

Consolidated Trust Deed

Kiwibank PIE Unit Trust

Manager
Kiwibank Investment Management Limited

Supervisor
Public Trust

(A consolidated and amended trust deed

27 May 2021)

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Deed dated

27 May 2021

Parties

- 1 **Kiwibank Investment Management Limited ('Manager')**
- 2 **Public Trust ('Supervisor')**

Background

- A The Kiwibank PIE Unit Trust ("Trust") was established by the Manager by deed trust dated 26 May 2008 ("Original Deed") and is currently governed by a consolidated trust deed dated 26 June 2018 ("Trust Deed").
- B The Trust is a Multi-rate PIE made up of different Funds, and units in those Funds of different classes are offered to the public. As at the date of this deed, the Funds are the Kiwibank PIE Term Deposit Fund, Kiwibank PIE Online Call Fund, and the Kiwibank Notice Saver.
- C By deed of retirement and appointment of supervisor dated 27 May 2020, Public Trust replaced Trustees Executors Limited as the supervisor of the Trust with effect from 1 June 2020.
- D The Supervisor is the trustee and supervisor of the Trust for the benefit of the Unit Holders on the terms and conditions set out in the Trust Deed.

1 Interpretation

1.1 Definitions

In this deed unless the context requires otherwise:

'Act' means the Financial Markets Conduct Act 2013.

'Administration Act' means the Tax Administration Act 1994.

'Agreed Redemption Date' has the meaning given to that term in the Establishment Deed for the Kiwibank PIE Term Deposit Fund.

'Assets' means:

- a in relation to the Trust or where used without reference to a Fund, all the Property, rights and assets of the Trust; and
- b in relation to a Fund, the Assets of the Trust attributable to that Fund.

'Attributed PIE Income' has the same meaning as in section HM 36 of the Tax Act.

'Attributed PIE Loss' has the same meaning as in section HM 36 of the Tax Act.

'Attribution Period' has the same meaning as in section HM 34 of the Tax Act.

'Auditor' means the person or persons for the time being appointed as auditor of the Trust pursuant to this deed.

'Authorised Investments' means, subject to any express limitation in this deed, any Establishment Deed and any supplemental deed, any cash, property, securities, right (contractual or otherwise, including derivatives such as futures and swaps, and contracted rights under underwriting agreements) or interest (equitable or otherwise) including, without limitation, such class or classes of investments agreed between the Supervisor and the Manager and notified to the Unit Holders.

'Business Day' means a day other than Saturday or Sunday on which banks are open for general banking business in Auckland and Wellington, New Zealand.

'Calculation Period' has the same meaning as in section YA 1 of the Tax Act.

'Class' means Units in the Trust that have identical features and equal ranking proportionate interests in the Assets of a Fund, whether or not those Units are issued at different times and whether or not they have different Agreed Redemption Dates. For the avoidance of doubt, this definition does not affect the definition of Investor Class.

'Class Variable' means a feature of a Class which distinguishes that Class from other Classes in the Trust or a Fund.

'Current Value' means, in relation to a Fund, subject to clause 1.6, such sum as is ascertained by the Manager by deducting from the aggregate of:

- a the Value of all Assets of that Fund; and
- b any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purpose of making a fair estimated market value determination of the total value of the part of the Trust attributable to that Fund, having due regard to Generally Accepted Accounting Practice (with any modifications which, in the opinion of the Manager, should be made in making that determination, provided that the Manager has agreed with the Supervisor on such modifications);

the aggregate of:

- c all Liabilities of that Fund; and
- d any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purpose of making a fair and reasonable determination of the total value of the part of the Trust attributable to that Fund having due regard to Generally Accepted Accounting Practice (with any modifications which, in the opinion of the Manager, should be made in making that determination, provided that the Manager has agreed with the Supervisor on such modifications).

'Distributable Amount' means, in relation to a Fund, the amount determined by the Manager as being the amount to be distributed in respect of Units in that Fund from the Assets of that Fund (whether from capital or income) in accordance with the terms of issue of the Units.

'Distribution Account' means, in relation to a Fund, the account to which amounts may be transferred pursuant to clause 19.2.

