for any money received by or on behalf of the Trustee or relating to any thing provided for in this Deed. The Trustee may receive Property from any person by gift inter vivos, by will, under the provisions of any other trust or otherwise as additions to the Trust Fund.
- (n) **Options.** To grant options in respect of any Property in the Trust Fund to any person and on any terms which the Trustee decides.
- (o) **Directorship.** To become a director of any company and to receive the remuneration attached to that office without accounting to the Trust. The Trustee must execute all proper declarations of trust for any shares held by it by virtue of any directorship and must account to the Trust for all dividends and bonuses. The Trustee may exercise all of the Trustee's Rights even if the Trustee or any director or shareholder of the Trustee has or may have a Personal Interest. This Right includes the power to appoint any person to act as director of any company who will be subject to the same restrictions as the Trustee.
- (p) **Act on legal advice.** To receive and act upon the opinion of a legal practitioner and/or counsel and/or take any legal or other action the Trustee decides:
  - (i) for the protection of any part of the Trust Fund;
  - (ii) in the execution of any of the trusts in this Deed or any of the Trustees Rights or Obligations;
  - (iii) in relation to the interpretation or effect of this Deed or any other document or statute;
  - (iv) in relation to the administration of the Trust,without being liable for any act done by the Trustee in accordance with any legal opinion. Nothing in this clause prohibits or impedes the Trustee or any Beneficiary from applying to any court.
- (q) **Succession duties.** To pay any probate, succession, estate or other duties, fees or taxes which become payable on the death of any Trustee or Beneficiary even if the payment of those amounts is not enforceable by legal process.

- (r) **Acquire units.** To acquire units or sub-units or parts of units in any unit trust whether by original subscription, Purchase or otherwise and whether fully or partly paid.
- (s) **Acquire annuities.** To acquire annuities and any reversionary or deferred Property or Rights of any description whether by original creation, assignment or otherwise.
- (t) **Do all necessary things.** To do all things as the Trustee deems necessary, expedient or beneficial to the Trust whether incidental or otherwise to the Trustees Rights or Obligations.
- (u) **Valuations.** To place a value on any part of the Trust Fund as the Trustee decides for any purpose. Any valuation made in good faith is binding on all Beneficiaries.
- (v) **Permit Beneficiaries to reside.** To permit any Beneficiary to occupy or reside in or upon any Property of the Trust rent free or otherwise and on terms which the Trustee decides.
- (w) **Agents.** To employ any agent or professional adviser including any solicitor, attorney, banker, accountant, auditor, stockbroker, investment adviser, real estate agent or other agent to transact business and/or do any act required to be transacted or done in the execution of the Trust and to act upon the advice of such agent or agents. Any agent may be remunerated from the Income or the capital of the Trust Fund.
- (x) **Undertakings.** To give any undertakings and enter into any Transaction relating to the Trust Fund as the Trustee decides whether or not those undertakings or Transactions may extend until after the Vesting Day.
- (y) **Voting Rights.** To exercise any voting rights attached to any investments of the Trust Fund.
- (z) **Powers of attorney.** To give proxies and powers of attorney (with or without power of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any part of the Trust Fund. Without limitation, the Trustee may empower its attorney to take any action and sign any document that the Trustee may lawfully do, including the exercise of any of the Trustee's Rights or Obligations and the execution of mortgage and security documents.
- (aa) **Nominee.** To allow any person to deal with or hold or be registered as the owner of any Property forming part of the Trust Fund as the custodian, agent or nominee of the Trustee.
- (bb) **Syndicates.** To invest in syndicates of all kinds which include without limitation property investment syndicates.
- (cc) **Pastoralist.** To carry on business as a pastoralist, grazier, farmer, stud proprietor, dairyman, livestock breeder or stock and station agent.
- (dd) **Deposits.** To make deposits at call or for a term with any bank, financial institution or person on terms and conditions as the Trustee decides.
- (ee) **Determine matters of doubt.** To determine all questions and matters of doubt which arise in the course of the execution of the trusts in this Deed or in the management, administration, realisation, liquidation, partition or winding up of the Trust Fund. Every determination of the Trustee in relation to any of these matters will bind all parties interested in the Trust Fund and will not be objected to or questioned.



- (ff) **Institute proceedings.** To institute and defend proceedings at law and to proceed to a determination or compromise any proceedings as the Trustee decides.
- (gg) **Incorporate companies.** To incorporate or promote any company anywhere in the world. The Trustee may Sell any part of the Trust Fund to that company. The following Rights apply to any incorporation or sale under this clause:
- (i) the expenses in connection with the incorporation and/or sale may be paid out of the Trust Fund;
  - (ii) the Trustee may become a director, officer or employee of the company and may receive the remuneration attaching to that office without being liable to account for it;
  - (iii) the consideration for any sale may comprise either cash, debentures or debenture stock, preference or ordinary or deferred shares (whether fully or partly paid) with any Rights attaching to them including without limitation the Right to convert from the one to the other as the Trustee decides or may comprise all or any of the above in any proportions as the Trustee decides; and
  - (iv) that the price for any sale will be fixed in any manner the Trustee decides.
- (hh) **Corporations Act 2001 (Cth) powers.** To exercise the powers of a company contained Section 124 of the Corporations Act 2001 (Cth) substituting where appropriate either the words "the Trustee" or "the Trust Fund" for the words "the company".
- (ii) **Trusts Act.** To exercise the Rights and Obligations conferred on trustees by the Trusts Act (Qld) 1973 or other equivalent legislation enacted or operative in any state or territory of Australia.
- (jj) **Personal Interest.** To exercise all of the Trustee's Rights even if the Trustee or any person has or may have a Personal Interest in the exercise of that Right or may benefit as a result of the exercise of that Right.
- (kk) **Establish trusts.** To establish and support out of the Trust Fund any association, institution, fund, scheme or other trust calculated to benefit the Beneficiaries or the employees or ex-employees of this Trust, any company, partnership, association, union of interest or syndicate in which this Trust may be interested or the dependents or associates of those persons. The Trustee may also grant pensions and allowances to and make payments towards insurance on behalf of those persons.
- (ll) **Clone trusts.** To establish any other trust as a clone of this Trust on the same terms as this Trust including all of the Rights and Obligations contained in this Deed and to Sell any Property of the Trust or the whole or any part of the Trust Fund to the trustee of that trust.
- (mm) **Gifts.** To make any donations, gifts or advances which the Trustee decides for any purpose or object. The Trustee may exercise this Right in favour of any person or to any association, institution, corporation or charity except an Excluded Person.
- (nn) **Exchange.** To exchange Property of the Trust for any other Property of any kind and for any consideration and on any conditions as the Trustee decides.
- (oo) **Partnerships.** To enter into any partnership with any person or persons and for any purpose and on any terms which the Trustee decides.

- (pp) **Compromise.** To compromise, settle or compound any action, suit, proceeding, difference or demand or matter relating to the Trust or to the Trust Fund. Any compromise, settlement or compound may be made for no consideration or for any consideration and on any terms which the Trustee decides. All compromises, settlements or compounds will bind all Beneficiaries and other persons who at any time acquire any interest under this Trust.
- (qq) **Carry on business.** To carry on any business either alone or in association or partnership with any other person including without limitation:
- (i) associations or partnerships with the Trustee in its own right or in its Capacity as trustee or in any other Capacity; or
  - (ii) with any company in which the Trustee is directly or indirectly interested in its own right or in its Capacity as trustee or in any other Capacity,
- and for that purpose, to retain and employ the whole or any part of the Trust Fund. The Trustee also has the Right to:
- (iii) advance any moneys of the Trust Fund which the Trustee decides for the purposes of the business;
  - (iv) expend any moneys of the Trust Fund in managing and carrying on the business including the Purchase or acquisition of any Property;
  - (v) borrow money in the course of managing or carrying on the business and/or give security over any Property of the business; and
  - (vi) generally, to act in all matters relating to the business as if the Trustee were beneficially entitled to it.
- (rr) **Arrangements with government.** To enter into any Transaction with the Commonwealth or any government or semi-government department or agency for any purpose which, in the opinion of the Trustee, would derive a benefit for the Trust or which may be of advantage to the Trust Fund and in particular, which may provide a grant, subsidy or other benefit.
- (ss) **Sub-trusts.** To establish sub-trusts as part of this Trust to hold the whole or part of the Trust Fund as the Trustee decides for the benefit of the Beneficiaries or some of them.
- (tt) **Limitation of entitlements.** To specifically limit the entitlement of any Beneficiary or class of Beneficiary in any manner as the Trustee decides.
- (uu) **Forgive debts.** To forgive all or part of any debt owed to the Trustee, in its capacity as Trustee, whether loaned from the Trust Fund or otherwise, and to do so on terms and in circumstances as the Trustee decides.
- (vv) **Service entity.** To act as a service entity in providing office supplies and services including professional or other employees, office furniture and equipment of all kinds, stationery, telephone and electricity services, management, administration and consultancy services and anything incidental to any of the above.
- (ww) **Franchise.** To Purchase and/or Sell any franchise, franchise agreement, licence or things of a similar nature.

- (xx) **Mix funds.** To blend for the purposes of investment, as the Trustee decides, any moneys which the Trustee holds under this Trust with other moneys (whether or not those other moneys are subject to any other settlement or trust and whether or not the Trustee is the trustee of that other settlement or trust) and to join with any person in making common investment including in carrying on any business, partnership or joint enterprise.

## **27. EXCLUSIVE MANAGEMENT RIGHTS**

Subject to this Deed, the Trustee has the exclusive Right to manage and control the Trust Fund. The Trustee will not be subject to the direction or control of any Beneficiary in the exercise of its Rights. No Beneficiary will (without limitation) be entitled to:

- (a) require the Trustee to disclose or provide to the Beneficiary or any other person any records of the Trust including accounting records or tax returns;
- (b) exercise any Rights with respect to any part of the Trust Fund;
- (c) interfere with the exercise of the Trustee's Rights or the performance of the Trustee's Obligations;
- (d) question the exercise or non-exercise of any of the Trustee's Rights; or
- (e) require the transfer of any part of the Trust Fund or any Income to any person.

## **28. NOTICES**

### **28.1 Form of notice**

Unless this Deed provides for a notice or communication to be given orally, any notice or other communication in connection with this Deed, must be in writing and signed by the person giving the notice and be addressed to the address of the person to whom it is to be given as recorded in the records of the Trustee.

### **28.2 Time of delivery**

The notice or other communication will be deemed to be received:

- (a) in the case of a posted letter, on the third day after posting;
- (b) in the case of delivery, by a generally recognised overnight courier, on the second day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of transmission by electronic mail, on the day of transmission if the electronic medium sending the notice states that the transmission was completed before 5:00pm on a business day, otherwise on the next business day. This method of service is effective only if the medium's report states that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

**29. JURISDICTION**

- (a) The Rights and Obligations of the Trustee and the Beneficiaries will be regulated by the Applicable Law.
- (b) The Trustee may, by resolution, declare that, as from the date of that resolution (or any later date specified in it), the Applicable Law will be the law of another place determined by the Trustee. This Deed and the Trust will then take effect according to the laws of that place which laws will become the Applicable Law.
- (c) The Trustee may resign and appoint a successor as the Trustee in any place outside the place of the Applicable Law and transfer the Trust Fund to the new Trustee. This Deed and the Trust will then be construed as if the Applicable Law was that place.

**30. SEVERANCE**

- (a) To the extent that the inclusion or appointment of any Beneficiary is invalid for any reason, that inclusion or appointment will be severed from this Deed and/or the inclusion or appointment of any other Beneficiary.
- (b) This Deed will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:
  - (i) that provision will be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation unless this would materially change the intended effect of this Deed; or
  - (ii) if the provision or part of it cannot effectively be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Deed will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

Schedule

- Item 1: Deed Date**  
01/06/2018
- Item 2: Place of Settlement**  
Queensland
- Item 3: Settlor**  
Acis Settlements Pty. Ltd. ACN 081 961 391
- Item 4: Trustee/s**  
Intrashield Pty Ltd ACN 133 426 534
- Item 5: Settlement Sum**  
\$10.00
- Item 6: Name of Trust**  
Mangusta Trust
- Item 7: Applicable Law**  
New South Wales
- Item 8: Appointor/s**  
Basile Papadimitriou  
Vincenzo Tesoriero
- Item 9: Alternative Appointor/s**  
Nil
- Item 10: Primary Beneficiaries**  
Basile Papadimitriou  
Vincenzo Tesoriero

**Item 11: Secondary Beneficiaries**

- (a) Any person who is, becomes or has been:
  - (i) a Spouse of a Primary Beneficiary;
  - (ii) a Child or remoter issue, uncle, aunt, niece, nephew, cousin, parent, brother or sister of a Primary Beneficiary;
  - (iii) a Child or remoter issue, uncle, aunt, niece, nephew, cousin, parent, brother or sister of a Spouse of a Primary Beneficiary; or
  - (iv) any Spouse, Child or remoter issue of a person in (ii) or (iii) above.
- (b) Any person (in that capacity only) who is or becomes the executor or trustee of the estate of any deceased Beneficiary.

**Item 12: Tertiary Beneficiaries**

Subject to the laws against perpetuities:

- (a) any proprietary corporation in which any other Beneficiary is the holder of at least one share or has a beneficial interest in at least one share;
- (b) any proprietary corporation in which any other Beneficiary is a director;
- (c) any proprietary corporation in which the Trustee is the holder of at least one share or has a beneficial interest in at least one share;
- (d) any trust or superannuation fund in which at least one other Beneficiary of this Trust is a beneficiary or has a beneficial interest or expectancy whether vested, contingent or otherwise or is a member;
- (e) any Spouse, Child or remoter issue, uncle, aunt, niece, nephew, cousin, parent, brother or sister of the other Beneficiary referred to in (a), (b), (c) or (d) above;
- (f) any trust of which the Trustee of this Trust is, becomes or has been a trustee or a beneficiary (however described) or unit holder;
- (g) where any corporation is named as or becomes a Beneficiary or Trustee, each of the directors and officers of the corporation and each holder of at least one share or of a beneficial interest in at least one share in the corporation;
- (h) any person who is, becomes or has been:
  - (i) a Spouse of a person in (g) above;
  - (ii) a Child or remoter issue, uncle, aunt, niece, nephew, cousin, parent, brother or sister of a person in (g) above; or
  - (iii) any Spouse of a person in (ii) above; or

- (i) any church or any religious, cultural, sporting, medical, environmental, research or artistic organisation or entity or any educational institution or school or any organisation or entity which promotes endeavours in any of these fields;
- (j) any entity which is tax exempt or a deductible gift recipient under the Act;
- (k) any charity or charitable institution or the trustee of any charitable trust.

**Item 13: Default Beneficiaries**

Nil

**Item 14: Excluded Persons**

Nil

Executed as a Deed

**EXECUTED AS A DEED** by Acis Settlements )  
Pty. Ltd. ACN 081 961 391 as Settlor. )



\_\_\_\_\_  
Angus Edward Harvey  
Director



\_\_\_\_\_  
Jordan Joel Topping  
Director

**EXECUTED AS A DEED** by Acis Nominees Pty )  
Ltd ACN 146 588 767 as duly constituted )  
attorney of Intrashield Pty Ltd ACN 133 426 534 )  
as Trustee. )



\_\_\_\_\_  
Angus Edward Harvey  
Director



\_\_\_\_\_  
Jordan Joel Topping  
Director



**Explanatory Notes  
Discretionary Trusts**

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## **EXPLANATORY NOTES DISCRETIONARY TRUSTS**

### **1. GENERAL OUTLINE**

Discretionary trusts can be confusing and complex, especially if you are using them for the first time. To assist your understanding, we have prepared these notes on the nature and operation of your discretionary trust. If you are uncertain of the nature of any of the Trustee's powers or whether a particular transaction may be lawful, you should immediately obtain professional advice as decisions made or discretions exercised by the Trustee may have significant tax and other consequences.

In any event, we recommend that you read the contents of the Trust Deed carefully and discuss it with your adviser.

A trust is an equitable obligation binding the Trustee to deal with trust property over which he has control for the benefit of named beneficiaries or classes of beneficiaries.

The key feature of a trust is that it creates an obligation. This obligation relates to the Trust Property and requires the Trustee to exercise control over the Trust Property for the benefit of the Beneficiaries.

A discretionary trust empowers the Trustee to determine the distribution of income and capital of the Trust. This discretion usually relates to whether income or a certain type of income will or may be distributed and to whom it will or may be distributed.

### **2. DISCRETIONARY TRUST**

The discretionary Trust Deed has the following features:

- (a) It is established by a Settlor (i.e. the person or entity who formally settles or creates the Trust) by the payment of a nominal sum to the Trustee which constitutes the initial Trust Property. Stamp duty may be payable in some jurisdictions on the creation of a trust and may be calculated by reference to the amount settled or at a flat rate.
- (b) The Trustee should (preferably) be a limited liability company established for this purpose. The Trustee has:
  - (i) a discretion to allocate income or capital to all or any of the Beneficiaries, or to accumulate the income; and
  - (ii) the powers of a natural person in relation to the Trust Property.
- (c) The Beneficiaries may receive capital or income and consist of several defined classes of persons. These typically include parents, children and grandchildren, spouses of children and grandchildren and more generally, any company or trust in which any of the beneficiaries have a beneficial interest and any religious or charitable institution. The Beneficiaries are categorised into 3 classes (Primary, Secondary and Tertiary).
- (d) For legal reasons, the Trust must terminate. This happens on the Vesting Day. The Trust may also be wound up at an earlier date. There is a formal legal process that must be undertaken to do so.

- (e) The Trust Property may be classified as either "income" or "capital" and may be split into a variety of categories so as to most effectively minimise each of the Trustee's and Beneficiaries' tax liability.

### 3. THE SETTLOR

The Settlor should be an independent person or entity who **must not** be:

- (a) a Beneficiary;
- (b) the Trustee; or
- (c) the Appointor or Alternate Appointor.

The Settlor contributes a nominal sum to establish the Trust (say, \$10.00). The payment of the settlement sum should be recorded in the books of the Trust, and be the first amount deposited into any new bank account established for the Trust. This amount must never be repaid to the Settlor.

### 4. THE TRUSTEE

The Trustee may be one or more individuals or companies. The benefit of using a corporate Trustee is that the liability of each shareholder is limited to the value of their own shares. The shareholders of the company may also be Beneficiaries of the Trust.

Note, however, that the Trustee is liable for any debts or liabilities incurred in the course of carrying on the Trust. The Trustee has a right of indemnity from the Trust Property to recoup those liabilities.

The Trustee may be removed and/or replaced by the Appointor or may resign by notice to the Appointor. If you wish to replace the Trustee, a deed of appointment and retirement of the Trustee is required. We recommend that you contact us in those circumstances as this must be done in accordance with the terms of the Trust Deed. Failure to ensure that amendments such as this one are properly carried out may have significant adverse consequences.

**The powers and discretions conferred upon the Trustee are extensive. We recommend that you read these powers carefully. If you do not understand any of them, please seek professional advice.**

### 5. THE BENEFICIARIES

Careful consideration should be made as to who you wish to be placed in each of the classes of beneficiaries.

We recommend that you obtain professional advice regarding the identity of the various classes of beneficiaries as this may have important tax considerations.

Normally, the Primary Beneficiaries are those persons who you wish to specifically name as Beneficiaries. The Secondary Beneficiaries include their spouses, parents, nephews, nieces, children and grandchildren. Tertiary Beneficiaries include such things as related companies and trusts etc.

The Trust Deed:

- (a) allows the Trustee to nominate persons not named in the Trust Deed as additional Beneficiaries. (**Before exercising this power**, the Trustee should seek legal and taxation advice particularly regarding the stamp duty and tax (particularly Capital Gains Tax) implications of that decision - see the warning below);
- (b) provides that the Default Beneficiaries are deemed to have received a distribution of Income in default of a determination or allocation by the Trustee in any year and where there are no nominated Default Beneficiaries, the undistributed Income is accumulated;
- (c) provides for the distribution of the capital of the Trust to a certain class of Beneficiary if the Trustee does not make an allocation of all the capital of the Trust before the Trust terminates. Among other things, this prevents the Trust Property passing to the Settlor should the discretion not be exercised.

#### **WARNING**

*Whilst it is possible under the Trust Deed to add or delete Beneficiaries, before doing so, it is important to keep in mind that this may result in stamp duty and Capital Gains Tax liabilities. Please do not attempt this without seeking professional advice as adding and deleting Beneficiaries may constitute the transfer of a "trust interest". This may result in a stamp duty liability assessed at full conveyance rates on the full unencumbered value of all or part of the Trust Property at the time or substantial capital gains tax liabilities.*

## **6. THE APPOINTOR**

The Appointor is the person or entity who effectively controls the Trust. The Appointor has the power to appoint and remove the Trustee and, therefore, indirectly controls who makes decisions concerning the Trust. The Trust Deed gives the Appointor the power to remove the Trustee and appoint a new Trustee. If the Appointor dies, this power may be exercised by the Appointor's personal representatives.

