



**ASIC**

Australian Securities & Investments Commission

## [PF 27]

### Pro Forma 27

### Assumption deed

Class Order [CO 98/1418] — Wholly-owned entities

*Reissued 22/6/2005*

*Updated 31/3/2008*

*Previous version: [SPF 27D] in ASIC Digest on CD-ROM*

*See editorial note at the end of this pro forma.*

ASSUMPTION DEED made [date]

BETWEEN:

- (1) [name] ACN/ARBN [number] of [address] (the “Holding Entity”);
- (2) [name] ACN [number] of [address] (the “Trustee”);
- (3) [name] ACN/ARBN [number] of [address] (the “Entity”).

RECITALS:

- (a) The Entity wishes to be joined as a party to the Deed of Cross Guarantee.
- (b) This Deed is an Assumption Deed as defined in the Deed of Cross Guarantee.

This Deed witnesses as follows:

#### 1 Interpretation

##### 1.1 Definitions

In this Deed, unless the context otherwise requires:

- (1) “Act” means the *Corporations Act 2001*;
- (2) “Alternative Trustee” means the company (if any) holding office as alternative trustee under the Deed of Cross Guarantee at the date of this Deed;

- (3) “ASIC” means the Australian Securities and Investments Commission;
- (4) “Certificate” in relation an Assumption Deed, means one or more certificates in writing addressed to the Entity, each Group Entity covered by the Deed of Cross Guarantee, the Trustee and any Alternative Trustee and to ASIC which together include statements to the following effect:
  - (a) that the Deed:
    - (i) is in exactly the same terms as ASIC Pro Forma 27 except for the following:
      - (A) all instructions for the inclusion of specified information have been replaced by that information in a complete and accurate manner and any consequential changes of a minor or editorial nature that are necessary for the effective operation of the deed have been made;
      - (B) execution clauses have been added, deleted, modified or varied as required in order to facilitate the proper execution of the deed;
      - (C) the date has been completed;
      - (D) the headnote, the headings before the headnote and any editorial notes have been omitted;
      - (E) in the case where the Deed covers more than one Entity — such variations as are necessary to enable the additional entities to be covered;
      - (F) in the case where the Deed covers making the trustee of the Deed of Cross Guarantee to which the Assumption Deed relates a member of the Closed Group — such variations as are necessary to enable the Assumption Deed to have that effect;
    - (b) that, in relation to the execution of the Deed by each party to it that is a company, either:

- (i) the Deed appears to be signed in accordance with subsection 127(1) of the Act; or
- (ii) the company's common seal appears to have been fixed to the Deed, and the fixing of the seal appears to have been witnessed, in accordance with subsection 127(2) of the Act;

and the provider of the certificate does not know and has no reason to suspect that the Deed has not been duly executed by the company;

- (ba) that the provider of the certificate, after having made such inquiries as were reasonable in the circumstances, is of the opinion that the Deed has been duly executed by each party to it that is not a company;

where:

- (c) the certificates referred to in paragraphs (a), (b) and (ba) are given by a lawyer who holds a practising certificate;
- (5) “Class Orders” means ASIC Class Order [CO 98/1418] and Australian Securities Commission Class Orders [CO 91/996], [CO 92/770], [CO 93/1370], [CO 94/1862] and [CO 95/1530];
- (6) “Deed of Cross Guarantee” means the Deed of Cross Guarantee dated [date] entered into between the Group Entities (including the Holding Entity) and the Trustee pursuant to the Class Orders [which has been varied by Assumption Deed dated [date] and by Revocation Deed dated [date] (if applicable)];
- (7) “Group Entity” has the same meaning as the term “Group Entity” or “Group Company” (as applicable) in the Deed of Cross Guarantee;
- (8) “Holding Entity” has the same meaning as the term “Holding Entity” or “Holding Company” in the Deed of Cross Guarantee;
- (9) “lawyer” has the same meaning as in section 9 of the Act;
- (10) “Trustee” means the company holding office as trustee under the Deed of Cross Guarantee at the date of this Deed; and

(11) if the Entity comprises two or more entities, this Deed is deemed to have separate operation in respect of each of them.