'Establishment Deed' means any establishment deed referred to in clause 2.4 that sets out the terms of an Initial Fund, or any establishment deed that establishes a New Fund in accordance with clause 2.5.

'Extraordinary Resolution' means, in relation to the Trust, a Fund or a Class, a resolution passed at a meeting of Unit Holders of Units in the Trust or of that Fund or Class, respectively, duly convened and carried by a majority of not less than three fourths of the persons validly voting thereat upon a vote by voice or a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three fourths of the votes validly cast on such poll.

'Financial Statements' means the financial statements referred to in clause 17 of this deed, which shall be prepared in accordance with that clause, the Financial Reporting Act 2013 and any other relevant statutory requirements, as varied, augmented or limited as is considered necessary or desirable by the Manager.

'Financial Year' means a year ending on 31 March (or such other date as the Manager nominates and the Supervisor agrees) where the Trust has been and is in existence, or that part of such a year occurring:

- a from the commencement of the Trust to the following 31 March; or
- b from the 1 April preceding the termination of the Trust to the termination of the Trust.

'FMA' means the Financial Markets Authority.

'Fund' means the Initial Funds and any New Fund.

'Generally Accepted Accounting Practice' has the meaning given to that term in the Financial Reporting Act 2013.

'GST' means goods and services tax chargeable in accordance with the Goods and Services Tax Act 1985.

'Initial Funds' means the Kiwibank PIE Online Call Fund and the Kiwibank PIE Term Deposit Fund.

'Investment Policies' means, in relation to a Fund, the policies in relation to investment and other matters affecting the financial position of the Fund adopted from time to time in accordance with clause 15.2.

'Investor' means a person who has provided funds to be invested in the Trust.

'Investor Class' has the same meaning as in section HM 5 of the Tax Act.

'Issue Price' means, in relation to a Unit, the price calculated in accordance with clause 5.2.

'Kiwibank' means Kiwibank Limited.

'Liabilities' means:

- a in relation to the Trust or where used without reference to a Fund, all liabilities of the Trust; and
- b in relation to a Fund, all liabilities of the Trust that the Manager decides in consultation with the Auditor are attributable to that Fund (including liabilities accrued but not yet paid) and any provision which the Manager decides in consultation with the Auditor should be taken into account in determining the liabilities of the Trust attributable to that Fund,

as determined in accordance with Generally Accepted Accounting Practice but excluding any amount which results from treating Units as liabilities and, if the Trust is a PIE, where the Manager, in accordance with Generally Accepted Accounting Practice or otherwise with the prior consent of the Supervisor, considers it appropriate to do so, any Portfolio Entity Tax Liability.

'Manager' means the manager of the Trust for the time being appointed under the provisions of this deed.

'Minimum Balance' means, in relation to a Class or Fund, such amount or amounts as the Manager may determine as the minimum balance for the Class or Fund and set out in the Terms from time to time.

'Minimum Withdrawal' means, in relation to a Class or Fund, such amount or amounts as the Manager may determine as the minimum withdrawal amount for the Class or Fund and set out in the Terms from time to time.

'Multi-rate PIE' has the same meaning as in section YA 1 of the Tax Act.

'Net Income' has the same meaning as in section HM 35(6)(a) of the Tax Act.

'Net Loss' has the same meaning as in section HM 35(6)(b) of the Tax Act.

'New Fund' means any fund established by an Establishment Deed under clause 2.5, and as at the date of this deed includes the Kiwibank Notice Saver.

'New Zealand Post Group' means New Zealand Post Limited and all of its Subsidiaries.

'Nominated Company' has the meaning given to that term in clause 24.6a.

'Nominee' has the meaning given to that term in clause 24.6.

'Ordinary Resolution' means, in relation to the Trust, a Fund or a Class, a resolution passed at a meeting of Unit Holders of Units in the Trust, Fund or Class, respectively, duly convened and held in accordance with this deed and carried by a majority of not less than one half of the persons validly voting at the meeting upon a vote by voice or show of hands or, if a poll is duly demanded, by a majority consisting of not less than one half of the votes validly given on such poll.

'Percentage' has the same for a Unit Holder as in section HM 36(3) of the Tax Act.

'Portfolio Entity Tax Liability' means in respect of a Fund the tax liability for the Fund as calculated in accordance with sections HM 47(3), 47(4) and 47(5) of the Tax Act.