If the Appointor dies, becomes mentally ill, bankrupt or if the Appointor is a company and has a receiver appointed, is wound up or is placed into liquidation, the Appointor is automatically removed. The Trust Deed allows an Alternative Appointor to be named who would in those circumstances, take over as the Appointor. If for some reason there is no Appointor or Alternative Appointor, the Trustee or Beneficiaries have the power to appoint a new Appointor.

## **7. INCOME SPLITTING**

It is generally desirable to provide for the greatest possible number of potential Beneficiaries. The Trustee may then distribute the income of the Trust most effectively to take into account the relative income levels (and tax rates) of each of the Beneficiaries or classes of Beneficiary.

Distributions of Trust income to Beneficiaries with lower levels of income may take advantage of lower marginal income tax rates and, in some cases, the tax free threshold.

## **8. CORPORATE BENEFICIARY**

It is also possible to nominate a corporate Beneficiary, taking advantage of the current lower rates of company tax. The use of a corporate Beneficiary is only generally beneficial where the company tax rate is lower than an individual's marginal rate of tax. A cash flow advantage may also result from distributions to a company, as the timing of collection of estimated tax in advance of final assessment is significantly later for companies than the tax instalment system for individuals.

## **9. DISTRIBUTION OF INCOME**

The Trust income may be paid to an adult beneficiary or allocated or credited to the Beneficiary as required (but in either event, the Beneficiary would be considered to be "presently entitled" for tax purposes). In the case of a child Beneficiary, the income or a part of it may be appropriated, credited or paid to the child or for his or her benefit.

## **10. DISTRIBUTIONS TO MINORS**

Particular care must be taken when distributing Trust Income to Beneficiaries under the age of eighteen (18) years. We recommend that you seek professional advice regarding the tax rates imposed on minors.

## **11. INCOME ATTRIBUTION**

With the increasing complexities of the Income Tax Assessment Acts, it is important to provide for income attribution. The Trust Deed includes income attribution provisions.

Generally speaking, this means that the Trust Deed provides that the income of the Trust retains its character as income when it is distributed to the Beneficiaries.

The Trust Deed provides that the various types of income specified in the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* may be distributed separately from the balance of the income of the Trust. These income streaming provisions are important in relation to interest income, dividend income and capital gains, and provide enhanced flexibility when using a discretionary trust.

## **12. DEFAULT DISTRIBUTION**

Under the current taxation system, any trust income not distributed to Beneficiaries in the tax year it is earned is taxed at highest personal income tax rate. It is therefore, necessary to provide for a default mechanism whereby any income left over as at 30 June of any given year would automatically be distributed to one or all of the beneficiaries.

## **13. DIVIDENDS**

With the introduction of dividend imputation, it is important to ensure that franked dividends are distributed to individuals who are best able to use any franking credits available. The Trust Deed allows the passing through of franked dividends to the Beneficiaries most able to take advantage of them in the most flexible fashion.

**14. PRESENT ENTITLEMENT**

Beneficiaries of discretionary trusts are taxed on the share of the Trust income only to which they are presently entitled.

**15. PERSONAL SERVICES INCOME**

In using a discretionary trust to carry on a business, it is important that the income of that business is not derived solely from the personal exertion of one individual.

Should this be the case, the Commissioner of Taxation may not accept that the income correctly belongs to the Trust, and may seek to assess the individual personally, negating any benefit in using a Trust.

**16. SUPERANNUATION**

A trust creates, through the Trustee, an employer/employee relationship in the case of a trading concern. You should seek professional advice about the tax-deductible benefits of superannuation for employees (including working directors) based on employer contributions, as opposed to individual superannuation contributions.

**17. ASSET PROTECTION AND LIMITED LIABILITY**

While a discretionary trust is not a separate legal entity, it does hold a favourable legal position.

Assets held by the Trustee are held for the benefit of all the potential Beneficiaries. The Beneficiaries are incapable of charging the assets of the Trust with their own debt.

The Trustee should not incur debts and/or to secure those debts against the assets of the Trust except where the debts are incurred for the benefit of or for the purposes of the Trust. Used correctly, assets can be isolated from the liabilities of the Beneficiaries and in many cases, the liabilities of the Trustee.

The use of a limited liability company as Trustee enhances asset protection by limiting the liability of the Trustee to the assets of the company for the debts incurred in the company's own capacity.

**18. DISTRIBUTIONS OF CAPITAL**

The Trust Deed permits the Trustee to distribute the whole or a part of the capital to one or more Beneficiaries on or before the Vesting Day. If all the capital is not distributed before the Trust terminates, the Trust Deed provides that it will be distributed to the Beneficiaries. Capital Distributions are subject to "the profits first rule", pursuant to which profits (income realised or unrealised) are to be taken to have been distributed prior to untaxed amounts and contributed capital. Therefore, any distribution of "capital", will have to be carefully considered and we suggest you obtain taxation advice before doing so.

**19. CAPITAL GAINS**

In relation to the distribution of capital gains from a discretionary trust, it is important to consider whether the potential beneficiaries have capital losses which may be offset against capital gains, and also to consider the most tax effective distribution of the capital gain given the

provisions of the *Income Tax Assessment Act 1997*. Again, you should seek professional advice in relation to those issues.

## 20. LOSSES INCURRED BY THE TRUST

Losses (whether of an income or capital nature) incurred by the Trust cannot be transferred or distributed to any of the Beneficiaries. They are "quarantined" in the Trust and may be carried forward and offset against future gains. If the Trust terminates before the losses can be offset, they are lost.

This differs significantly from a partnership, where the losses incurred by the partnership are distributed to each of the individual partners to be included in their personal income tax returns and offset against other assessable income.

## 21. RECORDS AND ACCOUNTS

A trust is not a taxable entity even though the Trustee must file a Return of Trust Income each year. In certain circumstances, the Trustee may be assessed and be required to pay tax on the whole or part of the Trust Income.

All decisions of the Trustee should be recorded in minutes and the transactions recorded in the books of account of the Trust. The Trustee owes a duty to account to the Beneficiaries.

**The Trustee must ensure that it does not mix its own monies or monies not associated with the Trust with trust funds whether in the trust's books or in the trust's bank accounts.**

If the Trustee is a company, we recommend that the Trustee company's sole activity be to act as Trustee for the Trust. However, if the Trustee carries on more than one function, the distinction between the Trustee acting in its capacity as trustee and acting on its own behalf must always be maintained. Separate books of account should be kept for the Trust and the company and its bank accounts should indicate the capacity in which the Trustee is acting, eg. The trust's bank account should be styled "X Pty Ltd as trustee for the X Discretionary Trust".

It is not necessary for the Trust's accounts to be audited. When using a corporate Trustee, its annual accounts and reports will reveal this fact and show the Trust's assets and liabilities. The Trust's accounts should indicate whether or not the assets of the Trust are sufficient to meet the liabilities which the Trustee has incurred in that capacity.

## 22. STAMP DUTY

Stamp duty may be assessed if there is a transfer of a "trust interest," or a "re-settlement" of the Trust Property. A "re-settlement" or a transfer of a "trust interest" may occur in several circumstances, including if the Trustee varies the Trust Deed by adding or removing Beneficiaries. As this can have a significant financial impact, always seek professional assistance before making that decision.

If a Trust asset is transferred to a Beneficiary, the transfer may attract conveyance duty on the full unencumbered value of the asset transferred. In some cases, concessional rates of duty may apply. Legal advice should be sought in relation to those transactions **before** signing any documents of this nature.

Revision date: 17 December 2012

**WARNING**

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**The Discretionary Trust  
Efficacy in Trade and Investment**

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## THE DISCRETIONARY TRUST – EFFICACY IN TRADE AND INVESTMENT

### 1. GENERAL OUTLINE

A great deal of discussion circulates about family discretionary trusts, how they should be taxed and whether they remain a useful vehicle for trade and investment. This paper aims to deal with some of the more common issues.

#### **Your trust is safe**

Discretionary trusts can be confusing and complex, especially if you are using them for the first time. *Trust loss measures* affecting discretionary and family trusts seem to make trusts even more complicated to understand.

Properly structured and administered discretionary and family trusts still remain a desirable alternative as an investment structure. In certain circumstances, for example, discretionary trusts will fully maintain tax shelters on distributions at a beneficiary level. In addition, a discretionary trust can provide a great deal of flexibility in the amounts and the character of income distributed.

To assist your understanding of the trust loss measures, we have prepared the following short summary of its impact on discretionary trusts. This includes:

- an overview of the trust loss measures – their potential effect on your trust structure;
- what makes a trust a “family trust” – and how you can benefit from making a “family election”;
- the new tests for discretionary/family trusts – how to comply and take advantage of tax minimisation; and
- a comparison of different investment structures – and why a discretionary trust “out-performs” other structures in certain situations.

If you are uncertain as to whether your trust structure complies with the law, you should immediately seek professional advice, as any further transactions may have significant tax and other consequences.

### 2. ABOUT THE TRUST LOSS MEASURES- Overview and policy objective

The trust loss measures limit the recoupment of prior and current year losses and debt deductions to prevent the transfer of any tax benefit of the losses or deductions. This is done by examining whether there has been a change in majority underlying beneficial ownership or control of a trust or whether income injection schemes have been entered into to take advantage of a trust's losses. The measures apply to two broad categories of trusts - fixed trusts and non-fixed trusts. Non-fixed trusts include discretionary trusts.

The legislation attempts to prevent the transfer of the tax benefit of losses i.e. when a person who did not bear the economic loss at the time it was incurred by the trust, obtains a benefit because the trust is able to deduct the loss. The new provisions generally will not apply to **family trusts** that make distributions **only** to members of a family group.

### 3. WHEN IS A TRUST A FAMILY TRUST?

A trust becomes a family trust by making a *family trust election* naming a particular individual whose family is to benefit from the trust. Associated entities that are not wholly owned by the family of the named individual may become a member of the family group by making an *interposed entity election*.

If a family trust, or a trust, company or partnership that makes an interposed entity election has made a distribution of income or capital to persons outside the defined family group, or if those persons become presently entitled to the income or capital, then *family trust distribution tax* is payable.

The tests to be satisfied before losses are deductible vary depending on the type of trust. Each type of trust must satisfy certain tests relating to ownership or control in order to deduct losses and debt deductions. Tracing rules are imposed to monitor ownership of trust interests where entities are interposed between the trust and the underlying beneficiaries. **These tests will generally not apply to family trusts. Family trusts that distribute only to members of the family group, and which make an election for the purpose, will generally not be affected by these rules.** However, where a family trust distributes income or capital to persons outside the family group, a special tax, the family trust distribution tax, becomes payable. This is levied at the top marginal rate plus Medicare levy (48.5%), or at the rate of 100% where a non-resident entity becomes liable to family trust distribution tax and the ATO cannot recover the tax because of territorial limitations.

#### What is the definition of a "family trust"?

A family trust is defined as a trust which distributes:

- (a) income and capital to beneficiaries who are members of a family (eg spouse, children, grandparents, brothers, sisters, etc) or family entities; or
- (b) income to charities listed under sec 78 of the Income Tax Assessments Acts.

For a normal discretionary trust to be classified as a family trust it must make an election to distribute only to family members or sec 78 charities. Family members must be in full control of the trust to qualify for conversion to a family trust.

### 4. THE TESTS – their effect on your trust

If your trust does not fall within the appropriate test criteria, it may:

- (a) be prevented from deducting its tax losses from earlier income years; and
- (b) have to work out its net income and tax losses in a special way; and
- (c) may be prevented from deducting certain debts (eg. bad debts) incurred in the income year or earlier income years.

Non-fixed trusts will fall outside the test criteria if there is no continuity of majority beneficial ownership or if control of the trust changes.

#### Types of tests

Trust losses will be deductible if the trust satisfies the criteria set out in the following tests:

Type of trust	Tests
Fixed trusts	Continuity of beneficial ownership; Income injection test.
<b>Discretionary trusts</b>	<b>Continuity of beneficial ownership;</b> <b>Continuity of control test;</b> <b>Income injection test.</b>
<b>Family trusts</b>	<b>Family control test;</b> <b>Income injection test.</b>
Widely held listed public unit trusts	Continuity of beneficial ownership; Income injection test;
	or Same business test; Income injection test

### **What is the income injection test?**

An injection of funds by an outsider into a trust will constitute a benefit to a trust. In calculating the injection test, income as well as capital will be treated as a benefit. Family members will be considered "outsiders" unless they are the trustee or a beneficiary with a fixed entitlement.

If a trust is involved in an income injection scheme to take advantage of deductions it may be prevented from making full use of them under the income injection test. Under these schemes, income is injected by an outsider into a trust with losses or other deductions so that no tax is payable on the income.

In general terms, the outsider must provide a benefit to the trust and a return benefit must be given to the outsider.

### **What is the control test?**

Family trusts and discretionary trusts are required to satisfy the continuity of control test in order to deduct losses. This means that the same person must control at least 50% of the voting power of the trust in the loss year as in the year in which the deduction is claimed.

### **Example**

Black Pty Ltd is trustee of the Smith Family Discretionary Trust. The trustee has decided to sign the election under the tax loss legislation to convert to a family trust. Andrew is the controlling director of the corporate trustee, and is the Principal/Appointor of the trust deed with the power to remove or appoint a trustee. Andrew would be considered to be the controller of the trust. The trust made a loss of \$1000 for the year ended 30 June 2003. In order for the loss to be deductible against assessable income in the 2004 year, Andrew would need to be the controller of the trust for the 2004 year, and the income injection test would need to be satisfied.

### **What is the continuity of beneficial ownership test?**

This test must be satisfied by fixed, **discretionary** and public listed trusts. It requires that at least:

- (a) 50% of the underlying beneficial interests; or
- (b) in the case where a meeting can change those entitlements) 50% of the voting rights in the income and capital of the trust,

must be held by the same persons in the loss year as in the year in which the deduction is claimed.

For a discretionary trust to satisfy this test, the trust must maintain records to substantiate the pattern of distributions to beneficiaries. The same Beneficiaries must receive on average 50% of income and capital over the preceding two years and in the year in which the claim is made.

### **What is the Family control test?**

For a trust or other entity to make a family trust election or an interposed entity election, the family must actually control the trust or entity in the initial year for which the election is to be effective. Sections 272-87 Income Tax Assessment Act 1936 enable legal or financial advisers to be part of the controlling group, and to enable the "family" group to consist of:

- (a) the individual specified in the family trust election;
- (b) one or more members of his or her family; or
- (c) the trustees of one or more trusts in which the individual is a beneficiary,

or a combination of any of these.

## **5. FAMILY TRUSTS – no need to fear**

Family trusts are subject to concessional treatment and most of the tests which make up the trust loss provisions operate to their exclusion. In particular the control test and the continuity of beneficial ownership test do not apply. Therefore, changes in ownership or control of a family trust do not result in the adverse consequences explained above if the trust is a family trust at all the relevant times and it falls within the income injection test criteria.

### **How do the trust loss carry-forward measures impact upon the utility of trusts?**

The income injection test appears to be directed at the more blatant forms of "trafficking" in trust losses. **It should not affect the utility of either unit trusts or discretionary trusts in their regular application.**

The majority of discretionary trusts will fall, or be brought, within the category of "excepted" family trusts, in which case they need only be concerned with the income injection test. To qualify as an excepted family trust, the trust deed must limit distributions to family members, or to interposed entities who themselves only make distributions to family members. Alternatively, the trustee and interposed entities may, by way of an election, bind themselves to limit distributions to family members.

Therefore, if discretionary trusts come within the category of excepted family trusts it is unlikely that the trust loss carry-forward provisions will have a significant impact upon them.

### **Why is a discretionary trust such a tax-effective vehicle for trade and investment?**

The discretionary trust, in appropriate circumstances, will be a highly effective investment vehicle because there will be no "claw-back" of any tax shelter available in the calculation of the net income of the trust. The benefit of both property cost base indexation and depreciation allowances, will be fully maintainable at beneficiary level.

The same principles apply to a discretionary trust used as a trading vehicle. If, on a disposal of goodwill, the 50% exemption operates to reduce the capital profit captured as a net capital gain this shelter will also be fully maintainable at beneficiary level on a distribution of the sale proceeds by the trustee.

The same is true of the small business GST exemptions which are available to trusts which operate small businesses and dispose of the business or a business asset.

The use of a company may result in the benefit of indexation and the partial exemption being negated when sale proceeds are fully distributed. The use of an inappropriately structured unit trust may result in the loss of indexation benefits at unit holder level.

In summary, it might at this stage in the analysis be said that it is only partnerships and **discretionary trusts** which will consistently allow investors and traders to retain their returns, without at least a partial negation of tax shelters.

### **What are the limitations upon the use of discretionary trusts as trading and investment vehicles?**

There are two constraints upon the use of discretionary trusts:

1. any losses will be "locked up" in the trust, available only for offset against future trust income, and then only if the trust meets prescribed tests for the carry-forward of revenue losses;
2. they lend themselves only to situations in which the beneficiaries are prepared to accept their discretionary nature.

Accordingly, discretionary trusts are primarily "family" vehicles.

## **6. THE WAY FORWARD**

Table 1 provides you with a ready comparison of investment vehicles and their key characteristics.

Tables 2 and 3 provide a comparison of ideal applications for investment or trade.

These tables have been compiled to help you to ascertain the most appropriate structure for your trade or investment. They also illustrate that discretionary trusts can be an effective and advantageous structure.

TABLE 1: KEY CHARACTERISTICS

	<b>LOSS ACCESS SHELTERS ON DISTRIBUTION OF PROFITS</b>	<b>LOSS CARRY FORWARD</b>	<b>MAINTENANCE OF TAX</b>	<b>CAPITAL RAISING</b>
<b>PARTNERSHIP</b>	Partners have immediate access to losses.	Depends on rules applicable to partner in question (i.e. whether individual or company).	Full preservation of tax benefits at partner level.	CGT exposures arise where partners dispose of interest in property on admission of new partner.
<b>DISCRETIONARY TRUST</b>	Locked up in trust.	If distributions limited to family members and/or entities making distributions to family members, will generally be able to carry losses forward indefinitely.	Tax shelters fully maintainable at beneficiary level.	Not applicable.
<b>UNIT TRUST</b>	Locked up in trust.	Subject to continuity of majority of entitlements to income and capital. Alternative some business test only for listed unit trust.	Benefit of indexation fully maintainable at beneficiary level if trust fully capitalised. Discount substantially negated on distribution of sale proceeds.	Issue of units not a "disposal" for CGT purposes.
<b>COMPANY</b>	Losses transferable only between companies in same group.	Subject to continuity of ownership and alternative same business tests.	Tax shelters on corporate profits eliminated on full distribution to individual shareholders.	Issue of shares not "disposal" for CGT purposes.

TABLE 2: IDEAL APPLICATIONS – INVESTMENT VEHICLES

	<b>RELATIONSHIP BETWEEN PARTIES</b>	<b>TERM OF INVESTMENT</b>	<b>LEVEL OF GEARING/RETENTION</b>	<b>PROFIT DISTRIBUTION</b>
<b>PARTNERSHIP</b>	High degree of trust.	Short to medium.	High distribution.	Always full.
<b>DISCRETIONARY TRUST</b>	Related parties.	Not a key factor of trust losses.	Low – avoid running up distribution.	Generally full.
<b>UNIT TRUST (FULLY CAPITALISED)</b>	Primarily arm's length relationships.	Not a key factor	Low – avoid running up trust losses.	Full distribution of profits.
<b>COMPANY</b>	Primarily arm's length relationships.	Medium to long term to exploit 30% tax rate.	Low, unless losses transferable.	Distribution only to extent that dividend can be franked, medium to long term retention of balance.

TABLE 3: IDEAL APPLICATIONS - TRADING VEHICLES

	<b>RELATIONSHIP BETWEEN PARTIES</b>	<b>LIKELIHOOD OF LOSSES</b>	<b>SIZE OF ENTERPRISE/ NET WORTH</b>
<b>PARTNERSHIP</b>	Must be high degree of trust.	Often vehicle of choice where losses in prospect.	Access to discount determined by reference to value of partner's interest in net worth – partners may qualify for discount even where net worth of partnership and associated businesses is well in excess of ordinarily applicable exemption threshold (\$2 million as indexed).
<b>DISCRETIONARY TRUST</b>	Related parties.	Consider partnership when losses in prospect.	Exemption threshold applies in ordinary way.
<b>UNIT TRUST</b>	Primarily arm's length parties.	Consider partnership if losses in prospect and sufficient degree of trust.	Not suited to SMEs* - claw back of discount on distribution of sale proceeds.
<b>COMPANY</b>	Primarily arm's length parties.	Consider partnership if losses in prospect and sufficient degree of trust.	Not suited to SMEs – claw back of discount on distribution of sale proceeds.

