



ASIC

Australian Securities & Investments Commission

[PF 26]

Pro Forma 26

Revocation deed

[Class Order \[CO 98/1418\] — Wholly-owned entities ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/XX](#)

Reissued 13/8/1998

Updated 31/3/2008

Updated [insert date#]

This pro forma relates to [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/XX](#) [Class Order \[CO 98/1418\]](#). For further information see [##] [the editorial note with this class order](#). See also [the editorial note following this pro forma](#).

REVOCATION DEED made [date]

BETWEEN:

- (1) The entities the name or Australian Company Number or Australian Registered Body Number of which are set out in Schedule 1 (the “Group Entities”);
- (2) [name] Limited ACN [number] of [address] (the “Trustee”)

RECITALS:

- (a) The Group Entities are the entities which as at the date of this Deed are so defined in the Deed of Cross Guarantee.
- (b) The Trustee is the company which as at the date of this Deed is the Trustee holding office as trustee under the Deed of Cross Guarantee.
- (c) The Group Entities desire pursuant to clause 4.5 of the Deed of Cross Guarantee to revoke the Deed of Cross Guarantee in respect of the Released Group Entity by executing this Revocation Deed.

This Deed witnesses as follows:

1 Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

- (i) “ASIC” means the Australian Securities and Investments Commission;
- (ii) “ASIC Instrument” means each of ASIC Corporations (Wholly-owned Companies) Instrument 2016/XX, 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];
- (iii) “Assumption Deed” means a deed executed pursuant to clause 5 of the Deed of Cross Guarantee by virtue of which a further Group Entity or further Group Entities have been joined to the Deed of Cross Guarantee;
- ~~(iii) “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];~~
- (iv) “Continuing Group Entities” means the Group Entities other than the Released Group Entity;
- (v) “Creditor” means a person (whether now ascertained or ascertainable or not) who is not a Group Entity and to whom now or at any future time a Debt (whether now existing or not) is or may at any future time be or become payable;
- (vi) “Debt” means any debt or claim which is now or at any future time admissible to proof in the winding up of a Group Entity and no other claim;
- (vii) “Deed of Cross Guarantee” means the deed of cross guarantee dated [date] entered into between the Group Entities and the Trustee pursuant to an the Class Orders ASIC Instrument, the parties to which deed have been varied by Assumption Deed dated [date] and by Revocation Deed dated [date].
- (viii) “Group Entity” has the same meaning as the term “Group Entity” or “Group Company” (as applicable) in the Deed of Cross Guarantee;
- (ix) “Holding Entity” means the Group Entity which controls each of the other Group Entities, and which is not controlled by another Group Entity, being the entity the name and Australian Company Number or Australian Registered Body Number of which are set out in Schedule 2;
- (x) “Released Group Entity” means each of the Group Entities the name and Australian Company Number or Australian Registered Body Number of which are set out in Schedule 3; and
- (xi) “Revocation Deed” means a deed executed pursuant to clause 4.5 of the Deed of Cross Guarantee by virtue of which the Deed of Cross Guarantee has ceased to apply

to one or more of the entities which were previously party to the Deed of Cross Guarantee.

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**

2.1 *Conditions precedent*

The operation of this Deed is conditional upon:

- (i) the Holding Entity lodging an original of this Deed with ASIC;
- (ii) each of the Group Entities giving notice to its Creditors of this Deed by public advertisement (which may be a joint advertisement by two or more Group Entities) made at any time before or within one month after the date on which the original of this Deed is lodged with ASIC; such advertisement shall be placed in a daily newspaper circulating in each state and territory in which any Creditor of the Group Entity is located; and
- (iii) there being no winding up under section 459A or paragraphs 461(1)(a) or, (h) ~~or (j)~~ of the Corporations Act 2001 or as a creditors' voluntary winding up under ~~Part 5.5~~, Division 3 of Part 5.5 of the Corporations Act 2001 of any Group Entity being either:
 - (a) a winding up within six months after the original of this Deed is lodged with ASIC; or
 - (b) a winding up the commencement of which occurs within six months after the original of this Deed is lodged with ASIC.

2.2 *Operative date*

If the conditions specified in clause 2.1 are satisfied, this Deed becomes operative on the day following the expiration of the period referred to in paragraph 2.1(iii) notwithstanding that the Trustee has not executed, or does not execute, this Deed.

3 **Revocation and Release**

3.1 *Revocation*

Upon and by virtue of this Deed becoming operative, the Deed of Cross Guarantee is revoked in respect of the Released Group Entity with the consequences specified in clause 3.2.