'Portfolio Investment Entity' or **'PIE'** means a portfolio investment entity as defined in section YA 1 of the Tax Act.

'Portfolio Investor Proxy' means a proxy within the meaning of section HM 33 of the Tax Act.

'Portfolio Investor Rate' has the same meaning as in section YA 1 of the Tax Act.

'Prescribed Investor Rate' has the same meaning as in section YA 1 of the Tax Act.

'Property' means real or personal property.

'Proportion' means, in relation to a Unit at any time, the proportion that the balance of the Unit Account of that Unit bears to the aggregate of the balances of the Unit Accounts for all the Units of the same Fund at that time.

'Rebate' means any rebates of tax and includes any tax credits provided pursuant to section LS 1 of the Tax Act.

'Record Date' means, in relation to a Fund, a time and date determined by the Manager for the purpose of determining the persons presently entitled to a Distributable Amount in respect of that Fund.

'Redemption Notice' means a notice received by the Manager pursuant to clause 10.2, or otherwise deemed to have been received by the Manager under this deed.

'Register' means the register of Unit Holders maintained pursuant to clause 8.1.

'Registrar' means any person appointed by the Manager pursuant to clause 8.2.

'Regulations' means the Financial Markets Conduct Regulations 2014.

'Related Person' means in relation to the Manager or the Supervisor, as the case may be:

a any:

i holding company (within the meaning of section 5 of the Companies Act 1993) or Subsidiary of the Manager or the Supervisor (as applicable); and

ii body corporate where both that body corporate and the Manager or the Supervisor (as applicable) are related to a third body corporate under paragraph i;

b any director or shareholder of the Manager or the Supervisor;

c a grandparent, parent, brother, sister, brother in law, sister in law, child, child's spouse, grandchild or grandchild's spouse of any director of the Manager or the Supervisor;

d any person in which a person referred to in paragraph b or c above has a material financial interest; or

e any unit trusts, group investment funds, managed investment schemes, or similar schemes managed by the Manager, or by any related body corporate of the Manager.

'Repayment Value' means, in relation to a Unit, the amount payable to the Unit Holder upon a redemption of that Unit determined under clause 10.5.

'Request Date' means, in relation to a Redemption Notice or Withdrawal Notice, the date on which the Manager received the Redemption Notice or Withdrawal Notice and shall mean a date determined by the Manager where the provisions of this deed provide that a Redemption Notice or Withdrawal Notice is not required to be given.

'Required Majority' except where this deed or the law require otherwise, means a simple majority and in all other circumstances means the majority required by this deed or the law as the case may be.

'Resolution' means, in relation to the Trust, Fund or a Class:

- a a resolution passed at a meeting of Unit Holders of Units of the Trust, Fund or that Class, respectively:
 - i on a show of hands or by voice, by the Required Majority of Unit Holders present in person; or
 - ii if a poll is duly demanded, by Unit Holders holding the Required Majority of Units in the Trust, Fund or that Class, respectively, present and voting on the poll, in person or by proxy; or
- b a resolution in writing signed by Unit Holders holding the Required Majority of the Units in the Trust, Fund or Class, respectively.

'Subsidiary' has the meaning given to it in the Companies Act 1993.

'Supervisor' means the supervisor and trustee of the Trust for the time being appointed under the provisions of this deed and, in respect of any Assets, includes any Nominated Company or Nominee of the Supervisor.

'Tax' means all kinds of taxes, deductions, duties and charges imposed by a government or quasi-government authority, together with interest and penalties.

'Tax Act' means the Income Tax Act 2007.

'Tax Bank Account' means the bank account established by the Supervisor or its Nominated Company or Nominee and managed by the Manager in accordance with clause 20.3.

'Tax Bank Account Balance' means, at any time, the balance of the Tax Bank Account at that time after making allowance for any costs incurred in operating the Tax Bank Account;

'Tax Credits' means a credit against a person's tax liability provided for under Part LS of the Tax Act, or any other similar credit.

'Tax File Number' has the same meaning as in section YA 1 of the Tax Act.

'Tax Loss' has the same meaning as in section HM 35(7) of the Tax Act.