- SMEs - small to medium-sized enterprises



Revision date: 19 December 2007

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---

**From:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>  
**Sent:** Thursday, 2 September 2021 10:24 PM  
**To:** Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>  
**Cc:** Forum (Allens) <[ForumAllens@allens.com.au](mailto:ForumAllens@allens.com.au)>  
**Subject:** RE: Westpac v Forum Finance Pty Ltd (NSD616/2021) | In the matter of The Forum Group of Companies Pty Ltd (In Liquidation) (NSD747/2021) [Allens-File-DMS.FID2091065]

**CAUTION:** This email originated from outside the organisation. Do not act on instructions, click links or open attachments unless you recognise the sender and know the content is authentic and safe.

Dear Kirsty,

I confirm that my client's instructions are to support the application for the liquidators to be appointed receivers, as previously indicated.

We are instructed however, to expressly indicate that our client reserves his right to apply to the Court to discharge the orders in respect of 14 James St. As previously indicated, it is our client's preference to preserve the 14 James St properties during the course of these proceedings in accordance with the Freezing Orders, particularly noting that the properties are capable of servicing the mortgages.

In this regard, we seek a notation or an order to the effect that there is to be a moratorium for a reasonable period of time to enable our client to take the appropriate steps to obtain the consent of Westpac and the Mortgagee in order to replace the former trustee with a new trustee and to transfer title such new trustee thereafter.

As to the orders generally, we have no objection save for the inclusion of the words *reasonable* and *necessary* in respect of costs, expenses and remuneration.

Further, as previously indicated in our letter of 16 August 2021, our client wishes to be involved in the sale process of all property subject of this application. As such, we seek for the inclusion in the orders or by way of a separate date, a regime that outlines inter alia the method of sale, the nomination of the sales agent, the appropriate deductions and sale reserves.

If the Liquidators consent, could provide us with us short minutes of order that take into account the above matters.

We otherwise are available for a discussion regarding this email from 10am.

**Christopher Nehme**  
**Partner**

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**From:** Prestwich, Chris <[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)>  
**Sent:** Friday, 3 September 2021 10:59  
**To:** Christopher Nehme <[cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au)>  
**Cc:** Forum (Allens) <[ForumAllens@allens.com.au](mailto:ForumAllens@allens.com.au)>; Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>  
**Subject:** RE: Westpac v Forum Finance Pty Ltd (NSD616/2021) | In the matter of The Forum Group of Companies Pty Ltd (In Liquidation) (NSD747/2021) [Allens-File-DMS.FID2091065]

Dear Chris

Attached is a response to your earlier letter.

In relation to the points below, we are instructed as follows:

1. In relation to 14 James Street:
  - a. The Liquidators note that your client may seek to discharge the orders in respect of 14 James Street. We aren't proposing to include an express note of that in the orders, but recognise that your client would be entitled to bring that application;
  - b. The Liquidators aren't willing to agree to a formal moratorium. They are happy to discuss the proposed sales process and likely timing - that would include seeking submissions from agents, so we would expect that in practical terms your client would have ample time to take any steps he is proposing.
2. As to costs, the costs of a court-appointed receiver will be subject to the usual approval processes and the Liquidators do not consider that those require any further qualification.
3. As to the sales process, our clients are content to consult with your client about that process. For example, if there are particular agents that your client recommends, our clients would be interested in receiving that information. However, with a view to maximising the price that can be achieved through the sales process, they do not agree to orders which restrict the basis upon which the sale could occur.

Kind regards

Chris Prestwich  
Partner, **Allens**  
DL [+61 2 9230 4496](tel:+61292304496) M [+61 405 334 651](tel:+61405334651)

---





**Barclay Tuck Yachts**

1800 Sunset Harbour Drive, Miami Beach, 33139, United States

858-842-5447

Name

Phone (optional)

Your Name

Your Phone Number

Email

Your Email

Message

I recently viewed your listing on YachtWorld and I am interested in more details. Thank you.

Contact Broker

**2001 Mangusta 105 XOXO | 105ft**

US\$849,000

Sunny Isles, Florida

Not for sale to US residents while in US Waters

**— BASICS**

Year: 2001

Offered By: Barclay Tuck Yachts

Call

Contact

Chris Prestwich & Kristy Prinsloo  
Allens  
Level 28, Deutsche Bank Place  
126 Phillip Street  
SYDNEY NSW 2000

Date: 26 November 2021  
File No: 047678  
Author: Melissa Passarelli  
Partner: Sazz Nasimi

**By email: [Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)  
[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)**

Dear Mr Prestwich and Ms Prinsloo

**2001 Mangusta 105 XOXO ('Yacht')**

We refer to the above and note that you are in the process of selling same. As you are aware, we act for Mr Vince Tesoriero.

We have been provided with an advertisement of the Yacht which notes the following:

*"Not for sale to US residents while in US Waters"*

Given the Yacht is currently moored in the US, it appears to us to be completely inappropriate to list it as not for sale to US residents.

We remind you of your obligations pursuant to section 579 of the *Corporations Act* to exercise your powers with due care and in good faith and require that you open the sale campaign to US residents in order to achieve the best price.

We can indicate that our client maintains a claim over the Yacht and we are instructed that should the Yacht be sold undervalue our client intends to issue proceedings against the liquidators personally in order to recover the difference.

We otherwise reserve all our client's rights.

Yours faithfully  
**MADGWICKS**

Melissa Passarelli  
**Associate**

**T:** 03 9242 4780  
**E:** [Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

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**CC: [forumallens@allens.com.au](mailto:forumallens@allens.com.au)**

**MADGWICKS**  
ABN 82 199 611 971

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DX 485

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E: [madgwicks@madgwicks.com.au](mailto:madgwicks@madgwicks.com.au)  
W: [madgwicks.com.au](http://madgwicks.com.au)



---

**From:** Goldberg, Tyler <Tyler.Goldberg@allens.com.au>  
**Sent:** Monday, 29 November 2021 10:51 PM  
**To:** Sazz Nasimi; Melissa Passarelli; Alexandra Lawrence  
**Cc:** Forum (Allens)  
**Subject:** Forum | XOXO Yacht Repair [Allens-File-DMS.FID2091065]  
**Attachments:** 2021.11.29 Letter to S Nasimi - XOXO Yacht repair(517652832.2).pdf; Pantaenius PDS.pdf; Metrix Schedule of Insurance.pdf; Signed insurance claim form.pdf

Dear Colleagues,

Please see attached letter and its enclosures.

Yours faithfully

Tyler Goldberg  
Associate, **Allens**  
DL [+61 2 9230 4938](tel:+61292304938) M [+61 450 743 557](tel:+61450743557) [www.allens.com.au](http://www.allens.com.au)

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**Allens > < Linklaters**

29 November 2021

Madgwicks Lawyers  
 Level 6, 140 William Street  
 Melbourne VIC 3000  
 Attention: Sazz Nasimi

**By Email:** [Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

Dear Colleagues

### **XOXO Yacht Insurance Claim**

We act for Jason Preston and Jason Ireland as the receivers of the "XOXO" Mangusta 105 Motor Yacht (**XOXO Yacht**) (the **Receivers**).

We refer to the enclosed:

- Pantaenius Australia Pty Ltd (the **Insurer**) product disclosure statement and the Metrix Insurance schedule of insurances (**Insurance Policy**); and
- The insurance claim form signed by Vince Tesoriero (**Insurance Claim Form**).

Inspections following the Receivers' appointment indicate the XOXO Yacht suffered significant pre-appointment damage, and is in a poor state of repair. Estimates obtained by the Receivers indicate that the costs to repair and return the XOXO Yacht to an operable state will be in the range of USD \$300,000 to \$500,000 and could take up to 8 months to complete.

At least USD \$75,000 of this estimated cost is specifically in relation to repair of the vessel's keel.

The Receivers are seeking to ascertain whether some or all of these repair costs may be claimable under the Insurance Policy. The Insurance Claim Form, which we expect was submitted by or on behalf of Mr Tesoriero to the Insurer, is not complete. Specifically, no description of the incident which caused the damage to the XOXO Yacht was provided. For that reason, the Insurer closed the claim.

We request that Mr Tesoriero provide his understanding of the incident that caused the damage the XOXO Yacht by **5.00pm on 2 December 2021**.

Unless further information is provided to the Receivers and that information leads to a successful claim with the Insurer for a significant portion of the works required, the Receivers will have no option but to sell the XOXO Yacht in its current condition.

Yours faithfully



**Chris Prestwich**  
 Partner  
 Allens  
 Chris.Prestwich@allens.com.au  
 T +61 2 9230 4496

**Kirsty Prinsloo**  
 Managing Associate  
 Allens  
 Kirsty.Prinsloo@allens.com.au  
 T +61 2 9230 4735

**Our Ref** 121031672:  
 29.11.2021



ABN 93 616 446 833 | ACN 609 908 278 | AFSL 484789  
 4 Akuna Drive Williamstown VIC 3016  
**T:** +61 3 9397 8000 | **F:** +61 3 9397 8022  
**E:** info@metrixinsurance.com.au | **W:** metrixinsurance.com.au

## Schedule of Insurances

Vince Tesoriero & Associated Entities  
 44 Howitt Road  
 CAULFIELD NORTH VIC 3161

**Date:** 10 /08/ 2020

**Our Reference:** TESORIER V

**Renewal**

**Class of Policy:** Pleasure Craft

**Insurer:** Pantaenius Australia Pty Ltd  
 33 / 6 Jubilee Avenue, Warriewood NSW 2102  
 ABN: 95 148 013 085

**The Insured:** Vince Tesoriero

**Policy No:**  
 131421926

**Period of Cover:**  
 From **08/06/2020**  
 to **08/06/2021** at 4:00 pm

### Details:

Please see following pages for a description of the risk(s) insured

**Schedule of Insurance**

**Class of Policy:** Pleasure Craft  
**The Insured:** Vince Tesoriero

**Policy No:** 131421926  
**Invoice No:** 58950  
**Our Ref:** TESORIER V

**SALE & MOTOR YACHT INSURANCE - POLICY SCHEDULE Ref No. 131421926**

Insured: Vince Tesoriero  
 Policy Period: 08 June 2020, 4:00 pm EST - 08 June 2021, 4:00 pm EST  
 Insured Vessel Description: MY Mangusta 105 Open XOXO  
 Year built / measurements: 2001 / 31.00m x 6.60m  
 Flag / registration / HIN (Hull id no): Cayman Islands  
 Motor make / power (hp): MTU 2 x 2120.00 hp  
 Charter of the vessel: Skippercharter prebooked

**HULL AND PROPERTY INSURANCE****Agreed fixed value:**

Vessel incl inventory, equipment,  
 engine and tenders: \$1,400,000

**Additional Cover**

	<b>Single limit</b>	<b>Maximum limit</b>
Emergency Accommodation or Repatriation Costs	\$200.00/per night	\$1,000
Fishing Gear	\$1,500/per item	\$5,000
Personal Effects	\$1,500/per item	\$10,000
Commercial Towing Fees and Emergency Costs		\$5,000

In circumstances of a Total Loss, Constructive Total loss or a partial loss, the Insured shall not recover more than the Agreed Fixed Value in respect of loss or damage to the Vessel, Tenders, Personal Effects, Cradles, Fishing Gear and any other property insured under Section A of this Policy.

<b>Deductible</b> (Recommended Option)	\$40,000
Deductible Personal Effects	\$200
Deductible Fishing Gear	\$200
Deductible Trailers, Cradles	\$200

**Additional Conditions and Endorsements:**

Please note this Policy is a 12 month policy and is non refundable.

**Approved Skipper Clause:**

The vessel may only be used under the control of a skipper who has received the prior written approval of the Underwriters. Please submit th CV of any proposed Skipper of the vessel for approval.

The following Skipper(s) has/have been approved: Jeffrey Schwartz

Hard Stand Clause - The full deductible shall be payable in the event of any claims made for damage substained while the vessel is stored on a hard stand, this overrides clause 5.4 in the PDS.

Any claim for damage caused by a lighting strike shall require the client to pay the first 30% of the claim or the deductible whichever is the greater. This supersedes clause "5 Deductibles in the PDS.

The vessel is moored in a marina berth/at a jetty.

New for Old with deduction - There will be a deduction due to the age of the part repaired or replaced in case of Partial Loss claims.

**Schedule of Insurance**

**Class of Policy:** Pleasure Craft  
**The Insured:** Vince Tesoriero

**Policy No:** 131421926  
**Invoice No:** 58950  
**Our Ref:** TESORIER V

Any loss or damage caused by a named tropical storm is excluded from this cover. This exclusion applies between July 1st and November 15th annually in the area between Latitudes 10N and 30.5N (but does not apply for the Canary Islands and Cape Verde) and between November 1st and May 1st annually in the area between the Latitudes 10S and 30S.

A Named Tropical Storm is defined as a tropical cyclone which is given a name by a regional agency such as the National Hurricane Centre or the Australian Bureau of Meteorology or similar which are advisory and warning centres of the World Meteorological Organization WMO (<http://severe.worldweather.wmo.int>).

Any claim for damage or loss to the tender and its outboard shall require the client to pay 20% of the claim as a deductible.

"Wear and Tear" - Damages caused by wear and tear are excluded.

Salvage & Wreck Removal Warranty - Any claim against this policy for Salvage or Wreck Removal shall require the client to pay a one off deductible of \$20,000 AUD, this overrides clause "5. Deductibles" in the PDS.

**WAR, STRIKE & CONFISCATION INSURANCE**

**Agreed Fixed Value:** Maximum limit (per claim)  
 Vessel incl. inventory, equipment, engine and tenders \$1,400,000

**Cruising Area:**

Worldwide, apart from the areas listed in the current version of the Yacht War, Strike and Confiscation Exclusions / War, Strikes and Political Acts Exclusions.

**THIRD PARTY LIABILITY INSURANCE**

**Liability Limits:** Maximum limit (per claim)  
 Limit for personal injury and/pr property damage \$10,000,000.00

**Cover Includes:**

Any claim against this Policy shall require the client to pay a one off deductible of \$2,500.

**PERSONAL ACCIDENT INSURANCE****Benefits:**

	Maximum limit (per person)	Maximum limit (per accident)
in case of death:	\$225,000.00	\$225,000.00
in case of permanent disability (100%)	\$450,000.00	\$450,000.00

**GENERAL TERMS AND CONDITIONS****Navigational Limits:**

NA East Coast: Waters of the East Coast of the USA and Canada, including the Gulf of St Lawrence, between Latitudes 30.5° North and 52° North and as far as Longitude 50° West. (USEA +CA)

Florida: Inland waters of Florida. Coastal waters of Florida and the Gulf of Mexico between Latitudes 23.5° North and 30.5° North and as far as Longitude 50° West. (FLMEX)

Survey Warranty - If a vessel survey (rigging survey and/or mooring report) has been requested the Insured shall supply such survey before commencement of the Policy. If such survey is not supplied by the Insured in accordance with this Survey Warranty any claim associated with a defect that would have reasonably been identified had a reasonable survey taken place, may be refused by Underwriters. Further, Underwriters may cancel this Policy if the requested survey is not supplied

**Schedule of Insurance**

**Class of Policy:** Pleasure Craft  
**The Insured:** Vince Tesoriero

**Policy No:** 131421926  
**Invoice No:** 58950  
**Our Ref:** TESORIER V

in accordance with this Survey Warranty.

**Approved Skipper Clause:**

The vessel may only be used under the control of a skipper who has received the prior written approval of the Underwriters. Please submit th CV of any proposed Skipper of the vessel for approval.

The following Skipper(s) has/have been approved: Jeffrey Schwartz

**Charter of the Vessel:**

The cover includes the charter of the vessel (Skippercharter)

**Conditions of Insurance:**

The cover is subject to Pantaenius Sail & Motor Yacht Insurance Policy.

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# PRODUCT DISCLOSURE STATEMENT

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INCLUDING SAIL & MOTOR YACHT INSURANCE POLICY WORDING  
This PDS was prepared on 3rd of March 2020.

**Germany · Great Britain · Monaco · Denmark · Austria · Poland · Spain · Sweden · USA · Australia**

**PANTAENIUS**

Australia Pty Ltd.  
ABN 95 148 013 085  
AFS Licence No. 410502

**SYDNEY**

33/6 Jubilee Av.,  
Warriewood, NSW 2102, Australia  
Phone +61-(02)-9936 1670

**CORRESPONDENT BANK**

Commonwealth Bank  
Account Number: 10228190  
BSB: 062-236  
BIC/SWIFT: CTBAAU2S

**PANTAENIUS ONLINE**

pantaenius.com.au  
info@pantaenius.com.au

Pantaenius Australia Pty Ltd (AFS Licence No 410502) is an insurance agent organising specialist Sail & Motor Yacht Insurance.  
\*Pantaenius America Ltd. is a licensed insurance agent licensed in all 50 states. It is an independent corporation incorporated under the laws of New York and is a separate and distinct entity from any entity of the Pantaenius Group.

## SAIL & MOTOR YACHT INSURANCE POLICY

This document is a Product Disclosure Statement ('PDS') and contains the policy wording. The insurance is issued by Pantaenius Australia Pty Ltd. pursuant to a binding authority agreement with the insurers which allows Pantaenius to issue, vary and renew This Insurance for and on behalf of the Insurer.

In this PDS, 'we', 'us' or 'our' means the Insurer of the Sail and Motor Yacht insurance policy. This PDS is designed to help you understand what is covered and what is not covered under the Sail and Motor Yacht insurance policy ('policy') and to provide you with sufficient information to enable you to make an informed decision about whether to choose to take out insurance cover for your Vessel.

Some words and expressions have been given a specific meaning in this PDS and reflect the defined terms in the "Words with Special Meaning Section" of this PDS.

We have appointed Pantaenius as our agent to organise insurance and you can contact us through them at:

**PANTAENIUS AUSTRALIA PTY LTD.**

ABN: 95 148 013 085

AFS licence no.: 410502

Telephone: +61 -(02)-9936 1670

Email: [info@pantaenius.com.au](mailto:info@pantaenius.com.au)

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## 1. ABOUT THE INSURER

The insurers of your policy are authorised under the Insurance Act 1973 to write Australian insurance business.

Personal Accident insurance cover is underwritten by Chubb Insurance Australia Limited, ABN 23 001 642 020, AFSL 239687 (of Grosvenor Place, Level 38, 225 George Street, Sydney NSW 2000, Ph 02 9335 3411) ('Chubb').

All other insurance covers are underwritten by Chubb, Berkshire Hathaway Specialty Insurance Company, ABN 84 600 643 034, AFSL 466713 (of Level 23, 420 George Street, Sydney NSW 2000) ('BHSI') and HDI Global Specialty SE, ABN 58 129 395 544, AFSL 458776 (of Tower 1, Level 33, 100 Barangaroo Avenue, Sydney, NSW 2000) ("HDI Global Specialty") in accordance with the percentage of risk for each Insurer set out in the Schedule.

Pantaenius acts as an agent of the insurer(s) to issue the insurance policy and bind the insurers. This means that Pantaenius acts at all times on behalf of the insurers. Please refer to the Financial Services Guide issued by Pantaenius for full details of its binder authority.

## 2. ABOUT PANTAENIUS

Pantaenius Australia Pty Ltd (AFS Licence No 410502) is an insurance agent organising specialist Sail & Motor Yacht Insurance.

Pantaenius is registered as a company in Australia. Pantaenius operates as a wholly owned subsidiary of Pantaenius Holding GmbH (Pantaenius Holding), which is a company that forms part of the international Pantaenius Group with its head office based in Hamburg, Germany.

The Pantaenius Group operates worldwide organising sail and motor yacht insurance and comprises a number of companies with offices in the United Kingdom, Spain, Monaco, United States, Sweden, Denmark, Austria, Poland and Australia.

## 3. UNDERSTANDING YOUR POLICY

This PDS contains important information to help you understand the sail and motor yacht insurance cover offered under your policy and to assist you to decide if you wish to take out insurance cover.

It is up to you to choose the cover you need. We and our representatives do not provide any advice on whether the policy is suitable for your objectives, financial situation and needs. You should carefully consider the information which has been given to you having regard to your personal circumstances to decide if This Insurance is right for you.

You need to decide if the limits, type and level of cover(s) is appropriate for you and will cover your potential loss. If you do not choose appropriate cover, you may be underinsured and you may have to bear part of any loss for which you are not covered by your policy.

## 4. WHAT MAKES UP YOUR INSURANCE CONTRACT

This PDS contains the Policy Wording, which together with your Schedule and any written Endorsements issued to you by us, must be read carefully as they make up your insurance contract with the Insurer.

Sometimes we need to change the wording of your policy to vary your insurance cover depending on a number of factors. Your policy may be varied by issuing an Endorsement. You will find any Endorsements that apply to your policy set out in your Schedule.

This PDS and your policy sets out what risks you are Insured for and any circumstances in which you will not be Insured. You should read all the documents which make up your policy carefully in order to understand your rights and obligations, our limits of indemnity, the insurance cover provided, the restrictions and exclusions that apply to the cover provided and the other terms and conditions applicable to your policy. Please retain these documents in a safe place.

## 5. BENEFITS AND FEATURES OF YOUR POLICY

The following is a summary of some of the major benefits and features of your policy. Full details of the actual terms and conditions of your cover are set out in the policy wording contained in Section A, A1, B, C & D.