3.2 *Consequences of revocation*

The consequences of revocation of the Deed of Cross Guarantee in relation to the Released Group Entity are the following:

- (i) the Trustee on behalf of the Creditors and each of the Continuing Group Entities release the Released Group Entity from all liability under the Deed of Cross Guarantee including liability arising or accruing:
 - (a) before or after:
 - (1) execution of this Deed; or
 - (2) the conditions specified in clause 2.1 being satisfied; or
 - (b) due to the Deed of Cross Guarantee becoming enforceable against the Released Group Entity before or after:
 - (1) execution of this Deed; or
 - (2) the conditions specified in clause 2.1 being satisfied;
- (ii) the Trustee on behalf of the Creditors and each of the Group Entities release each of the Continuing Group Entities from all liability under the Deed of Cross Guarantee in respect of any Debt of each Released Group Entity including liability:
 - (a) in respect of any Debt arising or accruing before or after:
 - (1) execution of this Deed; or
 - (2) the conditions specified in clause 2.1 being satisfied; or
 - (b) due to the Deed of Cross Guarantee becoming enforceable against the Group Entity before or after:
 - (1) execution of this Deed; or
 - (2) the conditions specified in clause 2.1 being satisfied; and
- (iii) the Trustee on behalf of the Creditors and the Group Entities revokes the trust constituted by the Deed of Cross Guarantee in respect of the covenants of each Released Group Entity.

4 Law and jurisdiction

4.1 *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*].

4.2 *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 4.1*] and any courts which may hear appeals from

those courts in respect of any proceedings in connection with this Deed.

5 General

5.1 Severability

Any provision of this Deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Deed or affecting the validity or enforceability of that provision in any other jurisdiction.

5.2 Liability of parties

If two or more parties are included within the same defined term in this Deed:

- (i) this Deed has separate operation in relation to each of them;
- (ii) a liability or obligation of those persons under this Deed is a joint liability or obligation of all of them and a several liability or obligation of each of them; and
- (iii) a right given to those parties under this Deed is a right given severally to each of them.

5.3 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Deed and the rights and obligations of the parties under it.

SCHEDULE 1 (Group Entities)

Name	Australian Company Number or Australian Registered Body Number
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SCHEDULE 2 (Holding Entity)

Name	Australian Company Number or Australian Registered Body Number
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SCHEDULE 3
(Released Group Entity)

Name	Australian Company Number or Australian Registered Body Number
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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. ~~Clause 4.5 of the Pro Forma Deed of Cross Guarantee (see Pro Forma 24 [PF 24]) provides that the Deed may be revoked by all parties executing a Revocation Deed and clause 4.7 provides that upon payment of a reasonable fee, the Trustee may be required to execute such a Deed of Revocation.~~
2. ~~The Pro Forma has been designed assuming that the Group Entity revoking the Deed of Cross Guarantee is not the Trustee appointed under the Deed of Cross Guarantee. A Revocation Deed must be executed by all parties to the Deed of Cross Guarantee and lodged with ASIC. A Revocation Deed is not approved by ASIC. The Pro Forma is a guide only and ultimately it is for the parties to the Deed of Cross Guarantee to determine whether the Revocation Deed which they execute is effective in releasing a party to the Deed of Cross Guarantee. Of course, if group entities wish to prepare and execute their own Revocation Deed, they should ensure that the Revocation Deed is consistent with the limitations regarding revocation under clause 4.5 of the Deed of Cross Guarantee. For instance, it is not possible to revoke the Deed of Cross Guarantee with retrospective effect.~~
3. ~~If for any reason beyond the control of the Group Entities it is impossible to obtain execution of the Deed of Revocation by the Trustee, the Deed may be lodged together with a statutory declaration explaining why the Trustee has not executed the Deed. This declaration is to be signed by two directors of the Holding Entity, a director and secretary of the Holding Entity or the solicitor for that entity. ASIC will accept the Deed for lodgment if satisfied that it is not feasible to obtain the Trustee's execution.~~
4. ~~If the Group Entity revoking the Deed of Cross Guarantee is the Trustee under the Deed (“the Trustee Group Company”) then the Alternative Trustee will need to execute the Revocation Deed. In this case, if the Pro Forma is used, it will need to be amended to:~~
 - (a) ~~replace the word “Trustee” with the words “Alternative Trustee” wherever it appears;~~
 - (b) ~~where the Trustee Group Company intends to continue as Trustee, add a new clause as follows, “Nothing in this Revocation Deed affects the rights or obligations of the Released Group Entity in its role as Trustee under the Deed of Cross Guarantee” (in this case the need for an Alternative Trustee no longer exists); and~~
 - (c) ~~where the Trustee Group Company does not intend to continue to act as Trustee, provide for the appointment of a new Trustee.~~

- ~~— If both the Trustee Group Company and other group entities are revoking the Deed of Cross Guarantee, and the Pro Forma is being used, then two Revocation Deeds should be executed, one Revocation Deed to release all group entities with the exception of the Trustee Group Company, and another to release the Trustee Group Company (with the amendments as stated above).~~
5. ~~If a Revocation 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” in clause 1.1 of the pro forma Revocation Deed should be deleted.~~
6. ~~Clause 7.5 of the Deed of Cross Guarantee provides that the Trustee may retire and appoint a new Trustee. If this is to be done a separate deed of retirement and appointment should be executed.~~
7. ~~The attention of all parties is drawn to Div 2 of Pt 5.7B of the Corporations Act 2001. This may serve to invalidate a Deed of Revocation if not entered into in good faith.~~