'Taxable Income' has the same meaning as in section HM 35(7) of the Tax Act.

'Terms' means the terms and conditions which bind Unit Holders, as published by or on behalf of the Manager from time to time (including any other documents, websites, or information incorporated by reference into the published terms and conditions).

'Trust' means the trust established under this deed.

'Trusts Act' means the Trusts Act 2019.

'Unit' means subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units, or the Fund to which the Unit belongs:

- a an undivided proportionate share in the beneficial interest in the Assets of the Fund to which that Unit belongs; and

b in relation to a Fund, a Unit belonging to any Class created under the Establishment Deed for that Fund.

'Unit Account' means, in relation to a Unit, the account maintained by the Supervisor in relation to that Unit under clause 6.

'Unit Holder' means the person registered as the holder of a Unit (including persons jointly registered).

'Unit Value' means, subject to clause 1.6, in relation to a Unit at any time, the amount calculated by the Manager in accordance with the following formula as at that time:

$$CV \times (UA / U)$$

Where:

CV = Current Value of the Fund to which that Unit belongs

UA = Balance of the Unit Account of that Unit

U = Aggregate of the balances of all Unit Accounts of Units of the same Fund.

'Valuation Date' means, in relation to a Fund, a date at which the Manager calculates the Current Value of that Fund.

'Valuation Register' means the valuation register referred to in clause 16.1.

'Value' means, in relation to an Asset of or to be acquired by the Trust, the value shown in the Valuation Register or if its value is not shown in the Valuation Register, the value determined in accordance with clause 16.

'Valuer' means an independent expert appointed by the Manager from a panel of experts approved by the Supervisor generally or for the asset class in question.

'Withdrawal Amount' means the amount of the Unit Value of a Unit that the Unit Holder or the Manager requests be withdrawn, as specified in the relevant Withdrawal Notice.

'Withdrawal Notice' means a notice received by the Manager pursuant to clause 11.2, or otherwise deemed to have been received by the Manager under this deed.

1.2 **Construction**

In the construction of this deed, unless the context requires otherwise:

- a **Business Days**: anything required by this deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;
- b **Clauses and Schedules**: a reference to a clause or Schedule, respectively, is to a clause or Schedule of this deed;
- c **Currency**: a reference to any monetary amount is to New Zealand currency;
- d **Defined Terms**: words or phrases appearing in this deed with capitalised initial letters are defined terms and have the meanings given to them in this deed;

- e **Documents:** a reference to any document, including this deed, includes a reference to that document as amended, supplemented (by supplemental deed, or otherwise) or replaced from time to time;
- f **Fees:** where this deed provides that any fees, expenses, or other amounts shall be payable to the Supervisor, the Manager, or any other person, the amounts payable shall be increased by the amounts of any GST or other Tax or duty payable in respect thereof;
- g **Generally Accepted Accounting Practice:** notwithstanding any provision of this deed, where a matter is to be or may be interpreted pursuant to any provision of this deed by reference to Generally Accepted Accounting Practice or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets or net assets for any other purpose), the Manager may elect not to follow such Generally Accepted Accounting Practice or the New Zealand equivalents to international financial reporting standards where it reasonably thinks fit, subject to agreement with the Supervisor;
- h **Headings:** headings appear as a matter of convenience and do not affect the construction of this deed;
- i **Manager's discretion in relation to PIE regime:** whenever there is a reference in this deed to the Manager exercising any discretion in decision-making in relation to applying the requirements of the PIE regime to the Trust and its Unit Holders, this discretion shall be interpreted to include the requirement that the Manager exercise such discretion:
 - i with a view to ensuring that the Trust is in compliance to the fullest extent possible with the requirements of the PIE regime as they apply at the time of exercising the discretion; and
 - ii having regard to the best interests of Unit Holders generally, to the extent to which the context allows;
- j **No contra proferentem construction:** the rule of construction known as the contra proferentem rule does not apply to this deed;
- k **Parties:** a reference to a party to this deed or any other document includes that party's personal representatives/successors and permitted assigns;
- l **Person:** a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- m **Related terms:** where a word or expression is defined in this deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- n **Singular, plural and gender:** the singular includes the plural and vice versa, and words importing one gender include the other genders;
- o **Statutes and regulations:** a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations, and, in the case of the Act, to any framework or methodology issued by the FMA under the Act which applies to the Trust and / or the Funds;

- p **Time:** a reference to time is to New Zealand time;
- q **Units:** notwithstanding any provision of this deed, Units are not to be treated as liabilities for any purpose under this deed;
- r **Writing:** a reference to 'written' or 'in writing' includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 **Parties bound**

This deed binds the Supervisor, the Manager and the Unit Holders and any person claiming through any of them as if each of them had been a party to this deed.