### 5.1. General Overview

Unless otherwise stated in your Schedule, your policy will cover:

- (a) the person or company named as the insured; and
- (b) the Vessel described in your Schedule,

for the insurance cover types set out in your Schedule.

## 5.2. Summary of Risks Covered Under Your policy

There are 4 types of insurance cover available:

1. Section A: Hull and Property insurance
2. Section A.I: War, Strike and Confiscation insurance
3. Section B: Third Party Liability insurance
4. Section C: Personal Accident insurance

The sections that apply to you will be set out in your Schedule.

### SECTION A: Hull and Property insurance

- Hull and Property insurance provides cover for physical loss or damage occurring during the Policy Period to your Vessel as well as Personal Effects.
- No cover is provided if your Vessel is outside the Navigational Limits stated in your Schedule. The cover is only effective within the cruising area specified in your Schedule and includes any customary stay out of the water; for example, at storage during winter seasons or shipyards including hauling out and launching.
- If your Schedule states that the Named Tropical Storm Clause applies, this Hull and Property insurance does not provide cover for loss or damage caused by a Named Tropical Storm at certain areas during certain times of the year. For full details of this clause, you should read Section A §5.
- Hull and Property insurance does not cover every event, for example loss of money, valuables and jewellery, food and luxury items and intentional damage by you or damage caused by war or other excluded causes is not covered. For an explanation of what is not covered under Hull and Property insurance you should read the Exclusions set out in Section A §4 and the General Exclusions Applicable to All Sections of this insurance in Section D §1.
- Hull and Property insurance is an Agreed Fixed Value cover which means that in the event of a valid claim you will be paid compensation up to the Agreed Fixed Value. You cannot recover more than the Agreed Fixed Value for any repair or replacement of the Vessel. If "New for Old without deduction" is stated on your Schedule then in the event of a valid claim for partial damage, you will be compensated for the necessary replacement costs of your Vessel without deductions on a "new for old" basis. The Agreed Fixed Value is the amount specified in your Schedule. For more information about how Agreed Fixed Value cover applies you should read Section A §3.
- You may have to pay a Deductible each time you make a claim under each section of your policy. The amount of any Deductible which applies to your insurance cover is specified in your Schedule. An explanation of any Deductible which may apply under Hull and Property insurance is set out in Section A §3.5.
- No cover is in place if the Vessel is under charter unless a charter cover is expressly included in the Schedule.
- Your Hull and Property insurance also includes additional cover for risks such as salvage costs, commercial towing fees and emergency costs. For full details of additional cover, you should read Section A §2.

### Section A.I: War, Strike and Confiscation Insurance

- Yacht War, Strike and Confiscation cover is optional cover as an addition to Hull and Property insurance under your Sail and Motor Yacht Insurance Policy.
- This optional cover does not apply automatically and is a separate cover which must be added to your Section A 'Hull and Property Insurance' of your Sail and Motor Yacht Insurance Policy.
- If this optional cover is added, your Schedule must state that you have selected this option.
- In order to qualify for cover under this option you must have cover under Section A 'Hull and Property insurance' of your current Sail and Motor Yacht Insurance Policy.
- Section A.I covers loss of or damage occurring during the Policy Period to the Vessel or any liability arising from or caused by strikes, locked out workmen or persons taking part in labour disturbances, riots or civil commotions, war, civil war, revolution, capture, seizure, arrest or detention, terrorism or any person acting from a political motive, confiscation or appropriation.
- Except as otherwise provided in this option, all the terms, conditions and exclusions which apply to cover under Section A 'Hull and Property insurance' and Section D 'General Terms and Conditions' of your Sail and Motor Yacht Insurance Policy will also apply to your cover under this option.

### SECTION B: Third Party Liability insurance

- Third Party Liability insurance covers your legal liability to pay a third party for bodily injury, death or damage to property arising from your ownership, operation or use of your Vessel.

- Third Party Liability insurance covers the Insured referred to in your Schedule and extends to the Insured's family, the beneficial owner of the Vessel or the family of the beneficial owner of the Vessel, the Vessel's captain, the Vessel's crew, and guests who are with the consent of the Insured or the legal or beneficial owner onboard the Vessel. The cover also extends to third party liability connected with Tenders (attached to the Vessel), Water Sport Equipment, search and rescue costs and skipper liability insurance which is set out in Section B §1.
- Third Party Liability insurance does not cover every event, for example intentional damage by the Insured or damage caused by motorboat racing is excluded from the insurance cover. For an explanation of what is not covered under your Third Party Liability insurance you should read the Exclusions set out in Section §6 and the General Exclusions Applicable to All Sections of this insurance in Section D §1.

### SECTION C: Personal Accident insurance

- Personal Accident insurance covers accidents arising from the private pleasure use of your Vessel which causes accidental death or permanent Disability as a result of bodily injury to an Insured person from an external cause up to the Sum Insured for Accidental Death and Permanent Disability set out in your Schedule.
- An Accident is a sudden, external and identifiable event that happens by chance and could not have been expected from the perspective of the Insured Person. Benefits payable under Personal Accident insurance may include a Permanent Disability benefit which is paid if the Insured suffers a Bodily Injury as a result of an Accident which causes Permanent Disability. An Accidental Death benefit is also available in the event of death of an Insured Person. The amount of any Disability benefits paid, if any, will be a lump sum. The amount of any benefit determined by us will be calculated using the Sum Insured and the formula set out in the policy. For details of the benefits available under Personal Accident insurance you should read Section C 3.
- Additional benefits such as emergency transport and funeral costs and medical emergency costs abroad may be available under the policy. For details of the additional benefits available under Personal Accident insurance you should read Section C §3.
- Personal Accident insurance does not cover every event, for example it does not cover any Accidents which are directly or indirectly related to Pre-Existing Medical Conditions or Degenerative Medical Conditions. For an explanation of what is not covered under Personal Accident insurance you should read the Exclusions set out in Section C §6.

### IMPORTANT NOTE

The explanation of each Section of the policy set out above is a summary only. Please refer to each Section of Cover in the policy for full details of what is covered and not covered.

Not all events are covered by your policy and limits and conditions apply. Each cover has specific exclusions that will apply to it.

The policy is made up of 4 different types of cover set out in Sections A, A.1, B and C and which are subject to terms, conditions and exclusions in each Section. The General Terms and Conditions set out in Section D of the policy including exclusions apply to all types of cover under the policy.

It is important that you read your policy and your Schedule carefully, so that you can understand the conditions which apply to your cover, what is covered, the limits of indemnity and what is not covered.

## 6. APPLYING FOR COVER

If we ask any questions and/or require information specifically requested in your application form, this is in addition to and does not restrict your duty to make a full and accurate disclosure to us of all material information when applying for sail and motor yacht insurance or varying cover during the Policy Period.

## 7. COMMENCEMENT OF YOUR COVER

We provide cover to you on the terms contained in this PDS and policy.

Your cover will commence as stated in the Schedule. Cover cannot be backdated unless the Insurer has agreed expressly in writing to do so.

## 8. WHEN YOUR POLICY ENDS

Your policy ends:

- at the end of the Policy Period on your Schedule, or
- at the date of cancellation of your policy, if you have written to us and requested cancellation of your policy or we have cancelled your policy in accordance with your policy terms or law.

## 9. HOW WE CALCULATE YOUR PREMIUM

Your premium will be set out in your Schedule. Your premium is based on your risk profile and a range of other factors, such as where your Vessel is located, the type and value of the Vessel being Insured and your insurance claims history. We also take into account any relevant compulsory Government charges, stamp duty, GST and fire services levy applicable to your policy.

Your premium must be paid by the due date specified in the Invoice(s) we issue to you or as set out in your Schedule which ever is the earlier.

## 10. INSTALMENT PREMIUM

Additional charges may apply if you pay your premium by instalments. Details of these charges will be set out in your Schedule.

## 11. UNDERSTANDING YOUR DUTY OF DISCLOSURE

### Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

### What you do not need to tell us

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

If the Vessel is not a pleasurecraft as defined by the Insurance Contracts Act 1984(Cth), This Insurance will be governed by the Marine Insurance Act 1909(Cth) and not the Insurance Contracts Act 1984(Cth) and all material non disclosures will give rise to a right to treat the contract as if it never existed.

## 12. WORDS WITH SPECIAL MEANING

Some words have special meanings as described below. These words are identified within the PDS with capitalisation:

### Accident

Means a single sudden event which occurs at a specific date and time, in connection with the Insured person's use of the Vessel, and which causes death of or injury to an Insured person from an external cause.

### Agreed Fixed Value

Means the insured value of the Vessel, as agreed upon between the insurer(s) and the Insured and set out in the Schedule.

### BHSI

Means Berkshire Hathaway Specialty Insurance Company, (incorporated in Nebraska, USA. Liability is limited) ABN 84 600 643 034, AFSL 466713.

### Chubb

Means Chubb Insurance Australia Limited, ABN 23 001 642 020, AFSL 239687.

**HDI Global Specialty**

Means HDI Global Specialty SE, ABN 58 129 395 544, AFSL 458776.

**Constructive Total Loss**

Where the costs of reinstatement exceed the Agreed Fixed Value.

**Deductible**

Means the amount which you first have to pay if you make a claim under your policy as stated in your Schedule.

**Disability**

Means when the physical or mental capacity of an Insured person is permanently impaired as the result of an Accident.

**Endorsement**

Means an amendment or addition to your policy that is set out in the Schedule.

**Fishing Gear**

Means rods & reels used for the purpose of recreational/sport fishing.

**Gear and Equipment**

Means gear and equipment permanently attached to or used with the Vessel and includes masts, spars, standing and running rigging, sails, navigational aids (both hand-held and built in, safety equipment, tools which are kept permanently on the Vessel for emergency, breakdown and maintenance purposes, televisions, entertainment systems and accessories etc.)

**Hull**

Means the hull, deck, cabin, deck fixtures and fittings on or below the deck of your Vessel.

**Insured**

The Insured is the person or company (people or companies) specified as the Insured in the Schedule provided that person has an insurable interest in the Vessel.

**Insurer**

For Personal Accident insurance cover, means Chubb. For all other insurance covers, means Chubb, BHSI and HDI Global Specialty (Chubb underwrites 50% of the risk for these covers, BHSI underwrites 20% and HDI Global Specialty underwrites the remaining 30%).

**Leased Equipment**

Any equipment which has been leased by the Insured under a contract specifically for use on the Vessel, and which is of a nature that would normally be found on the Vessel.

**Named Tropical Storm**

Means a tropical cyclone which is given a name by a regional agency such as the National Hurricane Centre or the Australian Bureau of Meteorology or similar which are advisory and warning centers of the World Meteorological Organization (WMO <http://severe.worldweather.wmo.int/>).

**Machinery**

Means the main and auxiliary engines, generators, gear boxes, electrical and hydraulic equipment of the Vessel together with their cables and fittings.

**Navigational Limits**

The specific geographic restrictions imposed by the policy stating where the Vessel is covered and not covered as noted in the policy and Schedule.

**Partial Loss**

Any loss or damage covered by this policy which does not give rise to an actual or Constructive Total Loss.

**Personal Effects**

Items of a personal nature which would not normally be sold with the Vessel, but which are taken on board as personal items or for use in connection with the Vessel, including binoculars, bicycles, sports equipment, clothing, wet-weather gear and portable electrical equipment. This definition of Personal Effects specifically excludes mobile phones, items of jewellery, valuables (items which have a market value significantly in excess of the cost of manufacture), cameras, personal computers, drones, money, credit cards, travellers' cheques and consumable stores.

**Policy Period**

Means the period of insurance shown on the Schedule subject to prior termination in accordance with the policy.

**Schedule**

Means the current Schedule issued as part of your policy and sent to your last known email address (or postal address if an email address is not available).

**Tender**

Means any Vessels, including water toys (such as jet skis, but excluding wind kites and water jetpacks) that are carried on board the Insured Vessel(s), permanently belong to the Insured Vessel(s), and are used in connection with the Insured Vessel.

**This Insurance**

Means the contract of insurance between the Insured and the Insurer as set out in this PDS, the Schedule and any Endorsement(s).

**Total Loss**

Means when the Vessel is irrecoverable, completely destroyed or so damaged that it ceases to have the characteristics of a vessel.

**Trailer / Cradle**

Means a Trailer or Cradle which was manufactured for or bought by you as suitable for the Vessel

**Vessel**

Means the Vessel named in the Schedule, its Hull and Machinery, Tender(s) and watercraft which are capable of being stored on the Vessel and are used in connection with the Vessel, including any Watersports Equipment, and Gear and Equipment as would normally be sold with the Vessel. For the avoidance of doubt, the definition of Vessel does not include Personal Effects, Trailers, Cradles or Fishing gear.

**Watersports Equipment**

Means equipment designed to be used in a leisure activity that involves some element of physical activity and which is used in connection with the Vessel and kept on board.

**Wreck Removal Costs**

Means the costs of removing the wreck of the Vessel from the water by order of government, local or port authority.

In this PDS, the following words are not necessarily capitalised but have the following meanings:

1. you/your means the Insured.
2. we/us/our means the Insurer(s).

## 13. YOUR POLICY

### THE INSURANCE AGREEMENT

The contract of insurance between the Insured and the Insurer is set out in this Product Disclosure Statement, the Schedule and any Endorsement(s) (together "This Insurance"). The Insured should read these documents carefully in order to determine its rights and obligations, the limits of indemnity, the insurance cover provided, the restrictions and exclusions that apply to the cover provided and the other terms and conditions applicable to This Insurance.

Each Section A, B and C of This Insurance is Insured as a separate cover under these individual sections is subject to the general terms and conditions under Section D, payment of the premium for the individual section and the issuing by the Insurer of a Schedule for that section.

In deciding whether to insure the risk and on what terms, the Insurer has relied on the information that has been provided. For the contract of insurance to be valid, all the information provided to the Insurer by the Insured and/or its agent(s) must be true and complete and there must be full compliance with the Insured's duties and obligations of disclosure (as set out on page 7).

## SECTION A. HULL AND PROPERTY INSURANCE

### §1. Insurance Cover:

#### **All Risks:**

This Insurance covers the Insured against all risks of physical loss of or damage to the Vessel occurring during the Policy Period subject to the terms, conditions and exclusions of This Insurance. The limits that apply to This Insurance are set out in Section A §3 below.

### §2. Additional and Optional Cover:

Additional cover under this Section A §2 is subject in all respects to the terms, conditions and exclusions of This Insurance.

Unless otherwise stated below, the additional covers included in the PDS and on your Schedule are included in the Agreed Fixed Value. The amount of your benefit for each separate additional cover is limited to the higher of the amount set out below or the amount set out in your Schedule.

The additional covers included when you have cover under Section A are:

#### **1. Inspection after grounding:**

The reasonable expense of an inspection of the underwater part(s) of the Vessel after grounding, even if no damage is found. These costs are recoverable in addition to the Agreed Fixed Value.

#### **2. Salvage costs:**

Reasonable salvage charges incurred in preventing a loss recoverable under This Insurance are recoverable. These costs are recoverable in addition to the Agreed Fixed Value.

#### **3. Wreck Removal Costs:**

Following a loss which is covered by This Insurance, the reasonable Wreck Removal Costs are recoverable. These costs are recoverable in addition to the Agreed Fixed Value.

#### **4. Sue and Labour Costs:**

Reasonable costs incurred by the Insured in taking such measures as may be appropriate for the purpose of averting or minimizing a claim under this Section A, whether such measures are successful or not. These costs are recoverable in addition to the Agreed Fixed Value.

#### **5. Commercial Towing Fees and Emergency Costs:**

Reasonable commercial towing fees to the nearest place of refuge, incurred in an emergency for necessary repairs to be carried out. This Insurance also covers, in the event of an emergency while the Vessel is away from a safe harbour or refuge at sea, the reasonable costs of emergency labour and the delivery of fuel, parts, supplies (excluding the costs of these items) to the location of the breakdown. The cover under this Section A §2.5 is limited to \$5,000 for any one claim and is recoverable even if there is no physical loss of or damage to the Vessel. These costs are recoverable in addition to the Agreed Fixed Value.

#### **6. Emergency Accommodation or Repatriation Costs:**

Reasonable emergency accommodation expenses ashore for the Insured and the Insured's family and guests in the event that they were staying on board the Vessel at the time of a casualty Insured under this Section A, up to \$200 per person per night for a maximum of 7 nights following the casualty if, in the opinion of the surveyor appointed by the Insurer, the Vessel is rendered uninhabitable or unsafe due to loss of or damage to the Vessel while in use by the abovementioned people. If the Vessel is left unattended with the agreement of the Insurer, the cost of repatriation may be claimed instead of emergency accommodation costs. The maximum amount recoverable under this Section A §2.6 for any one incident or occurrence or series of incidents arising from one occurrence is \$1,000. These costs are recoverable in addition to the Agreed Fixed Value.

#### **7. Lost or stolen keys:**

Reasonable cost of replacement and administration for loss of or theft of keys to the Vessel. The maximum amount recoverable under this Section A §2.7 is \$1,000 in total.

## 8. Personal Effects / Fishing Gear:

Subject to a limit of \$1,500 per single item, whilst on board the Vessel, the following are covered:

- 8.1. Personal Effects up to a maximum of \$10,000; and
- 8.2. Fishing Gear up to a maximum of \$5,000

for all risks of physical loss or damage caused by an Accident to the Vessel and for deliberate physical loss or damage directly caused by anyone other than the insured, crew or the Insured's guests; theft from the Vessel by violent and forcible removal; and physical loss of or damage caused by piracy.

If a separate amount is specified in the Schedule for Personal Effects and/or Fishing Gear; that amount shall be the maximum indemnity of the insurer:

## 9. Temporary Storage Ashore:

The cover under Section A §1 is extended to cover parts of the Vessel while in locked and secure temporary storage ashore and/or while in transit worldwide provided that the means of transportation are suitable for the parts of the Vessel being transported and they are properly loaded and secured for the transit.

The following additional cover is optional and only covered if included on your Schedule:

## 10. Trailers & Cradles:

Only if separately specified in the schedule and subject to this clause, this Insurance covers a Trailer or Cradle which was manufactured or bought as suitable for the Vessel and which is owned by the insured, against physical loss or damage directly caused by theft, lightning, fire, explosion, or Accident while being towed, up to the limit specified in the Schedule for Trailers & Cradles.

## 11. Loss of Charter Income (Optional):

Only if separately specified in the Schedule and subject to this clause, This Insurance covers loss of charter income where the Vessel is prevented from starting or continuing a charter for more than 7 days due to physical loss of or damage to the Vessel caused by an incident covered under Section A of This Insurance.

Loss of the Vessel's charter income is Insured up to the limit specified in the Schedule for Loss of Charter Income (noting that a daily limit and overall maximum limit will be set out in the Schedule) provided that:

- 11.1. the charter deposit and/or charter fee was paid to the Insured or its charter management in accordance with a written and binding charter agreement; and
- 11.2. the Insurer has agreed in writing that such physical loss of or damage to the Vessel is covered under Section A of This Insurance; and
- 11.3. there is no other insurance covering the loss of charter income (to the extent permitted by law).

If Loss of Charter Income cover is noted on the Schedule, then a claim for loss of charter income in accordance with this clause is not excluded under Section A §4.6.

## §3. Agreed Fixed Value, Total and Partial Loss and Deductible(s):

### 1. Agreed Fixed Value:

The Agreed Fixed Value of the Vessel is the amount specified in the Schedule.

For the purpose of This Insurance, any equipment which has been leased by the Insured under a contract specifically for use on the Vessel, and which is of a nature that would normally be found on the Vessel, is covered within the Agreed Fixed Value and will be treated in the same way as equipment belonging to the Vessel.

The Agreed Fixed Value specified in the Schedule shall be conclusive proof of the Insured value of the Vessel.

We may, from time to time, request an independent valuation of your Vessel from a qualified marine dealer or boat broker:



## 2. Total Loss / Constructive Total Loss:

Where the Vessel is an actual Total Loss or a Constructive Total Loss, the Agreed Fixed Value of the Vessel shall be paid to the Insured in respect of a recoverable claim. The Insurer shall be entitled to deduct the realisable market value of any remaining Insured property. If the Vessel is stolen or lost and not recovered after the lapse of three months with no news of the Vessel being received, the Agreed Fixed Value of the Vessel shall be paid for a claim recoverable under This Insurance.

## 3. Partial Loss:

Claims for Partial Loss to the Vessel shall be settled on the basis of reasonable repair and/or replacement costs necessary to re-instate the Vessel nearly as is reasonably possible to its pre-incident condition where a claim is recoverable under This Insurance. These necessary costs will include the cost of transporting the Vessel to the nearest appropriate repair facility. This clause will also apply to the insurance of any other property Insured with specified limits under Section A §2 of This Insurance.

## 4. Deductions for New For Old:

The insurer's liability for Partial Loss is always limited to that set out at §3.3. The Insurer shall not be liable under This Insurance for the cost of new parts if reasonable second hand or reconditioned replacement parts are available to reinstate the Vessel as nearly as is reasonably possible to its pre-incident condition. If reasonable second hand or reconditioned replacement parts are available then a new for old deduction will not be made in respect of those parts.