#### 1.2 *Headings*

Headings and subheadings in this Deed are for convenience of reference only, and are to be ignored in the interpretation of this Deed.

### 2 Operation of Deed

This Deed is of no effect until the Holding Entity lodges an original of this Deed with ASIC together with an original of a Certificate relating to this Deed.

### 3 Assumption

On satisfaction of the condition specified in clause 2:

- (i) the Entity is joined to the Deed of Cross Guarantee; and
- (ii) the Entity assumes liability under and agrees to be bound by the Deed of Cross Guarantee as if the Entity had on the date of the Deed of Cross Guarantee executed the Deed of Cross Guarantee as a Group Entity.

### 4 Consent

The Holding Entity, on behalf of itself and all other Group Entities, and the Trustee consent to the joinder of the Entity to the Deed of Cross Guarantee.

### 5 Law and Jurisdiction

#### 5.1 *Governing Law*

This deed is governed by the law of and applicable to *[name of state or territory, being the same as the state or territory named in the Deed of Cross Guarantee]*.

#### 5.2 *Submission to jurisdiction*

The parties agree to submit to the non-exclusive jurisdiction of the courts of *[name of state or territory, being the same as that in clause 5.1]* and any courts which hear appeals from those courts in respect of any proceedings in connection with this Deed.

EXECUTED AS A DEED

THE COMMON SEAL of )

was affixed in the presence of, and the sealing is )  
attested by:

.....  
Secretary/Director  
Name (printed):

.....  
Director  
Name (printed):

THE COMMON SEAL of )

was affixed in the presence of, and the sealing is )  
attested by:

.....  
Secretary/Director  
Name (printed):

.....  
Director  
Name (printed):

THE COMMON SEAL of )

was affixed in the presence of, and the sealing is )  
attested by:

.....  
Secretary/Director  
Name (printed):

.....  
Director  
Name (printed):

## EDITORIAL NOTE

1. This pro forma relates to Class Order [CO 98/1418]. For further information see the editorial note that accompanies that class order.

### Trustee becoming subject to Deed of Cross Guarantee

2. Pro Forma 27 assumes that the group entity wishing to be joined to the Deed of Cross Guarantee is not the Trustee appointed under the Deed of Cross Guarantee. If the company wishing to become a party to the Deed of Cross Guarantee and a member of the closed group is the Trustee of the Deed of Cross Guarantee, then the Alternative Trustee will need to be added to the list of parties in the following pro forma and where the word "Trustee" appears in paragraph 1.1(iii) and clause 4 the words "and Alternative Trustee" should be added.

In this situation a supplementary deed to the Deed of Cross Guarantee will first need to be executed in order to appoint the Alternative Trustee to be alternative trustee under that Deed.

#### **Pre 13 August 1998 Deeds of Cross Guarantee**

3. If an Assumption Deed is to be executed in relation to a Deed of Cross Guarantee which was originally executed on or after 13 August 1998 (being the date Class Order [CO 98/1418] was executed), references to "Class Orders" dated before 13 August 1998 in the definition of "Class Orders" clause 1.1 of the Pro Forma Assumption Deed should be deleted.

#### **Pre 30 June 2004 Deeds of Cross Guarantee**

4. Under clause 5.2 of the pro forma Deed of Cross Guarantee as in use to 30 June 2004 ("old Pro Forma 24") further companies could only be added to the deed by way of an Assumption Deed ("Pro Forma 27") approved by ASIC. As ASIC no longer approves Assumption Deeds, it is necessary to enter into a new Deed of Cross Guarantee that contains the wording in the current Pro Forma 24 before any Assumption Deeds are executed. The existing Deed of Cross Guarantee can then be revoked in accordance with the provisions of that existing Deed [see note in PF 24].

#### **Appointing an Alternative Trustee**

5. Information regarding the requirement to appoint an Alternative Trustee may be found in paragraph 20 of the editorial note to Class Order [CO 98/1418] and Part 3 of the Schedule to the Deed of Cross Guarantee.

#### **New holding entity**

6. A new holding entity cannot be added by way of Assumption Deed. It will be necessary to revoke any existing Deed of Cross Guarantee (using a Deed of Revocation) and to enter into a new Deed of Cross Guarantee.