1.4 **Exchange of currencies**

Where, for the purposes of any provision of this deed, it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non-New Zealand currency (or a non-New Zealand currency equivalent of a sum expressed in New Zealand currency) such sum shall, unless otherwise agreed in writing by the Supervisor either generally or in any particular case, be converted to New Zealand currency (or the non-New Zealand currency, as the case may be) on such basis as is from time to time acceptable to the Manager provided always that in so determining a currency equivalent of any Asset or Liability, account may be taken of any contract or arrangement in force for covering the risk of fluctuations between New Zealand currency and the non-New Zealand currency in respect of the Asset or Liability.

1.5 **References to the Act**

Unless the context otherwise requires, any reference in this deed or an Establishment Deed to the Act shall be interpreted as being a reference only to those provisions of the Act which expressly apply to the Trust and / or the relevant Fund (as applicable), whether due to the application of an exemption from the Act or for any other reason.

1.6 **Frameworks or methodologies**

Where the FMA has published frameworks or methodologies that are directly applicable to the Trust and / or Funds in accordance with clause 1.5 and require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies. Any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this deed and the provisions of this deed shall be construed accordingly.

1.7 **Trusts Act 2019**

- a The following provisions of the Trusts Act that may be excluded from applying to the terms of the Trust are so excluded:
 - i section 31 (Duty not to exercise power for own benefit);
 - ii section 34 (Duty to avoid conflict of interest);
 - iii section 35 (Duty of impartiality);
 - iv section 36 (Duty not to profit);

- v section 37 (Duty to act for no reward);
- vi section 38 (Duty to act unanimously); and
- vii sections 142 – 146 (Alternative dispute resolution).

- b Section 58 (Trustee has power to invest) of the Trusts Act, which may be modified in its application to the terms of the Trust, is so modified to the extent set out in the investment procedure set out in clause 15.1 of this Deed.
- c Each other provision of the Trusts Act that may be modified (to the extent it is not otherwise excluded above) is so modified to the extent any term of this Deed is inconsistent with that provision of the Trusts Act.

2 Constitution of Trust

2.1 Appointment of Supervisor:

The appointment of the Supervisor as supervisor of the Trust in accordance with the Original Deed is confirmed. The Supervisor agrees to act in respect of the Trust as trustee and supervisor for the Unit Holders, and to hold the Assets as the exclusive property of the Trust in trust solely for the Unit Holders, upon and subject to the terms and conditions expressed or implied in this deed, any Establishment Deed, and the Act.

2.2 Appointment of Manager

The appointment of the Manager as manager of the Trust in accordance with the Original Deed, and its agreement to act as the manager upon and subject to the terms and conditions expressed or implied in this deed and the Act, and to observe and perform its obligations under this deed and the Act, are confirmed.

2.3 Name

- a The Trust is known as the Kiwibank PIE Unit Trust.
- b The Funds established in accordance with the Trust Deed and in existence as at the date of this deed are known as the Kiwibank PIE Online Call Fund, the Kiwibank PIE Term Deposit Fund, and Kiwibank Notice Saver.
- c Notwithstanding any name given to the Trust or a Fund pursuant to this deed or any Establishment Deed, the Manager may, subject to compliance with all legal and regulatory requirements, change the name of the Trust or a Fund by written notice to the Supervisor. The Manager shall notify Unit Holders in the Trust or Fund of any change of name of the Trust or Fund when next convenient for the Manager.

2.4 Initial settlement

When the Manager paid \$1.00 to the Supervisor by way of subscription by the Manager for a Unit in the Kiwibank PIE Online Call Fund, the Trust was be constituted on the terms contained in the Original Deed with the Manager as its initial beneficiary and the Initial Funds were established on the terms contained in their respective Establishment Deeds.