For Partial Loss claims, the Schedule will state either "New for Old with deduction" or "New for Old without deduction".

### 4.1. New for Old with deduction stated on the Schedule:

In the event of Partial loss, the following deductions will be made from the claim settlement in respect of parts or materials where the part which is repaired or replaced was - at the time of the incident, more than: 2 years old – 30% deduction

10 years old – an amount proportional to the reasonable consumed service life of the part taking into account the age and condition of the part. The deduction will not be applied to labour costs, or to the repair of the basic Hull and deck structures of the Vessel. The Insured may provide documentary evidence to prove the age of the part. If the Insured is not able to do so the part will be deemed to be at least 10 years old.

### 4.2. New for Old without deduction stated on the Schedule:

No deductions will be made in respect of parts or materials replaced with new parts when no reasonable second hand or reconditioned replacement parts are available.

## 5. Deductibles:

The Deductibles specified in the Schedule will apply to each claim except that in no circumstances shall a Deductible apply in respect of:

- 5.1. a Total Loss or Constructive Total Loss of the entire Vessel under Section A §3.2.
- 5.2. any payments made under Section A §2.1-7;
- 5.3. any claim under Section A §2.11 for Loss of Charter Income; and
- 5.4. any claim for loss or damage arising whilst the Vessel is moored at its usual berth, pontoon or private jetty or when the Vessel is ashore within a commercial marina providing the Vessel is not moored on a swing mooring or is at anchor.

Unless otherwise set out in your Schedule, the Deductibles set out in the below table apply in respect claims made under Section A §2. The Deductible for Section A §1 will be as set out in your Schedule.

Cover:	Section A ref:	Deductible:
Inspection After Grounding	§2. 1	No Deductible
Salvage Costs	§2. 2	No Deductible
Wreck Removal Costs	§2. 3	No Deductible
Sue and Labour Costs	§2. 4	No Deductible
Commercial Towing Fees and Emergency Costs	§2. 5	No Deductible
Emergency Accommodation or Repatriation Costs	§2. 6	No Deductible
Lost or Stolen Keys	§2. 7	No Deductible
Personal Effects / Fishing Gear	§2. 8	\$200
Trailers and Cradles	§2.10	\$200
Loss of Charter Income	§2.11	7 days
Total Loss/Constructive Loss of the Vessel	§3. 2	No Deductible
Whilst Moored at its usual marina berth	§5. 4	No Deductible

Please note that Deductibles also apply under the Named Tropical Storms Clause (see Section A §5).

## 6. How Your Claim is paid:

For any claim for loss or damage to your Vessel, the Insurer will, at its option:

### 6.1. For a Partial Loss:

6.1.1. Repair the Vessel (see sections 3, Partial Loss and 4, Deductions for New For Old); or

6.1.2. Pay the Insured the cost to replace or repair the Vessel, subject to deductions that apply in accordance with section 4; or

### 6.2. For a Total Loss, pay the Insured the Agreed Fixed Value of the Vessel.

For any loss or damage to any other item covered by this policy, the Insurer will, at its option, repair; replace or pay the Insured the cost or repair or replace, that item, up to the limit of cover for that item under the PDS.

The Insured shall not recover more than the Agreed Fixed Value in respect of the repair or replacement of all property insured under section A of the PDS including but not limited to the Vessel, lost or stolen keys, Personal Effects and fishing gear and Trailers & Cradles.

## §4. Exclusions – Hull and Property insurance:

This Insurance does not cover:

1. Any loss or damage directly or indirectly caused by osmosis, blistering, fibreglass or surface coat blistering, electrolysis, rust, corrosion, oxidation, rot, fungus, mould, infestation, change of temperature or humidity, gradual deterioration, delamination, marine growth or inherent vice;
2. The cost of or loss or expenditure incurred in remedying, repairing or replacing faulty or defective design, construction or the materials or parts used in construction or any cost or expense incurred by reason of betterment or alteration in design or construction;
3. The cost of rectifying, repairing or replacing defective workmanship or materials relating to any repair, alteration or maintenance work carried out on the Vessel;
4. Unless specified in the Schedule, any cost of repairing damage to the Vessel which is wear and tear damage or has been caused by the wear and tear of a part of the Vessel. Wear and tear includes (but is not limited to) damage caused by the reasonably foreseeable action of wind, wave and other perils of the sea without collision, grounding, incident or Accident. If the Insured selects wear and tear cover then the cost of repair of any damage proven to have been caused solely by wear and tear of a part will be covered, but not the cost of repairing or replacing the part which has sustained wear and tear;
5. The cost of repairing or replacing a latently defective part of the Vessel;
6. Loss of use, loss of charter Income (unless otherwise specified in the Schedule), loss of revenue, loss of profit, financial loss, loss of good will, loss of market value, depreciation, diminution of racing performance, diminution in aesthetic appearance, loss of any manufacturer's or supplier's warranty, reputational, emotional or psychological loss or any other form of non physical loss or damage or loss consequential to or indirectly attributable to the physical loss of or damage to the Vessel;

7. Loss of or damage to the Vessel that is attributable to or caused by:
  - 7.1. unseaworthiness of the Vessel or its crew;
  - 7.2. any lack of repair or maintenance of the Vessel;
  - 7.3. failure to comply with statutory requirements or local regulations or by-laws; or
  - 7.4. lack of reasonable care, protection or security of the Vessel;
8. Loss of or damage to computer software, programs or data;
9. Loss of or damage to the Vessel arising from transportation as cargo;
10. Loss or damage caused by an accumulation of rainwater, ice or snow unless resulting from unforeseeable weather conditions;
11. Theft of the Vessel or its tender or watercraft while on a Trailer if the Trailer is not adequately immobilised, wheel clamped or secured to a locked motor vehicle;
12. Theft of a Trailer which is not adequately immobilised, wheel clamped, in a locked place of storage or secured to a locked motor vehicle, or for theft of wheels or tyres, or for damage to tyres;
13. Theft of Personal Effects, gear, equipment and other moveable property Insured under this Section A unless there are visible signs of forcible and violent removal and/or entry or exit to the Vessel or to locked and secure temporary storage;
14. Theft of the Vessel by a person to whom it has been entrusted;
15. Loss or damage to an outboard motor if secured other than as specified by the manufacturer of the motor or the Vessel;
16. Loss or damage to main and auxiliary engines, generators, gear boxes, electrical and hydraulic equipment, together with their cables and fittings, unless caused by: collision; grounding/stranding; sinking; lightning; fire; theft; malicious damage; frost/freezing; blockage of the water inlet of an engine's cooling system or Accidental incursion of water to the Vessel, but not, however as a result of water ingress through the exhaust system of the main engine(s) or fuel tank filler system;
17. Loss of or damage to sails, covers, awnings, shades, Tenders or Watersports Equipment if split or damaged by the wind or blown or washed away;
18. Loss of or damage to jewellery, valuables, fine art, consumable stores, cash, credit/debit cards and/or bank cards, cheques, 'travelers' cheques and similar items; and
19. The Insurer shall not be liable for any un-repaired damage in the event of a subsequent loss (whether or not covered under This Insurance).

## **§5. Named Tropical Storms Clause:**

### **1. I. Definition**

A Named Tropical Storm is defined as a tropical cyclone which is given a name by a regional agency such as the National Hurricane Center or the Australian Bureau of Meteorology or similar which are advisory and warning centers of the World Meteorological Organisation (WMO <http://severe.worldweather.wmo.int/>).

### **2. Application and duration of this clause**

This clause is operative between July 1st and November 15th annually in the area between the Latitudes 10°N and 30.5°N (but does not apply for the Canary Islands and Cape Verde) and between November 1st and May 1st annually in the area between the Latitudes 10°S and 30°S.

### **3. Scope and conditions of cover**

Loss or damage caused by Named Tropical Storms is excluded from this policy, unless the Vessel is

- a) at sea (not anchored, moored or aground),

- b) stored ashore in a one-piece or approved Cradle (except in the case of multihulls) with the Cradle and Vessel securely lashed together and secured with ground anchoring arrangements, or the Hull sunk in the ground. If the masts are removed, they are stored separately and safely. If the masts remain stepped they are secured by all possible means (using halyards, additional lines etc.) to the ground,
- c) secured in a marina berth with additional ropes as can appropriately be used,
- d) in the mangroves anchored with adequate ground gear and secured with multiple landlines.

Loss or damage caused by Named Tropical Storms to parts of the Vessel that are capable of removal and safe storage but have not been removed and safely stored (including but not limited to booms, spars, sails, awnings, biminis or other covers or shades, Tenders, water sports equipment, Personal Effects and Fishing gear) is excluded from this policy. If the Vessel is at sea as per a), the removal and safe storage is only required where it is reasonably possible to do so.

#### **4. Deductible:**

For any claim for loss or damage caused by a Named Tropical Storm (including constructive or actual total loss) which is accepted under Section A § 5.3.a) or 5.3b), the deductible noted in the Schedule applies. For any claim for loss or damage which is accepted under condition Section A § 5.3. c),d), the deductible is 25% of the total cost of the claim or the deductible noted in the schedule, whichever is the higher.

## **SECTION A. I. WAR, STRIKE AND CONFISCATION INSURANCE**

### **§1. Optional Cover:**

This optional cover is available as an addition to Hull and Property Insurance under Your Sail and Motor Yacht Insurance Policy.

The following option for War, Strike and Confiscation Cover does not apply automatically. It is a separate section of cover. You will have cover under this option if you have elected to add it to Section A 'Hull and Property Insurance' of Your Sail and Motor Yacht Insurance Policy and your current Schedule states that you have selected this option.

In order to qualify for cover under this option you must have cover under Section A 'Hull and Property Insurance' of your current Sail and Motor Yacht Insurance Policy.

Except as otherwise provided in this option, all the terms, conditions and exclusions which apply to cover under Section A 'Hull and Property Insurance' and Section D' General Terms and Conditions' of Your Sail and Motor Yacht Insurance Policy will also apply to your cover under this option.

### **§2. Insurance Cover:**

1. In addition to the Hull and Property Insurance under Section A of your Sail and Motor Yacht Insurance Policy, we will cover loss of or damage to the Vessel or any liability arising from or caused by strikes, locked out workmen or persons taking part in labour disturbances, riots or civil commotions, war; civil war; revolution, capture, seizure, arrest or detainment, terrorism or any person acting from a political motive, confiscation or appropriation. The War, Strike and Confiscation Cover is subject to the same limits of cover as set out in Section A.
2. The Total Loss of the Vessel shall be assumed if the Insured has lost the free use and disposal of the Vessel as a result of:
  - 2.1. seizure, forfeiture, arrest, interventions of higher authorities, confiscation or expropriation and which has resulted in Insured losing the free use and disposal of the Vessel for a continuous period of at least 12 months; or
  - 2.2. consequences of an act of war or national defence activities through which the Vessel is trapped in a harbour, canal, waterway or other access to open seas, and which has resulted in Insured losing the free use and disposal of the Vessel for a continuous period of at least 6 months.

### §3. Exclusions

1. There is no cover and we shall not be liable under this option for loss or damage caused by:
  - 1.1. capture, seizure, forfeiture, arrest, interventions of higher authorities, confiscation or expropriation by means of or due to:
    - (a) a directive by a public authority of the state in which the Vessel is registered or the Insured has its place of business; or
    - (b) quarantine regulations or a breach of customs or trade regulations;
  - 1.2. any detonation of any weapon of war which releases atomic or nuclear radiation, causes a nuclear reaction or is nuclear-powered (nuclear weapons);
  - 1.3. non-presentation of securities, non-payment of penalties, taxes or any financial reason.
2. For the avoidance of doubt, the following exclusions in your Sail and Motor Yacht Insurance Policy also apply to cover under this option:
  - 2.1. Section A Hull and Property Insurance §4. Exclusions – Hull and Property Insurance; and
  - 2.2. Section D General Terms and Conditions §1. 'General Exclusions Applicable to All Sections of This Insurance' with the exception of exclusion "I. War, Strikes and Political Acts" which exclusion does not apply to cover under this Option.
3. No cover shall apply for or in relation to any loss or damage which occurs in countries, geographical or territorial areas listed in JWC Hull War, Piracy, Terrorism and Related Perils Listed Areas current at the time of the loss or otherwise outside the navigational limits stated in the Schedule.
4. There is no cover under this option for, and any cover shall automatically and simultaneously cease upon, the outbreak of war (whether there be a declaration of war or not) between two or more of the following countries: United States of America, United Kingdom, Germany, France, Russian Federation or the People's Republic of China.

### §4. Termination of Yacht War, Strike and Confiscation Cover

Subject to law, this option and the cover under it may be cancelled by the Insured by giving 7 days' notice and if so, then the cover provided by this option terminates at 4pm AEST on the seventh day following notice being given.

### §5. Deductible

There is no Deductible which applies to any claim for loss or damage under this option.

## **SECTION B. THIRD PARTY LIABILITY INSURANCE**

### §1. Insurance Cover:

#### **I. Indemnity:**

The Insurer agrees to indemnify the Insured, up to the Third Party Liability Limit specified in the Schedule, for damages that the Insured is legally liable to pay to a third party by reason of the Insured's ownership, operation and use of the Vessel, arising out of an Accident during the Policy period, in respect of bodily injury or death or damage to the property of a third party.

- 1.1. The indemnity under Section B §1.1 above shall extend to the Insured's family, the beneficial owner of the Vessel or the family of the beneficial owner of the Vessel, the Vessel's captain, Vessel's crew and guests onboard the Vessel with the consent of the Insured or the legal or beneficial owner where such person becomes liable to a third party for bodily injury or death or damage to the property of a third party by reason of their operation and/or use of the Vessel during the Policy Period.
- 1.2. Section B will not extend to a person operating or employed by a shipyard, repair facility, fuelling facility, boat yard, Vessel club, sales agency, charter agent or any similar organisation.

**Section B also includes cover for:**

**2. Legal liability to a third party arising out of or from;**

2.1. Use of Watersports Equipment:

Water-skiing, wakeboarding and aquaplaning activities using, the Vessel's Tender(s) or watercraft, water sports equipment and diving equipment that is used in connection with the Vessel. Watersports equipment must be commercially manufactured.

2.2. Pollution:

The sudden and accidental release or escape of oil, oily mixture, fuel, chemicals, waste materials or other pollutants arising from the operation and use of the Vessel up to a maximum of \$500,000 to be inclusive of fines, punitive, aggravated or exemplary damages and legal costs and expenses unless otherwise specified in the Schedule.

**3. Search and Rescue Costs:**

For search and rescue costs being levied on the Insured and/or the Vessel arising from an unintentional activation of one of the Vessel's emergency rescue devices (such as EPIRB or GMDSS devices) when no emergency situation existed, provided that these costs cannot be recovered from any other source.

**4. Legal costs:**

For payment of legal costs and disbursements reasonably incurred in contesting liability or issuing legal proceedings to limit liability and/or the legal costs and disbursements reasonably incurred in proceedings before an official inquiry by the state or authorities where the Accident occurred that gave rise to the death of the third party, provided that the instruction of lawyers has the insurers' prior written approval.

**5. Security Deposit:**

If the Vessel is arrested as a result of a liability Insured under This Insurance, the insurers will provide a security deposit, officially or judicially determined, up to an amount of \$150,000.

**6. Uninsured Boater:**

For bodily injury sustained onboard the Vessel caused by a third party Vessel that has left evidence of direct physical contact with the Vessel but where the operator or owner of the third party Vessel is not Insured and/or is not identified.

This uninsured boater's insurance does not cover claims where the injured person is eligible for benefits or compensation under any employer's liability law, workmen's compensation, Disability benefit or similar law or in respect of an injury where the uninsured Vessel is owned by the Insured or the same beneficial owner of the Insured.

**7. Use of Other Vessels:**

7.1. The benefit of This Insurance is extended to cover the person named in the Schedule as the insured, being a natural person, for the legal liabilities covered by This Insurance when arising out of the use of a Vessel and its tender which has been borrowed or chartered and which is under the control of that person as captain.

7.2. This extension also covers that person's crew as Insured persons.

7.3. This extension is not valid if the insurance is in the name of a Company, Consortium, Club, Partnership or legal entity other than a natural person.

7.4. To the extent permitted by law, this extension will only provide compensation to the extent that the loss, damage or liability is not covered by any other insurance, and in particular any insurance attaching to the chartered or borrowed Vessel.

7.5. This extension does not cover loss of or damage to the chartered or borrowed Vessel itself.

7.6. This cover under Section B § 1.7 is effective worldwide.

## 8. Marina Liability:

For legal liability imposed in accordance with terms and conditions of a lease or agreement for the provision of a berth, mooring or storage facility for the Vessel.

## §2. Conduct of The Investigation, The claim or Action

The Insurer is entitled to investigate and settle at its sole discretion any claim or action brought by a third party. The Insurer reserves the right to appoint lawyers to represent the Insured or person claiming an indemnity under Section B §1.3 above.

## §3. Amount of Indemnity:

1. The Third Party Liability Limit specified in the Schedule shall be the maximum liability of the Insurer in respect of any one Accident or occurrence regardless of the number of Insured's that may be specified in the Schedule or persons claiming an indemnity under Section B §1.2 above, the number of Vessels Insured under This Insurance, claims made or persons injured.
2. The insurer's obligation to indemnify the Insured or person listed in Section B §1.3 above for legal costs and disbursements under Section B §1.4 above and/or costs incurred in complying with the duty to mitigate under Section D §2.7.2 shall be in addition to the indemnity under the Third Party Liability Limit specified in the Schedule.
3. Where a claim is asserted under the US or Canadian law and/or practice, irrespective of the jurisdiction, then the insurer's total indemnity including cover under Section B §1.3 above and/or Section D §2.8.2 shall be the Third Party Liability Limit specified in the Schedule irrespective of whether legal costs were incurred solely as a result of the insurer's instruction.

## §4. Deductible

The Deductible(s) specified in the Schedule will apply to each claim made under Section B and will be payable in addition to any deductible payable in respect of a claim under Section A.

## §5. Exclusions – Third Party Liability insurance:

This Insurance does not cover any liability, claim or expense arising directly or indirectly from:

1. Any fines, penalties and/or assessments by any authority and/or any punitive, multiple or exemplary damages of any nature whatsoever except as provided under Section B §1.1.2;
2. The use of any diving equipment by a person not in possession of the appropriate qualification and required licence, except in circumstances where a lesson or training is being given to an unqualified person by a member of the crew that is a qualified and licensed diving instructor;
3. The release, discharge or escape of oil, oily mixture, fuel, chemicals, waste materials or other pollutants which arises directly or indirectly from a deliberate or reckless act or omission by the insured, or where committed with the consent, approval or knowledge of the Insured;
4. Any claim for liability arising when a Trailer is connected to a motor vehicle;
5. Any liability assumed by the Insured or its representatives under any contract or agreement (including, but not limited to a contractual exclusion, limitation of liability or any waiver or limitation of the insurer's subrogated rights of recovery) unless the insurer's prior approval is set out in the Schedule or in an Endorsement;
6. Any claim against the Insured by any paid crew of the Vessel employed by the insured, or a crew agency, to be paid crew on board the Vessel or in connection with the Vessel;
7. The ownership, possession, use, storage, handling and/or control of any firearm or deadly weapon;
8. Any claim for damages by the Insured or the legal or beneficial owner of the Vessel;
9. Any disease that is transmitted by the Insured or anyone using the Vessel;

10. Any claim arising directly or indirectly out of or in any way connected with asbestos.

11. Liability that would otherwise, in any part, be covered under a statutory or compulsory insurance policy, compensation scheme or fund.

## SECTION C. PERSONAL ACCIDENT INSURANCE

### §I. Definitions – Personal Accident insurance:

Where the following words are used in Section C of this PDS, they have the meanings described below. These words are identified within Section C with capitalisation. All other defined terms set in the «Words with Special Meaning» section of the PDS continue to apply.

Accident means a sudden, external and identifiable event that happens by chance and could not have been expected from the perspective of the Insured Person. The word Accidental shall be construed accordingly. The following are also specifically deemed to be Accidents:

- a) spraining, straining or tearing of joints, joint capsules, muscles, tendons, or ligaments, or abdominal or inguinal hernia, resulting from excessive exertion on limbs or spine, provided the Bodily Injury is not a Pre-Existing Medical Condition or a Degenerative Medical Condition;
- b) drowning or asphyxia under water. Drowning shall be assumed if an Insured Person goes overboard and is not recovered within one (1) month of the Accident;
- c) conditions associated with diving such as decompression sickness or barotrauma suffered by licensed divers or divers in training even if no specific Accident is identified.
- d) Bodily Injury caused by the sudden escape of gases and vapours, fumes, dust clouds and acids;
- e) rabies, tetanus or infection of wounds as the result of an Accident;
- f) food poisoning caused by the one-off ingestion of a poisonous foodstuff provided that the onset occurs within forty-eight (48) hours of ingestion and is diagnosed by a Medical Practitioner within this time;
- g) Bodily Injury sustained during the lawful defence of, or attempts to rescue, people or things;
- h) Bodily injury caused by food deprivation or deprivation of medication or by the incorrect administration of essential medicines or foodstuffs as a result of an abduction or hostage-taking which commenced during the term of the Policy.