2.5 Establishment of New Funds

The Manager may at any time give notice to the Supervisor of its intention to constitute a New Fund. If the Supervisor approves the constitution of a New Fund (such approval not to be unreasonably withheld or delayed) the Supervisor shall join with the Manager in executing an Establishment Deed, supplemental to this deed, which Establishment Deed shall:

- a contain a provision for the constitution of the New Fund;
- b specify the name of the New Fund;
- c specify any limitation on the Authorised Investments of the New Fund;
- d specify the date of commencement of the New Fund;
- e if required, set out the Supervisor's fee (or the basis for calculation thereof) for the New Fund;
- f specify the name and Class Variables of each Class of Units in the New Fund, or the manner in which those things must be determined;
- g if required, provide for any distributions that may be made in respect of the Units in the New Fund;
- h specify any fees that may be payable by Unit Holders of Units in the New Fund or from the Assets of the New Fund; and
- i specify any rights the Manager or Supervisor may have to terminate the New Fund;
- j make any amendment to this deed in respect of the New Fund approved by the Supervisor.

2.6 Single Trust

Notwithstanding the division of Units into Funds and the attribution of different Assets to each Fund in accordance with the relevant Establishment Deeds, none of the Funds nor the Assets of each Fund constitute separate trusts. The Assets of each Fund constitute separate trust funds of the Trust, held in trust by the Supervisor subject to the following terms, clause 3.3 and the other provisions of this deed:

- a the Liabilities of a particular Fund shall be met only from the Assets of that Fund;
- b all Assets of a Fund shall be held by the Supervisor for the benefit of that Fund;
- c the Supervisor and Manager shall keep separately identifiable records and ledger accounts for each Fund, and shall not permit the Assets or Liabilities of any Fund to become intermingled with those of any other Fund; and
- d the creation of a New Fund shall not in any way vary or affect any other Fund nor give rise to any resettlement of the Trust.

3 Units

3.1 Beneficial interest in Assets

The beneficial interests in the Assets of the Trust shall be divided into Units.

3.2 Classes of Units

Units may be divided into different Classes in accordance with each Establishment Deed and all applicable law, including the Act.

3.3 Nature of Units

Each Unit in a Fund shall, at any time:

- a have a value equal to the Unit Value of that Unit at that time; and
- b confer a proportionate, undivided beneficial interest in each of the Assets of the Fund to which that Unit belongs that is equal to the Unit's Proportion at that time,

subject to any rights, terms of issue, obligations and restrictions attaching to any particular Unit or Fund. No Unit or Class of Unit shall confer on the holder or holders of that Unit or Class any interest in any particular Asset or part of an Asset of the Trust or Fund.

3.4 No interest in Assets of other Classes

A Unit in one Fund shall not confer any right or interest in the Assets of another Fund.

3.5 Rights of Investors

An Investor shall have the same rights, benefits and entitlements as if the Investor were the registered holder of any Unit held by any Portfolio Investor Proxy on behalf of the Investor, except that:

- a the Portfolio Investor Proxy shall be deemed to hold such rights, benefits and entitlements on behalf of the Investor; and
- b the Portfolio Investor Proxy is the only person able to exercise any such rights or entitlements or receive any such benefits.

3.6 Role of any Portfolio Investor Proxy

Notwithstanding anything else in this deed, to the maximum extent permitted by law:

- a any Portfolio Investor Proxy must comply with the obligations imposed on Portfolio Investor Proxies under section HM 33 of the Tax Act;
- b neither the Manager nor the Supervisor shall have any obligation or liability of any nature:
 - i for PIE or other tax in respect of income allocated to any Portfolio Investment Proxy; or
 - ii for any matter for which any Portfolio Investor Proxy is responsible under paragraph a above; and
- c neither the Manager nor the Supervisor shall have any liability or obligation to Investors or any Portfolio Investor Proxy in connection with the Portfolio Investor Proxy's failure to comply with, or any action or inaction of the Portfolio Investor Proxy in respect of, its obligations under paragraph a above.