Accidental Death means death occurring as a result of a Bodily Injury.

Bodily Injury means a Bodily Injury resulting solely and directly from an Accident and which occurs independently of any illness or any other cause, where the Bodily Injury and Accident both occur during the Policy Period and whilst the person is an Insured Person. Bodily Injury includes illness or disease resulting directly from medical or surgical treatment rendered necessary by any Bodily Injury. It does not mean a Sickness or any Pre-Existing Medical Condition or Degenerative Medical Condition.

Close Relative means parent, spouse/ partner; child, brother; sister; brother-in-law, sister-in-law, daughter-in-law, son-in-law, half-brother; half-sister; fiancé(e), niece, nephew, uncle, aunt, stepchild, grandparent or grandchild.

Country of Residence means the country:

- a) of which the Insured Person is a permanent resident (e.g. in relation to which they hold a multiple entry visa or permit which gives the Insured Person resident rights in such country); or
- b) in which the Insured Person is residing on an overseas expatriate assignment.

Degenerative Medical Condition means any condition that has gradually developed over time affecting the Insured Person's musculoskeletal system (muscles, bones, ligaments and joints, including vertebral discs and cartilage).



Insured Person means a person who falls into one of the following categories and to whom premium has been paid or agreed to be paid by the Insured: the owner of the Vessel, the unpaid captain and crew, visitors and guests and unpaid persons carrying out maintenance, servicing, hauling out, launching, conversion and repair works on the Insured's behalf. They are a person that is legally entitled to claim under the Policy by reason of the operation of Section 48 of the Insurance Contracts Act and on no other basis. An Insured Person is not a contracting Insured under the Policy with the Insurer. The agreement with the Insurer is entered into with the Insured. In the event that the Vessel is a chartered Vessel used in accordance with Section C §2.2 below, only the Insured as the captain and the crew members shall be Insured Persons under the Policy.

Medical Practitioner means an Insured Person's attending doctor or specialist who is registered or licensed to practice medicine under the laws of the country in which they practice, other than:

- a) the Insured; or
- b) the Insured Person; or
- c) a Close Relative of the Insured Person.

Permanent Disability means the physical or mental capacity of the Insured Person is permanently impaired as the result of an Accident, as diagnosed by a Medical Practitioner. An impairment is deemed to be permanent if it is likely to exist for more than twelve (12) months from the date of Bodily Injury and at the expiry of that period there is no expectation of improvement in the condition.

Pre-Existing Medical Condition means

- a) any physical defect, condition, illness, disease or mental health condition for which treatment, medication or advice (including advice for treatment) has been received or prescribed by a doctor or dentist in the three (3) years immediately prior to becoming an Insured Person under the Policy; or
- b) a condition, the manifestation of symptoms of which a reasonable person in the circumstances would be expected to be aware of in the three (3) months immediately prior to becoming an Insured Person under the Policy.

Professional Diver or Sports person means a person who dives or partakes in any sport for which they receive a fee, allowance, sponsorship or monetary reward as a result of their participation, which in totality accounts for more than fifteen percent (15%) of their annual income from all sources.

Sum Insured means the maximum benefit payable.

### **§2. Scope of Personal Accident insurance:**

The insurance covers Accidental Death or Permanent Disability as a result of a Bodily Injury.

1. This Personal Accident insurance is effective worldwide and relates to Accidents which occur within the Policy Period in connection with the private pleasure use of the Vessel, its dinghies, Watersports Equipment (e.g. jet skis, water skis) used in connection with the Vessel, and swimming, snorkelling and diving from the Vessel. It also covers Accidents when the Vessel is participating in regattas, moored, laid-up, navigating in harbours, and being hauled or launched, maintained, serviced, converted or repaired.
2. This Insurance also covers Accidents which occur in connection with the use of a Vessel, where the Vessel has been chartered by the Insured and is under the Insured's control as captain, excluding any charter contracts which are for more than two (2) weeks duration, or are for commercial purposes, or include participation in any regattas or races.
3. This Insurance also covers Accidents which occur during an Insured Person's trip ashore not exceeding forty-eight (48) consecutive hours and where the trip ashore is not inclusive of the Insured Persons Country of Residence.

### **§3. Scope of Benefits:**

The Sums Insured is specified in the Schedule. Unless otherwise specified:

- the most that will be paid under all claims made under Section C and related to Accidental Death is the Sum Insured specified in the Schedule for Accidental Death; and
- the most that will be paid under all claims made under Section C and related to Permanent Disability is the Sum Insured specified in the Schedule for Permanent Disability.

The amount of individual benefit is calculated in accordance with this section.

In respect of each category (either Accidental Death or Permanent disability), the maximum benefit to which each Insured Person is entitled ("Individual Entitlement") per Accident is calculated by dividing the Sum Insured for the relevant category by the number of Insured Persons on board the Vessel at the time of the Accident, subject to the maximum Sums Insured per Insured Person for that category, as set out in the Schedule.

The following provisions set out the assessment of benefits:

**I. Permanent Disability benefit:**

I.1. Preconditions for benefit:

The Insured or Insured Person must claim for the Permanent Disability benefit by submitting a medical certificate to the insurers within twelve (12) months of the Accident. There is no entitlement to Permanent Disability benefit if the Insured Person dies as a result of the Accident. (see Section C §3.2 Accidental death benefit).

I.2. Type and amount of benefit:

The Permanent Disability benefit is paid as a lump sum. The amount of benefit is calculated as a percentage of the Individual Entitlement based on the degree of Permanent Disability caused by the Accident. In the event of loss or total functional incapacity of the following body parts and sensory organs as a result of an Accident, the following percentages shall apply:

Arm	75%
Arm above the elbow joint	70%
Arm below the elbow joint	65%
Hand	60%
Thumb	25%
Index finger	16%
Other finger	10%
More than three digits of one hand (where a digit is a thumb, index or other finger)	60%
Leg above mid-thigh	75%
Leg up to mid-thigh	70%
Leg below the knee	65%
Leg up to mid-calf	60%
Foot	50%
Big toe	8%
Other toe	4%
Eye	50%
If, however, the vision in the other eye had already been lost before the accident	75%
Hearing in one ear	35%
If, however, the hearing on the other ear had already been lost before the accident	50%
Sense of smell	15%
Sense of taste	10%
Voice	70%

For Partial loss or partial impairment of function of the above body parts and sensory organs, a pro-rata portion of the above applicable percentage applies.

I.3. For any body parts and sensory organs that are not listed in Section C §3.1.2 above, the percentage applied is calculated according to the degree of impairment of the normal physical or mental capacity as a whole. Only professional, written medical opinions and assessments shall be considered when calculating such percentages. The maximum payable is 50% of the Permanent Disability Sum Insured.

I.4. If several body parts or sensory organs are impaired by the Accident, the assessed benefits shall be added together, subject to a maximum benefit of 100% of the Individual Entitlement.

**2. Accidental Death benefit:**

It is a precondition for the payment of an Accidental Death benefit that the Insured Person died as a direct result of the Accident within twelve (12) months of the Accident. Attention is drawn to the specific obligations set out in Section C §5.6. below.

**3. Additional Benefit - Accident emergency transport & funeral costs abroad:**

In the event of an Accident occurring outside the Insured Person's Country of Residence, necessary and reasonable costs of up to \$30,000 incurred as a result of the Accident shall be reimbursed in respect of the following:

- 3.1. transportation of the Insured Person who has sustained a Bodily Injury, deemed necessary and ordered by a Medical Practitioner, to a hospital or a specialist clinic; also the additional expenses for that Insured Person's return transport to their Country of Residence if on medical orders or unavoidable due to the type of Bodily Injury;
- 3.2. in the event of Accidental Death suffered outside the Insured Persons Country of Residence, the costs incurred in the repatriation of their body or ashes to a place nominated by the legal representative of the Insured Persons estate, and/or the reasonable funeral, burial or cremation and associated expenses incurred outside the Insured Persons Country of Residence.

Any amount paid under this section is in addition to the Sum Insured.

**4. Additional benefit - Accident emergency medical costs abroad:**

In the event of an Accident occurring outside the Insured Person's Country of Residence, all necessary and reasonable medical costs, up to \$30,000, which are incurred as the result of treatment provided by a Medical Practitioner, and which due to the nature of Bodily Injury cannot could not have been postponed until the Insured Person returned to their Country of Residence, , shall be reimbursed to the Insured or Insured Person. Any amount paid under this section is in addition to the Sum Insured.

A \$75 Deductible applies to a claim made under this section A §4.4.

This section A §4.4 does not provide cover for any costs which are covered by Medicare, under a reciprocal health scheme, or which would result in the Insurer contravening the Health Insurance Act 1973 (Cth), the Private Health Insurance Act 2007 (Cth), Private Health Insurance (Health Insurance Business) Rules as updated from time to time or the National Health Act 1953 (Cth) or any amendment to, or consolidation or re-enactment of, those Acts.

**§4. Exclusions – Personal Accident insurance:**

There is no cover under this Policy with respect to any loss, damage, liability, Accidental Death, Permanent disablement or Bodily Injury which result directly or indirectly from:

1. a Pre-Existing Medical Condition or Degenerative Medical Condition, an Accident suffered as a result of a stroke, epilepsy or other seizures which affect the Insured Person's entire body, if the stroke, epilepsy or other seizures were not caused by an Accident covered by this policy; this does not apply to Insured events under Section C §3.2;
2. an Insured Person being under the influence of intoxicating liquor; including having a blood alcohol content over 0.05%, or being under the influence of any other drug unless it was prescribed by a Medical Practitioner and taken in accordance with a Medical Practitioner's advice;
3. any intentional self-injury, suicide, reckless misconduct or any illegal or criminal act committed by the Insured or the Insured Person;
4. war or civil war;
5. Accidents to crew members appointed for remuneration;
6. Accidents to an Insured Person when acting as a Professional Diver or Sportsperson;
7. Accidents to persons who have chartered the Vessel from the Insured and persons who jointly use the Vessel with any person who has chartered the Vessel from the Insured, unless otherwise agreed;
8. the following Bodily Injuries:
  - 8.1. bleeding from internal organs and brain haemorrhages, unless directly caused by an Accident event which is covered by This Insurance;

8.2. Bodily Injury caused by radiation.

However, this exclusion does not apply to the malfunction or misuse of equipment delivering X-rays, laser radiation, maser radiation and artificially generated ultraviolet radiation following an Accident.

8.3. Bodily Injury caused by therapeutic treatments or surgery.

However, this exclusion does not apply if the therapeutic treatments or surgery, including radio-diagnostic and radio-therapeutic treatment or surgery, are carried out as the result of an Accident which is covered by This Insurance, or are carried out by violent acts of third parties.

8.4. infections, with the exception of those specified in the definition of Accident.

8.5. poisoning as a result of the oral ingestion of solid or liquid substances with the exception of food poisoning as specified in the definition of Accident.

8.6. abnormal disorders resulting from psychological reactions which cannot be directly and causally attributed to Bodily Injury, even if these are caused by an Accident.

**§5. Obligations on the Insured Person when there is an Accident:**

1. Following an Accident for which it is anticipated that a claim for benefit will be made under this Policy, the Insured Person must immediately consult a Medical Practitioner; follow the Medical Practitioner's orders and notify Pantaenius of the Accident event and the Medical Practitioner's orders.
2. A Notification of Accident Form will be sent to the Insured and must be completed truthfully and returned immediately. Any additional relevant information which has been requested by the Insurer must be provided in the same way.
3. If Medical Practitioners are instructed by or on behalf of the insurers, the Insured Person must agree to be examined by such Medical Practitioner's. The Insurer shall bear the necessary costs of attending such examination including the Insured Person's loss of earnings (if any) during such attendance and the costs of the examination.
4. If loss of earnings is not substantiated by the Insured Person, then a fixed amount shall be reimbursed amounting to 1% of the Sum Insured for Permanent Disability up to a maximum of \$600.
5. Any Medical Practitioners who has treated or examined the Insured Person, whether as a result of the Accident or not, any hospitals and other medical establishments, other personal insurers, statutory sickness funds, workers' compensation insurers and authorities must be authorised to release all requested information. If consent has been given prior to the Accident, the insurers shall inform the Insured Person prior to the collection of personal health data. The Insured Person may object to such data being collected, however, this may lead to the loss of the Insured Person's right to claim any benefit. The Insured Person may at any time request that data only be collected if consent has been obtained for the individual collection.
6. If the Accident results in Accidental Death, this must be reported within forty-eight (48) hours, or as soon as reasonably practical, even if the Accident has already been reported.
7. The insurers shall be granted the right to have a post-mortem examination carried out by an instructed Medical Practitioners, if the insurers consider this to be necessary to the establishment of any right to benefit under the Policy.
8. Failure to comply with the notification deadlines for individual types of benefit may invalidate the claim.
9. Breach of any of these conditions may invalidate the Policy. In the event that the breach is negligent, the insurers may elect to continue to provide cover and meet the claim for the Accident, but any benefits payable under the Policy shall be reduced proportionately to the degree of negligence.

The insurance cover under the Policy may not be invalidated if the Insured Person can prove that the breach of the obligation did not cause or affect the Accident or the establishment or extent of the benefit, and provided the breach is not fraudulent.

If the Insured Person does not consult a Medical Practitioners until the true extent of Bodily Injury becomes known, or if it was initially believed that there were no consequences of the Accident and there was therefore no immediate notification of claim, this will not be deemed to be a breach of obligations. Neither will it be deemed a breach if an obligation was unintentionally not fulfilled but was then immediately fulfilled after such obligation was identified.

### **§6. Payment Date of Benefits:**

1. The Insurer will bear any medical fees incurred in order to substantiate the claim if they have commissioned them. They will not bear any additional costs.
2. If the claim is accepted, or if there is agreement as to the cause and the amount, the benefit shall be provided within two (2) weeks.
3. If it is established that there is a right to Permanent Disability benefits under this Policy, but the degree of Permanent Disability has not been established, an appropriate advance payment shall be made upon request. During the twelve (12) months immediately following the Accident, this payment shall not exceed the amount Insured for Accidental Death benefit, unless all treatment has been completed.

## **SECTION D. GENERAL TERMS AND CONDITIONS**

### **§1. General Exclusions Applicable to All Sections of This Insurance:**

This Insurance does not cover loss, damage, liability, death, injury, claim or expense arising directly or indirectly, in whole or in part from:

#### **1. War, Strikes and Political Acts:**

Loss of or damage to the Vessel or any liability arising from or caused by strikes, locked out workmen or persons taking part in labour disturbances, riots or civil commotions, war, civil war, revolution, capture, seizure, arrest or detainment, terrorism or any person acting from a political motive, confiscation, appropriation (unless cover is provided under Section A.1, in which case this exclusion does not apply);

#### **2. Nuclear Hazard:**

Any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

#### **3. Chemical, Biological and Other Weapons:**

The use of chemical, biological or bio-chemical substances, electro-magnetic waves, any computer system, virus or process or any electronic system as a weapon or as a means of inflicting harm;

#### **4. Illegal Acts:**

Operation or use of the Vessel for any illegal activity or purpose, so far as the Insured can control the matter;

#### **5. Deliberate Acts or Omissions:**

The deliberate acts or omissions of the Insured or deliberate acts or omissions committed with the consent, approval or knowledge of the Insured;

#### **6. Racing:**

- 6.1. any racing of the Vessel or its Tenders or watercraft when under power, including the associated speed trials;
- 6.2. unless specified in the Schedule, any sailboat racing of the Vessel named in the Schedule of more than 250 nautical miles.

For sailboat racing of less than 250 nautical miles, This Insurance applies only if the race is organised/sanctioned by a registered yachting association.

#### **7. Non-compliance with safety regulations or licences:**

Any claim, if the Vessel;

- 7.1. was under the control of any person who does not hold relevant licences as required by the flag state of the Vessel and/or the relevant authorities, unless the Insured had reasonable grounds to believe, and did so believe, that the operator was in possession of such licences;

- 7.2. did not comply with any applicable safety regulations of the flag state of the Vessel or the state having jurisdiction over the waters in which the Vessel was located;
- 7.3. was under the control of a person who is under the influence of alcohol or drugs;
- 7.4. was under the control of a person who did not have the necessary experience and training to reasonably control the Vessel.

**8. Prejudice of the Rights of the insurer:**

Any contractual exclusion or limitation of liability, waiver or any other limitation of the insurer's subrogated rights of recovery (unless approved in advance in writing by the insurer);

**9. Incident covered under another Section:**

A claim that is already recoverable under another section of This Insurance;

**§2. General Terms and Conditions Applicable to All Sections of This Insurance:**

The following terms and conditions regulate This Insurance and the requirements set out below must be strictly complied with or we may be entitled to reduce or refuse to pay a claim to the extent permitted by law and/or cancel the policy:

**1. Change in Risk:**

The Insured is required to notify Pantaenius as soon as reasonably possible of any modification to the Vessel or any change in the information provided prior to inception of the policy, whether in the proposal or application form or in any other communication. Failure to do so may entitle us to reduce our liability under This Insurance in respect of a claim, cancel the policy, or both.

**2. Policy Period:**

The Policy Period is as specified in the Schedule subject to the terms contained in this PDS and policy.

**3. Navigational Limits:**

This Insurance provides cover only if the Vessel is within the Navigational Limits specified in the Schedule.

Unplanned departures from the Navigational Limits specified in the Schedule, when undertaken for emergencies or for weather routing, will not invalidate This Insurance, but must be reported as soon as possible.

**4. Use of the Vessel:**

This Insurance covers the Vessel while the Vessel is afloat, in commission, while being used for private and pleasure purposes, for business entertainment, while laid up, while being exhibited at a recognised boat show or navigated for demonstration purposes, while ashore, at a shipyard or repair facility, while being lifted and launched and while being moved ashore.

**5. Charter of the Vessel:**

Unless otherwise stated in the Schedule the Insured warrants that the Vessel will not be used for commercial purposes or for reward by way of charter party or otherwise.

No cover will be provided by the Policy if the Vessel is used for commercial purposes or for reward by way of charter party or otherwise. The Vessel will only be covered under This Insurance for a charter period if the Schedule or an Endorsement states that commercial usage of the Vessel is covered under This Insurance and any additional premium has been paid.

**6. Avoidance of loss:**

The Insured is required to take all reasonable measures to avoid loss, damage or liability which would be recoverable under This Insurance. The Insured must act as if uninsured. If the Insured fails to take such reasonable measures, the insurer's liability to the Insured under this policy shall be reduced to the extent that the loss, damage or liability claimed is caused or contributed to by the Insured's failure to do so.

## 7. Insured's duties in the event of an incident which might be covered under This Insurance:

In the event of an occurrence which may give rise to a claim under This Insurance, the Insured must comply fully with the following obligations:

### 7.1. Notification:

Notify Pantaenius in the first instance without delay of every event which may give rise to a claim under This Insurance by sending a completed claim form signed by the Insured to Pantaenius by mail, e-mail or telefax.

Immediately notify the relevant government authority (i.e. police or coastguard) of any incidence of fire, or if the Insured believes a crime has been committed or if required to do so by local practice or law and provide the incident reference number to the insurer.

### 7.2. Duty to mitigate:

Take all reasonable measures to minimise any loss, damage or liability that may be recoverable under This Insurance and to minimise liabilities to third parties. The Insured is required to act as if it was uninsured. If the Insured fails to take such reasonable measures, the insurer's liability to the Insured under this policy shall be reduced to the extent that the loss, damage or liability claimed is caused or contributed to by the Insured's failure to do so.

### 7.3. Inspections & Retained Parts/Evidence:

7.3.1. Allow inspections, as many times as necessary, of the damaged Vessel or equipment by the insurer's representative(s).

7.3.2. Do not affect any repairs or replacement until the Insurer has approved the claim.

7.3.3. Retain for inspection all parts which may be regarded as evidence of loss or of cause of damage or liability.

### 7.4. Information and Documents:

Provide the Insurer with detailed and accurate reports, invoices, receipts, and other bills regarding the circumstances of the Insured event and of the sustained loss, damage or liability within a reasonable time of the Insured event and permit extracts and copies of such documents to be made.

### 7.5. Admission of Liability:

The Insured must not make any admission of liability or agree any settlement with a third party (whether relating to the liability of the Insured or the Insured's rights of recovery from the third party) without the express written consent of the Insurer.

### 7.6. Notices and Summonses:

The Insured must immediately forward to the Insurer any written demand, notice or court document in connection with any liability potentially giving rise to a claim under This Insurance.

### 7.7. Examination under Oath:

Submit to an examination under oath, as many times as necessary, and, in so far as it is within the Insured's power; ensure that any employees, or others associated with the Vessel, co-operate with the Insurer and its representative(s) and submit to examination under oath with the Insurer and/or their representative(s).

### 7.8. Witnesses:

Provide the Insurer with the names and addresses of any known injured persons or witnesses and if necessary, assist in securing their attendance at the trial of any liability/recovery claim.

### 7.9. Co-operation:

Provide full co-operation to the Insurer and/or its representative(s) in the defence of any liability claim, including providing any letters of demand, claim forms, writs, and other legal documents to Pantaenius as soon as they are received and take no action without the approval of the Insurer and/or its representatives.

7.10. Subrogation:

Upon payment of any loss, damage or expense, the Insured agrees that the Insurer shall be subrogated to all the rights of the Insured to the extent of such payment. The Insured shall co-operate fully with the Insurer and/or its representative(s) and provide all reasonable assistance in advancing any subrogated claim including providing all relevant documentation, evidence and the giving of oral evidence as necessary.

7.11. Fraudulent claims:

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this policy, or if any loss hereunder be occasioned by the willful act or with the connivance of the insured, the insurers, without prejudice to any other right(s) they might have under this policy, shall be entitled to refuse to pay such claim and/or the policy.

**8. Premium:**

8.1. Premium due in full prior to inception: The premium is due and payable in full by the Insured prior to the commencement of the Policy Period.

8.2. Premium due by two or more instalments:

Where it is agreed in writing by the Insurer that the premium is to be paid by two or more instalments:

- a) The first instalment of premium is due and payable in full by the Insured prior to the commencement of the Policy Period.
- b) The Insured must pay each subsequent premium instalment on its due date.

**9. Currency:**

Payments by the Insurer and the Insured under This Insurance will be made in the currency of the sums Insured and premium stated in the Schedule.

Where amounts are expressed in Australian Dollars in this Product Disclosure Statement, the equivalent in the currency of the sums Insured stated in the Schedule shall apply.

**10. Change of Ownership:**

If you intend to transfer your Vessel to a new owner, you must give Pantaenius notice of this at least 30 days' before the date of transfer:

If you give this notice, and subject to full compliance with all the terms and conditions of the insurance, including any express conditions and warranties specified in the Schedule, the cover under This Insurance will be transferred to the new owner(s) of the Vessel. This extension of cover will in no circumstances apply if there is a condition on the Schedule requiring the captain of the Vessel to be expressly approved by the insurers and the new owner(s) has not obtained such approval.

If you do not give us 30 days' notice of the transfer, the insurance shall end from the time when the Vessel is sold or transferred to new ownership or there is a change in the controlling interest of the Insured and a proportionate return of the unused premium shall be made by the Insurer if there has been no claim.

**11. Assignment:**

No assignment of or interest in This Insurance or any amount payable under This Insurance shall be recognised by the insurer, without the prior written consent of the Insurer.

**12. Loss Payee:**

Unless agreed to the contrary, all claim payments for physical loss of or damage to the Vessel under This Insurance shall be paid to the Insured specified in the Schedule or any Endorsement.



### 13. Other insurance:

If the Insured has other insurance in respect of a loss recoverable under This Insurance;

- 13.1. unless otherwise specified in This Insurance, to the extent permitted by law the Insurer will pay only the rateable proportion of the loss that This Insurance bears to the total amount of all insurance covering the loss; and
- 13.2. the Insurer reserves its right to recover contribution from any other Insurer liable in respect of the same loss.

### 14. Distribution of recoveries:

In the event of recoveries from third parties in respect of any claim which has been paid in whole or in part by the Insurer under This Insurance, all such recoveries shall be distributed between the Insurer and the Insured in accordance with section 67 of the Insurance Contracts Act 1984(Cth).

### 15. Notices:

Notices are to be given in writing. Notices to the Insured will be sent to the address of the Insured specified in the Schedule. Notices to the Insurer are to be sent to Pantaenius at the address specified in the Schedule.

### 16. Safety Legislation:

It is a condition of this policy that anyone in control of the Vessel complies with any relevant laws, and ensures that the Vessel conforms with any applicable safety regulations and obtains permits, certificates or licences required in accordance with the laws of Australia.

### 17. Law:

Unless the Schedule states to the contrary, This Insurance shall be governed by and construed in accordance with the laws of the Commonwealth of Australia and the state of New South Wales.

### 18. Jurisdiction:

Unless the Schedule provides to the contrary, This Insurance shall be subject to the exclusive jurisdiction of the Courts of Australia.

### 19. Legal Actions against the insurer:

No action shall be brought against the Insurer under This Insurance unless:

- 19.1. the Insured has complied fully with all the requirements of This Insurance; and
- 19.2. such action is commenced within two years from the date of that happening or occurrence from which the claim arose.

### 20. Rights of Third Parties:

No term of This Insurance is intended to confer any benefit or right on any third party under any applicable legislation, except to the extent provided under the Insurance Contracts Act 1984 (Cth).

### 21. Insurer's Share:

In the event that a section of This Insurance is underwritten by more than one Insurer, each Insurer subscribing to that section of This Insurance shall only be liable for its share of the indemnity, i.e. there is no joint liability. Any agreement between the leading insurer(s) of a particular section of This Insurance and the Insured is binding on all other insurers subscribing to that section of This Insurance.

### 22. Severability:

The invalidity or unenforceability of any provisions of This Insurance Agreement shall not affect the validity or enforceability of any other provision of This Insurance Agreement which shall remain in full force and effect.

## 14. OUR OBLIGATIONS TO YOU

### 14.1. Renewal:

At least 21 days before the end of your Policy Period, Pantaenius will send you a renewal notice which will set out your renewal terms.

### 14.2. Cooling off/Cancellation of Your policy:

#### (a) Cooling Off Period

If you decide that your policy does not meet your requirements and you want to return your insurance after your decision to buy it, you can cancel it without giving any reason, by notifying us in writing within fourteen (14) days of receiving your policy. To exercise this right, you must return your Schedule(s) to Pantaenius within fourteen (14) days telling us that the cover is not required.

When we receive your notice to cancel your policy within the cooling off period, we will refund you any premium paid (less any tax retained by us under any law).

However, your cancellation rights do not apply if, during the cooling off period under your policy, you have made a claim or you have exercised some other right under your policy.

If you cancel your policy in the cooling off period, you will not be entitled to make a claim including for any occurrence or circumstances that you have previously notified us may give rise to a claim.

#### (b) Cancellation by You

You can cancel This Insurance at any time by giving Pantaenius written notice of cancellation of your policy and specifying the date of cancellation which must not be less than one calendar month after the date of the notice.

#### (c) Cancellation by Us during the Policy Period

We may cancel your policy on any of the grounds set out in the Insurance Contracts Act 1984 or as permitted by law and we will provide you with written notice.

### 14.3. Refund of premium:

If your policy is cancelled and you have not made any claim, we will refund part of that part of the premium, if any, which is equal to the unexpired Policy Period less any non refundable government charges.

### 14.4. Making a claim:

To make a claim under your policy, you must contact Pantaenius.

Pantaenius will provide you with a claim form which includes guidelines and instructions on how to complete the form. Once Pantaenius receives your claim form with a description of the incident and any loss or damage, Pantaenius will:

- check whether the incident and damage are covered by your policy; and
- check that your premiums were paid at the time of the incident.

We will only pay a claim for the repair to your Vessel or for payments to third parties if you have properly disclosed the risk before entering into your policy and if we have accepted your claim.

### 14.5. How GST applies to any payments under Your policy:

For the purposes of this Section 15.1 - GST, input tax credit, Business Activity Statement and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Your premium is subject to GST. When we pay a claim, your GST status will determine how much we pay. When you are:

- not registered for GST, the amount we pay is the amount Insured or part thereof up to the liability limit of insurance specified in the Schedule including GST;

- registered for GST, we will pay the amount Insured or part thereof up to the liability limit of insurance specified in the Schedule and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item Insured under your policy) we will pay for the GST amount.

We will reduce the GST amount we pay by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the input tax credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number and taxable percentage. Your taxable percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

If you do not tell us your correct GST status, any GST liability is your responsibility.

Where the settlement of your claim is less than the liability limit of insurance specified in the Schedule, we will only pay an amount for GST (less your entitlement for input tax credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to your claim.

#### **14.6. Protecting Your Privacy:**

We are committed to preserving your privacy and personal information. We collect personal information from or about you for our business activities, including to assess your application for insurance, to administer your policy and any claims made by you, and to send you information about products and services that may be of interest to you. Personal information may be obtained about you from other people or organisations. If you do not provide, or authorise us to collect, your personal information, we may not be able to offer you our services. We may disclose your personal information for the purposes for which it was collected, including to the Insurer and our third party service providers who may be based overseas.

For further information on how Pantaenius collects, uses and discloses personal information, how to access or correct your personal information held by the Insurer or Pantaenius, or how to make a complaint, please contact us on (02) 9936 1670 or you may view the Pantaenius Privacy Policy at [www.pantaenius.com.au](http://www.pantaenius.com.au).

#### **Chubb Privacy Statement**

In this Statement “We”, “Our” and “Us” means Chubb Insurance Australia Limited (Chubb).

“You” and “Your” refers to Our customers and prospective customers as well as those who use Our Website.

This Statement is a summary of Our Privacy Policy and provides an overview of how We collect, disclose and handle Your Personal Information. Our Privacy Policy may change from time to time and where this occurs, the updated Privacy Policy will be posted to Our website.

#### **Why We collect Your Personal Information**

The primary purpose for Our collection and use of Your Personal Information is to enable Us to provide insurance services to You.

Sometimes, We may use Your Personal Information for Our marketing campaigns, in relation to new products, services or information that may be of interest to You. If You wish to opt out of Our marketing campaigns You can contact Our customer relations team on 1800 815 675 or email [CustomerService.AUNZ@chubb.com](mailto:CustomerService.AUNZ@chubb.com).

#### **How We obtain Your Personal Information**

We collect Your Personal Information (which may include sensitive information) at various points including but not limited to when You are applying for, changing or renewing an insurance policy with Us or when We are processing a claim. Personal Information is usually obtained directly from You but sometimes via a third party such an insurance intermediary or Your employer (e.g. in the case of a group insurance policy). Please refer to Our Privacy Policy for further details.

When information is provided to Us via a third party We use that information on the basis that You have consented or would reasonably expect Us to collect Your Personal Information in this way. We take reasonable steps to ensure that You have been made aware of how We handle Your Personal Information.

### **When do We disclose Your Personal Information?**

We may disclose the information We collect to third parties, including service providers engaged by Us to carry out certain business activities on Our behalf (such as claims assessors and call centres in Australia). In some circumstances, in order to provide Our services to You, We may need to transfer Your Personal Information to other entities within the Chubb group of companies such as the regional head offices of Chubb located in Singapore, UK or USA (Chubb Group of Companies), or third parties with whom We (or the Chubb Group of Companies) have sub-contracted to provide a specific service for Us, which may be located outside of Australia (such as in the Philippines or USA). These entities and their locations may change from time to time. Please contact us, if you would like a full list of the countries in which these third parties are located.

Where access to Our products has been facilitated through a third party (for example: insurance broker, online marketing agency etc.) We may also share Your information with that third party.

In the circumstances where We disclose Personal Information to the Chubb Group of Companies, third parties or third parties outside Australia We take steps to protect Personal Information against unauthorised disclosure, misuse or loss.

### **Your Consent**

In dealing with Us, You agree to Us using and disclosing Your Personal Information as set out in this Privacy Statement and Our Privacy Policy. This consent remains valid unless You tell Us otherwise. If You wish to withdraw Your consent, including for things such as receiving information on products and offers by Us or persons We have an association with, please contact Our Privacy Officer.

#### **Access to and correction of Your Personal Information**

If you'd like a copy of your Personal Information or wish to correct or update it, want to withdraw Your consent to receiving offers of products or services from Us or persons We have an association with, or You would like a copy of Our Privacy Policy, please contact Our customer relations team on 1800 815 675 or email [CustomerService.AUNZ@chubb.com](mailto:CustomerService.AUNZ@chubb.com).

To request access to, update or correct your personal information held by Chubb, please complete Our Personal Information Request Form online or download it from [www2.chubb.com/au-en/footer/privacy.aspx](http://www2.chubb.com/au-en/footer/privacy.aspx) and return to:

Please return the form to:

Email: [customer@combined.com.au](mailto:customer@combined.com.au)  
Fax: +61 2 9922 2096  
Address: PO Box 403 North Sydney NSW 2059

### **How to Make a Complaint**

If You have a complaint or would like more information about how We manage Your Personal Information, please review Our Privacy Policy for more details, or contact:

Privacy Officer  
Chubb Insurance Australia Limited  
GPO Box 4907 Sydney NSW 2001  
+61 2 9335 3200  
[Privacy.AU@chubb.com](mailto:Privacy.AU@chubb.com).

### **BHSI Privacy Statement**

BHSI, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding your privacy and the confidentiality of your personal information. BHSI, and entities acting on BHSI's behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you. Without your personal information, BHSI may not be able to issue insurance cover, administer your insurance or process your claim. BHSI will only use your personal information in accordance with the Privacy Act 1988 (Cth) and for the purposes outlined above.

BHSI may disclose your personal information to other companies in the Berkshire Hathaway group and other third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in New Zealand, India, Malaysia, Singapore, Hong Kong, Germany, UAE, the United Kingdom and the United States of America. Where such disclosure is made, BHSI makes all reasonable efforts to ensure

that the arrangements BHSI has in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information BHSI holds about you (including contacting BHSI to correct or update the personal information BHSI holds about you), or if you have a complaint about a breach of your privacy, please refer to BHSI's privacy policy available at <http://www.bhspecialty.com/privacy-policy.html> or contact BHSI's Privacy Officer by email to [australasia.privacy.compliance@bhspecialty.com](mailto:australasia.privacy.compliance@bhspecialty.com).

BHSI reserves the right to refuse access under the grounds permitted by the Privacy Act 1988 (Cth) and if you are seeking information on another person's behalf, BHSI will require written authorisation from that individual.

### **HDI Global Specialty SE Privacy Statement**

HDI Global Specialty is committed to protecting Your privacy in accordance with the Privacy Act 1988 (Cth) (the "Act") and the Australian Privacy Principles (APPs). In this section dealing with Privacy, "We", "Our" and "Us" refers to HDI Global Specialty.

Further information about Our Privacy Policy is available at:

- [www.hdi-specialty.com/int/en/legals/privacy](http://www.hdi-specialty.com/int/en/legals/privacy)
- or by contacting HDI Global Specialty on (02) 8646 8307

This Privacy Statement outlines why, how We collect, disclose and handle Your personal information (including sensitive information) as defined in the Act about:

- You, if an individual; and
- other individuals You provide information about.

### **WHY WE COLLECT YOUR PERSONAL INFORMATION**

We collect Your personal information (including sensitive information) so We can:

- underwrite and administer Your insurance cover;
- advise You about and determine what other service or products We can
  - i) provide to You, or;
  - ii) that may interest You.
- identify You and conduct necessary checks;
- issue, manage and administer services and products provided to You or others, including processing requests for quotes, applications for insurance, underwriting and pricing Policies, issuing You with a Policy, managing claims, claims investigation, handling and settlement;
- maintain and improve Our services and products;
- make special offers or offer other services and products provided by Us or those We have an association with, that might be of interest to You.

You also have a legal obligation under the Insurance Contracts Act 1984 to disclose certain information. Failure to disclose information required may result in Us declining cover, a cancellation of Your insurance cover or reducing the level of cover, or declining claims.

If You choose not to provide Us with the information We have requested, We may not be able to provide You with Our services or products or properly manage and administer services and products provided to You or others.

### **HOW WE COLLECT YOUR PERSONAL INFORMATION**

Collection can take place by telephone, email, or in writing and through websites (from data You input directly or through cookies and other web analytic tools).

We collect it directly from You or Your agent.

There may, however, be occasions where We collect Your personal information from someone else.

This may include:

- our authorised representatives;
- other insurers;
- our legal or other advisors;
- anyone You have authorised to deal with Us on Your behalf;
- our distributors or referrers, agents or related companies;
- service providers;
- another party involved in a claim including parties who assist Us in investigating or processing claims;
- third parties who may be arranging insurance cover for a group that You are a part of;
- providers of marketing lists and industry databases;
- publicly available sources;
- third parties claiming under Your Policy;
- witnesses and medical practitioners;
- family members; and
- personal information provided to Us by Pantaenius.

If You provide Us with personal information about another person You must only do so with their consent and agree to make them aware of:

- this privacy notice;
- that You will, or may, provide their information to Us and third parties We may provide it to;
- the relevant purposes We and any of such third parties will use it for; and
- how such persons can access their personal information.

If it is sensitive information We rely on You to have obtained such other persons consent on these matters. If You have not done so, or will not do so, You must tell Us before You provide their relevant personal information.

#### **TO WHOM WE DISCLOSE YOUR PERSONAL INFORMATION TO**

While underwriting and administering Your Policy, managing Your claims as well as providing services to You, we may disclose Your information to entities to which We are related, insurers, reinsurers, contractors, Our representatives or third party providers providing services related to Us or who are administrating Your policy;

- other insurers and reinsurers;
- banks and financial institutions for Policy payments;
- assessors, third party administrators, emergency providers, retailers, medical providers, travel carriers, in the event of a claim;
- other entities to enable them to offer their products or services to You;
- government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law;
- Your agents;
- Our legal, accounting and other professional advisers;
- data warehouses and consultants;
- mailing houses and marketing companies;
- insurance reference bureaus;
- credit providers;
- social media and other similar sites and membership networks;
- loyalty and rewards programs or partners;
- providers of medical and non-medical assistance and services;
- investigators, Loss assessors and adjusters;
- other parties We may be able to claim or recover against;
- anyone either of Us appoint to review and handle complaints or disputes; and
- any other parties where permitted or required by law.

We also may need to disclose information to persons located overseas including United Kingdom and the European Union. These countries are listed in Our Privacy Policy and may change from time to time and as may be notified in Our Privacy Policy.

You can contact Us for more details or refer to Our Privacy Policy available at Our website: [www.hdi-specialty.com/int/en/legals/privacy](http://www.hdi-specialty.com/int/en/legals/privacy)

## **MORE INFORMATION, ACCESS, CORRECTION OR COMPLAINTS**

Our Privacy Policies contain information about how You may access and seek correction of personal information We hold about You. In summary, You may gain access to Your personal information by submitting a written request to Us.

In some circumstances permitted under the Privacy Act 1988, We may not permit access to Your personal information.

Circumstances where access may be denied include where it would have an unreasonable impact on the privacy of other individuals, or where it would be unlawful.

For more information about Our privacy practices including how We collect, use or disclose information, how to access or seek correction to Your information or how to complain in relation to a breach of the Australian Privacy Principles and how such a complaint will be handled, please refer to Our Privacy Policy.

## **COMPLAINTS**

Our Privacy Policy also contains information about how You may complain about a breach of the applicable privacy principles and how We will deal with such a complaint.

## **CONSENT**

Your application includes a consent that You and any other individuals You provide information about consent to the collection, use and disclosure of personal information as set out in this notice.

## **CONTACT US AND OPTING OUT**

If You wish to withdraw Your consent, including for things such as receiving information on products and offers by Us or persons We have an association with, please contact Us.

### **HDI Global Specialty:**

By phone: (02)8646 8307

By email: [PrivacyAustralianBranch@hdi-specialty.com](mailto:PrivacyAustralianBranch@hdi-specialty.com)

In writing: Privacy Manager, HDI Global Specialty SE

Tower 1, Level 33,

100 Barangaroo Avenue, Sydney NSW 2000.

### **14.7. General Insurance Code of Practice:**

We are a signatory to the General Insurance Code of Practice (the Code). The objectives of the Code are to further raise standards of service and promote consumer confidence in the general insurance industry. Further information about the Code and your rights under it is available at [www.codeofpractice.com.au](http://www.codeofpractice.com.au) and on request.

### **14.8. Complaints:**

We take the concerns of our customers very seriously and have detailed complaint handling and internal dispute resolution procedures that you can access. Please note that if we have resolved your initial complaint to your satisfaction by the end of the 5th business day after we have received it, and you have not requested that we provide you a response in writing, the following complaint handling and internal dispute resolution process does not apply. This exemption to the complaints process does not apply to complaints regarding a declined claim, the value of a claim, or about financial hardship.

#### **Stage 1 – Complaint Handling Procedure**

If you are dissatisfied with any aspect of your relationship with Pantaenius Australia Pty Ltd including our products or services and wish to make a complaint, please contact us at:

The Complaints Officer  
Pantaenius Australia Pty Ltd  
33/6 Jubilee Avenue  
Warriewood, NSW 2102  
phone + 61 2 9936 1670  
email [complaints@pantaenius.com.au](mailto:complaints@pantaenius.com.au)

You will need to provide:

- your name and surname;
- your policy &/or claim number (if applicable);
- the date and time that the issue arose; and
- a description of the issue.

The members of our complaint handling team are trained to handle complaints fairly and efficiently. We will investigate your complaint and keep you informed of the progress of our investigation. We will respond to your complaint in writing within fifteen (15) business days provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames and, if we cannot agree, you may request that your complaint is taken to Stage 2 and referred to our internal dispute resolution team. We will otherwise keep you informed about the progress of our response at least every ten (10) business days, unless you agree otherwise.

### **Stage 2 – Internal Dispute Resolution Procedure**

If you advise us that you wish to take your complaint to Stage 2, your complaint will be reviewed by members of Chubb's internal dispute resolution team, who are independent to Pantaenius' complaint handling team and are committed to reviewing disputes objectively, fairly and efficiently.

You may contact our internal dispute resolution team by phone, fax or post (as below), or email at:

Internal Dispute Resolution Service  
Chubb Insurance Australia Limited  
GPO Box 4065  
Sydney NSW 2001  
O +61 2 9335 3200  
F +61 2 9335 3411  
E [DisputeResolution.AU@chubb.com](mailto:DisputeResolution.AU@chubb.com)

Please provide us with your claim or policy number (if applicable) and as much information as you can about the reason for your dispute.

We will keep you informed of the progress of our review of your dispute at least every ten (10) business days and will respond to your dispute in writing within fifteen (15) business days, provided we have all necessary information and have completed any investigation required. In cases where further information or investigation is required, we will work with you to agree reasonable alternative time frames. If we cannot agree, you may refer your dispute to the Australian Financial Complaints Authority (AFCA) as detailed under Stage 3 below, subject to its Rules. If your complaint or dispute falls outside the AFCA Rules, you can seek independent legal advice or access any other external dispute resolution options that may be available to you.

### **Stage 3 – External Dispute Resolution**

If you are dissatisfied with our internal dispute determination, or we are unable to resolve your complaint or dispute to your satisfaction within forty-five (45) days, you may refer your complaint or dispute to AFCA, subject to its Rules.

AFCA is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission. We are a member of this scheme and we agree to be bound by its determinations about a dispute. AFCA provides fair and independent financial services complaint resolution that is free to consumers.

You may contact AFCA at any time at:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001  
O 1800 931 678 (free call)  
F +61 3 9613 6399  
E [info@afca.org.au](mailto:info@afca.org.au)  
W [www.afca.org.au](http://www.afca.org.au)

Time limits may apply to complain to AFCA and so you should act promptly or otherwise consult the AFCA website to find out if or when the time limit relevant to your circumstances expires.



## 15. FINANCIAL CLAIMS SCHEME

Each Insurer is an insurance company authorised under the Insurance Act 1973 (Cth) (Insurance Act) to carry on general insurance business in Australia by the Australian Prudential Regulation Authority (APRA) and are subject to the prudential requirements of the Insurance Act.

The Insurance Act is designed to ensure that, under all reasonable circumstances, financial promises made by Us are met within a stable, efficient and competitive financial system.

Because of this We are exempted from the requirement to meet the compensation arrangements Australian financial services licensees must have in place to compensate retail clients for loss or damage suffered because of breaches by the licensee or its representatives of Chapter 7 of the Corporations Act 2001 (Cth). We have compensation arrangements in place that are in accordance with the Insurance Act.

In the unlikely event that We were to become insolvent and were unable to meet Our obligations under the Policy, a person entitled to claim may be entitled to payment under the Financial Claims Scheme. Access to the Scheme is subject to eligibility criteria. Please refer to <https://www.fcs.gov.au> for more information.

## 16. SANCTIONS

No Insurer shall be deemed to provide cover and no Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer or its ultimate holding company to any sanction, prohibition or restriction implemented pursuant to resolutions of the United Nations or the trade and economic sanctions, laws or regulations of the European Union, the United Kingdom, Australia or the United States of America.

## 17. UPDATING AND OTHER DOCUMENTS WHICH MAY COMPRISE THIS PDS DOCUMENT

Information in this PDS may need to be updated from time to time to take account of changes or to add to the PDS. You can obtain a copy of any updated information by contacting us. If we materially change anything which generally affects a policy which has been issued, we may provide all insureds with a new PDS or supplementary PDS. In each individual case we will notify an individual Insured in respect of changes to their individual insurance policy. Updates will also be available on the website:

[pantaenius.com.au](http://pantaenius.com.au)

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## Claim Form – Hull Damage 0818

Dear Policyholder,

We are sorry to learn of the incident involving your vessel. With your assistance we will use our best endeavours to process your claim without undue delay.

Please find below, the claim form which your policy insurers require to be completed. Please return this to us as soon as possible, with a full description of the claim incident. If you can also provide the following information it will help us to negotiate any early decision from the insurers.

- Photographs of any damage to your vessel.
- Written quotations/estimates for the repair or replacement of damaged items.
- A diagram of the incident, witness statements if available and personal details of any other parties involved if your claim is for a collision.

**It is essential that you return the claim forms as soon as possible. Although estimates may not yet be available, please do not delay submission of your claim form.**

Under the terms of your policy you have an obligation to take reasonable steps to reduce any further damage to your boat and to give the insurers all possible information to assist them in assessing your claim.

A surveyor may be appointed to investigate your claim and will also be able to advise.

I look forward to receiving the completed form as soon as possible and will keep your information of progress on your claim.

***Yours faithfully,***

**Claims Department  
Pantaenius Australia Pty Ltd.**

continue page 2



Germany • Great Britain • Hong Kong • Denmark • Austria • Poland • Japan • Sweden • USA • Australia  
Pantaenius Australia Pty Ltd. 377 Justice Ave. Warrington NSW 2392 Phone +61 (0)2 4223 1670 • info@pantaenius.com.au

[pantaenius.com.au](http://pantaenius.com.au)

# Yacht Hull Damage Claim Form 0818

Claim No.:

## Policy Holder

Name/Company Name: VINCE TESORIERO

Are you registered for GST?

Yes

No

If yes, please complete the ABN number:

Address: LEVEL 5/141 WAUWER ST, NORTH STONEY

Daytime Phone: —

Mobile: 0411 137 849

Home Phone: —

E-mail Address: VTESORIERO@FORUMGOLF.P.

COM.AU

Customer No:

Policy No:

## Vessel

Type of Vessel: MANGUSTA 105

Vessel Name: XOXO

At the time of damage, was the vessel being used for charter?

Bareboat

Skipper

Skipper at time of damage:

Number of crew:

Location at time of damage:

Date of damage:

Time of damage:

Weather conditions at time of damage:

*N/A*

continue page 3



Germany Great Britain France Denmark Austria Poland Spain Sweden USA Japan  
Korea Australia NZ/USA - 1800 100 4000 - 1800 100 4000 - 1800 100 4000 - 1800 100 4000 - 1800 100 4000

pantaenius.com.au

# Yacht Hull Damage Claim Form 0818

What measures have you taken or will you take to minimize the damage?

TAKEN BOAT OUT OF THE WATER

Type of damage to the insured vessel, estimated repair costs:

CRUSHED BOTTOM, TAKEN IN WATER  
- \$100K.

How do you suggest that the damage be repaired?

FIBREGLASS & MECHANICAL DAMAGE.

What company do you suggest should do the repairs?

MIDDLE POINT MARINA

Where can the vessel be inspected by an expert?

3601 NW SOUTH RIVER DRIVE, MIAMI  
FLORIDA

If the vessel has already been inspected, please provide us with the name and address of the surveyor.

AS ABOVE

Does any person/company other than yourself have any financial interest in the boat?

Yes

No

Are any of the items for which you are claiming covered under any other insurance?

[Empty box for other insurance information]

Did Police or responsible authority produce a report?

Yes

No

If yes, please provide Name/Address/Reference No/Crime Report No.

[Empty box for police report details]

**Please note: All cases of theft, explosion, fire, vandalism and total loss must be reported to the local Police and a copy of their report submitted with your claim.**

continue page 4



**PANTAENIUS**  
Sail & Motor Yacht Insurance

Germany: Diederichsen Platz, D-20357 Hamburg, Germany | USA: Australia: Pantaenius Australia Pty Ltd, 3301 Justice Av., Waverley NSW 2160 | Phone: (61) 45 11 9933 | 1670 • info@pantaenius.com.au

pantaenius.com.au

# Yacht Hull Damage Claim Form 0818

Please provide us with a detailed and exact description of the incident. You may use the space provided or a separate sheet. Sketches and photos should be provided where applicable.

[Large empty rectangular area for providing a detailed description of the incident, sketches, and photos.]

continue page 6



Germany • Great Britain • Monaco • Denmark • Austria • Poland • Spain • Sweden • USA • Australia  
Pantaenius Australia Pty Ltd, 3376 Jubilee Av, Warriewood NSW 2110? Phone +61-(0)2-9936 1111 • info@pantaenius.com.au

[pantaenius.com.au](http://pantaenius.com.au)

# Yacht Hull Damage Claim Form 0818

Please complete if another vessel was involved in the accident

Name of the vessel:
Owner's name & address:
Skipper's name & address :

N/A

Were there any other witnesses?

Yes

No

If so, please provide names.

What damages were incurred to the other vessel and/or objects:

You certify that the information given in this form is truthful, accurate and complete. No information likely to affect this claim has been withheld.

**We would like to point out that a fraudulent or exaggerated claim may result in a complete loss of any entitlement under the policy.**

Date:	Signature: 
-------	---

Please return the completed form to Pantaenius Australia Pty Ltd.

Please note: Our current Privacy Policy can be found under [pantaenius.com.au/en/info/privacy-policy](http://pantaenius.com.au/en/info/privacy-policy)



Germany · France · Spain · Morocco · Denmark · Austria · Poland · Spain · Sweden · USA · Australia  
Pantaenius Australia Pty Ltd. 33/6 Jubilee Av. Warriewood NSW 2102 · Phone +61-(0)2-9936 1431 · [www.pantaenius.com.au](http://www.pantaenius.com.au)

[pantaenius.com.au](http://pantaenius.com.au)

**Allens**

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia

T +61 2 9230 4000  
F +61 2 9230 5333  
www.allens.com.au

GPO Box 50  
Sydney NSW 2001 Australia

ABN 47 702 595 758

**Allens > < Linklaters**

8 December 2021

Sazz Nasimi  
Madgwicks Lawyers  
Level 6, 140 William Street  
Melbourne VIC 3000

**By Email**

[Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)

Dear Mr Nasimi

**2001 Mangusta 105 XOXO (Yacht)**

We refer to your letter dated 26 November 2021.

We are instructed as follows:

- At the time of the Receivers' appointment, it was unclear whether there was any duty owing in respect of the Yacht. As such, in order to ensure there were no inadvertent breaches of US laws the Yacht was listed as '*not for sale to US residents while in US waters*'.
- This caveat to the sale campaign was necessary to comply with US laws. Further, given the location of the Yacht it would not have been an onerous undertaking to complete the sale outside of US domestic waters, were it to be operational.
- On 29 November 2021, it was confirmed that there was no duty owing on the Yacht and accordingly the caveat was removed from the advertisement that day.
- The Receivers are fully abreast of their statutory obligations and are acting with due care and in good faith to achieve the best possible sale price.

Yours sincerely

**Chris Prestwich**

Partner  
Allens  
Chris.Prestwich@allens.com.au  
T +61 2 9230 4496

**Kirsty Prinsloo**

Managing Associate  
Allens  
Kirsty.Prinsloo@allens.com.au  
T +61 2 9230 4735

**Our Ref** 121031672:121031672  
KBPS 517894726v2 121031672 8.12.2021

Can't see this message? [View in a browser](#)

# **BARCLAY TUCK YACHTS**

**BROKERAGE - CHARTER - NEW CONSTRUCTION - OVERSEAS PURCHASES**

**Must Go Immediately, Bring All Offers.  
All New Photos and Walkthrough Videos As of December 30, 2021!**

**\*This Mangusta Is A Seized Asset\*  
Sold As Is Where Is Sale but Can Do Survey.**





## **MANGUSTA 105' 2001 - XOXO**

LOCATION: FORT LAUDERDALE, FLORIDA

ASKING: \$849,000

LOA: 105'

BEAM: 22' 8"

DRAFT: 5' 6"

CABINS: 4

ENGINES: (2) MTU

**Must Go Immediately, Bring All Offers.  
All New Photos and Walkthrough Videos As of December 30, 2021!**

**\*This Mangusta Is A Seized Asset\*  
Sold As Is Where Is Sale but Can Do Survey.**

### **Recently Completed**

New AC Chillers in the Boat  
Full Wax and Compound  
Teak Just Done

### **Known Items That Needs To Be Done**

One Generator Down, Must Be Fully Replaced  
Engines Need Servicing  
Jet Drives Need Servicing

Frequency Converter/Atlas Must be Replaced  
Bottom Job

**PLEASE CONTACT FOR WALK-THROUGH VIDEOS!**

**Contact Barclay Tuck for More Information.**

**c: 858-699-7637**

**e: [BarclayTuck@gmail.com](mailto:BarclayTuck@gmail.com)**













Please Contact Barclay Tuck for More Information.

c: 858-699-7637

e: BarclayTuck@gmail.com

[VIEW MANGUSTA](#)

  
**BARCLAY TUCK  
YACHTS**

Miami Beach  
858-699-7637



[BARCLAYTUCKYACHTS.COM](http://BARCLAYTUCKYACHTS.COM) 

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**From:** Melissa Passarelli  
**Sent:** Tuesday, 25 January 2022 10:01 PM  
**To:** India.Short@allens.com.au  
**Cc:** Sazz Nasimi; Alexandra Lawrence; Prestwich, Chris; Prinsloo, Kirsty  
**Subject:** RE: M/Y XOXO [Allens-File-DMS.FID2091065] [MADG-CURRENT\_MATTERS.18091.047678]  
**Attachments:** Mangusta 105\_ 2001 \_ Miami Beach \_ Barclay Tuck Yachts.pdf

Dear Ms Short

We refer to your below email.

Given the uncompromising manner in which your client has conducted the proceedings against Mr Tesoriero to date, our client is neither obliged nor inclined to assist the Receivers by responding to their request contained in your below email.

In your letter of 3 September 2021 to our predecessors you stated that "*the liquidators would be content to engage with [our] client regarding the sales process, including the proposed method of sale and the provision of updates*". To date this has not occurred.

We note that the Receivers' advertisement which is **attached** has explicitly stated that sale of the yacht is a forced sale. Plainly, the Receivers are not going to realise its true or full market value as a result.

In the event our client prevails in the substantive proceedings, he will seek to recover damages in respect of the full market value of the yacht as at the date of hearing which has been wrongfully prematurely sold by the Receivers.

Regards

**Melissa Passarelli**  
Associate

MADGWICKS  
LAWYERS

[Visit our COVID-19 Resources Hub for practical information to assist you through this time](#)

[Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)

Level 6, 140 William Street, Melbourne VIC 3000  
[www.madgwicks.com.au](http://www.madgwicks.com.au)



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Liability limited by a scheme approved under Professional Standards Legislation.

**Security Warning: We take cyber security risks seriously. Please confirm any bank transfer details by phone directly before making a payment.**

---

**From:** Short, India <[India.Short@allens.com.au](mailto:India.Short@allens.com.au)>  
**Sent:** Friday, 14 January 2022 5:41 PM  
**To:** Sazz Nasimi <[Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)>; Alexandra Lawrence <[Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)>; Melissa Passarelli <[Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)>; Candy Nelson <[Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)>  
**Cc:** Prestwich, Chris <[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)>; Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>  
**Subject:** FW: M/Y XOXO [Allens-File-DMS.FID2091065]

# BARCLAY TUCK YACHTS

HOME BROKERAGE SOLD CHARTER NEW CONSTRUCTION FALCON BOATS SERVICES ABOUT CONTACT



## MANGUSTA 105' 2001

### XOXO

LOCATION: FORT LAUDERDALE, FL  
ASKING: \$849,000

LOA: 105'  
BEAM: 22' 8"  
DRAFT: 5' 6"  
STATEROOMS: 4  
ENGINES: (2) MTU

[VIEW MLS LISTING](#)

**Must Go Immediately, Bring All Offers.**  
**All New Photos and Walkthrough Videos As of December 30, 2021!**

**\*This Mangusta Is A Seized Asset\***  
**Sold As Is Where Is Sale but Can Do Survey.**

#### Recently Completed Items

- New AC Chillers in the Boat
- Full Wax and Compound
- Teak Just Done

#### Known Items That Needs To Be Done

- One Generator Down, Must Be Fully Replaced
  - Engines Need Servicing
  - Jet Drives Need Servicing
- Frequency Convertor/Atlas Must be Replaced
  - Bottom Job

#### Key Features

- Hot Tub
- Large Sun Pad on Bow with Bimini



- Four Stateroom Layout
- Reach Speeds up to 25 knots
- Shallow Draft to Reach any Destination
- Large Garage Could Fit Tender and Jet Ski
- Rolls Royce Jet Controller
- Crew Space for Four

Please Contact for Walk-Through Videos

Contact Barclay Tuck for More Information.

c: 858-699-7637

e: barclaytuck@gmail.com







140



[Show More](#)



BarclayTuck@gmail.com

858-699-7637

©2016 BY BARCLAY TUCK YACHTS

---

**From:** Short, India <[India.Short@allens.com.au](mailto:India.Short@allens.com.au)>  
**Sent:** Friday, 14 January 2022 5:41 PM  
**To:** Sazz Nasimi <[Sazz.Nasimi@madgwicks.com.au](mailto:Sazz.Nasimi@madgwicks.com.au)>; Alexandra Lawrence <[Alexandra.Lawrence@madgwicks.com.au](mailto:Alexandra.Lawrence@madgwicks.com.au)>; Melissa Passarelli <[Melissa.Passarelli@madgwicks.com.au](mailto:Melissa.Passarelli@madgwicks.com.au)>; Candy Nelson <[Candy.Nelson@madgwicks.com.au](mailto:Candy.Nelson@madgwicks.com.au)>  
**Cc:** Prestwich, Chris <[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)>; Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>  
**Subject:** FW: M/Y XOXO [Allens-File-DMS.FID2091065]

Dear Colleagues

We have received the below email from Wagner Legal in respect of a claim for outstanding amounts owed to Mr Mark Ribeiro for his services rendered as a crewman for the XOXO Yacht in the period of 20 March 2020 to 20 October 2021.

The Receivers intend to request further information from Mr Ribeiro to substantiate this claim, but in the event that your client has any information relevant to this claim, including any knowledge as to the type of services that Mr Ribeiro provided in respect of the XOXO Yacht and any amounts that have previously been paid to Mr Ribeiro, we request that you please let us know as soon as possible and by no later than next **Wednesday 19 January 2022**.

Kind regards

India Short  
Lawyer, **Allens**  
DL +61 2 9230 5188 M +61 415 702 925

---

**From:** Scott Wagner <[sw@wagnerlegalco.com](mailto:sw@wagnerlegalco.com)>  
**Sent:** Friday, 7 January 2022 5:23 AM  
**To:** Prestwich, Chris <[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au)>; [barclaytuck@gmail.com](mailto:barclaytuck@gmail.com); Prinsloo, Kirsty <[Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)>; Short, India <[India.Short@allens.com.au](mailto:India.Short@allens.com.au)>; [ksozou@mcgrathnicol.com](mailto:ksozou@mcgrathnicol.com); [sball@mcgrathnicol.com](mailto:sball@mcgrathnicol.com)  
**Subject:** M/Y XOXO

**CAUTION:** External Email

Dear All,

Please allow this communication to serve as my formal introduction as counsel to Mark Ribeiro, who has continuously provided crew services as a crew member to the 2001 105' Mangusta XOXO.

I apologize if I have included any individuals who may not need to receive this communication, but I am doing the best I could under the circumstances with the information I have in my possession.

As you may know, Mr. Ribeiro was due \$10,000.00 per month for services rendered to the Vessel; and while he was paid for months until March 20, 2020, payments ceased while he continued to serve; he is due and owed money for services rendered to and on the credit of the Vessel until October 20, 2021, which is 19 months in the amount of \$190,000.00 exclusive of interest, fees and costs, plus \$1,358.57 in costs he personally advanced for the Vessel.

We understand that you may already know about these charges due, but wanted to further inform you of the amounts due and owing, and to provide notice to anyone who may be interested in purchasing this Vessel.



The services provided by my client are a maritime lien against the Vessel and will travel from owner to owner until satisfied.

We do not wish to arrest the Vessel immediately as we understand the Vessel is listed for sale, but without any security in place to ensure that the maritime lien will be promptly paid, we worry we may have no other choice.

As such, please confirm you will pay to my trust account (wire instructions attached) the amount of \$191,358.57 by Monday and we will agree to waive interest, fees and costs.

Regards,  
Scott Wagner



**WAGNER LEGAL**

**Scott A. Wagner, Esq.**

Business & Trial Law - Air | Land | Sea

3050 Biscayne Blvd., Suite 701\* (Please note our new Suite Number)

Miami, FL 33137

Phone: 305-459-3005 Ext. 101

Direct: 305-768-9247

Cell: 305-794-8508

[www.WagnerLegalCo.com](http://www.WagnerLegalCo.com)

\*\*\*\*\*

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Website: <https://www.allens.com.au> | Office locations: <https://www.allens.com.au/offices> | Partner contacts: <https://www.allens.com.au/experts>

\*\*\*\*\*