3.7 Rights not attaching to Units

Subject to the Unit Holders' rights created by this deed, the Act, and any other applicable legislation, no Unit Holder shall be entitled to:

- a **Acquire particular Assets:** require the transfer to him or her of any Assets; or
- b **Question discretions:** interfere with or question the exercise or non-exercise by the Supervisor or the Manager of the rights, discretions and powers of the Supervisor and the Manager in their dealings with the Trust or any Assets or any part thereof; or
- c **Exercise rights concerning the Assets:** by virtue of holding Units, attend meetings whether of shareholders, unitholders or otherwise or vote or take part in or consent to any action concerning any Property or corporation in which the Trust holds an interest.

4 Offer of Units

4.1 Offer of Units

The Manager may from time to time do either or both of the following:

- a invite applications from any person or persons to subscribe for or purchase Units; or
- b offer Units to any person or persons for subscription or purchase;

in either case in compliance with all applicable requirements of the Act and all other applicable legislation, for the Issue Price and on the terms and conditions contained in this deed and such other terms and conditions (not being inconsistent with this deed) as are determined by the Manager from time to time.

4.2 Manager may refuse application

The Manager may in its absolute discretion accept or refuse an application for Units in whole or in part without reason and may limit the size of any Class or Fund in its discretion.

4.3 Minimum Balance

Without limiting clause 4.2, the Manager may refuse any application for a Unit for less than a Minimum Balance for the Class or Fund to which that Unit belongs.

4.4 Portfolio Investment Entity

Without limiting clause 4.2, the Manager may refuse any application for a Unit where to do otherwise would threaten or cause the Trust to become ineligible as a PIE.

5 Issue of Units

5.1 Manager's power to issue

a Manager's discretion

The Manager may issue Units at any time, to any person, and in any number it thinks fit.

b Issue of Units ranking equally with existing Units

The Manager may issue Units ranking equally with all existing Units in the same Class or Fund. Any such issue will not be treated as an action affecting the rights attached to the existing Units and the Manager need not first offer those Units to existing Unit Holders.

c Manager to issue certificates

Where required by law, the Manager shall issue certificates evidencing the issue of a Unit, in such form and within such time frames as the Manager shall decide, subject to any relevant law. The Manager may issue certificates evidencing the issue of a Unit, in such form and within such time frames as the Manager shall decide, even if it is not required to do so by law.

5.2 Issue Price

Unless otherwise provided in the Establishment Deed for the relevant Fund or the Terms and subject to clause 1.6 the following shall apply:

- a Each Unit shall be issued for an amount in value equal to its Issue Price.
- b The Issue Price of each Unit is not a fixed amount and shall be the Minimum Balance for the Class or Fund to which the Unit belongs or such other amount as the Manager may in its discretion accept.
- c Payment shall be in cash or, at the Manager's discretion, may in any particular case be made in whole or in part by the transfer of:
 - i **Authorised Investments:** Authorised Investments of a kind able to be vested in the Supervisor in accordance with clause 5.3 equal in value to the Issue Price for each Unit applied for; or
 - ii **Cash and Authorised Investments:** A combination of both cash and Authorised Investments, as approved by the Manager, equal in value to the Issue Price for each Unit applied for.

5.3 Non-cash payment

If the Manager accepts payment in Property (such Property being in all respects an Authorised Investment) rather than cash, the Manager must obtain:

- a an effective transfer to the Supervisor of title to the Property, confirmed in a manner approved by the Supervisor; and
- b if the Supervisor so requires, a valuation by the Valuer of the Property.

The Manager may deduct from the acquisition cost of the Property, before the number of Units to be issued is calculated, any costs incurred in valuing and transferring the Property if such amounts have not been included in the Issue Price.

5.4 Brokerage/commission

The Manager may pay, as an expense of the Trust, brokerage and/or commission on the issue of Units at a rate set by the Manager, if provided for in the Terms.

5.5 **Issue date**

Subject to clause 1.6, a Unit is taken to be issued when:

- a the Manager accepts the application; or
- b the consideration against which the Unit is to be issued is transferred to the Supervisor,

whichever happens later. A Unit issued or the crediting of any amount to a Unit Account against consideration paid other than in cleared funds or by the transfer of Property is void if the money is not subsequently cleared or the title to the Property does not pass to the Supervisor.

6 **Unit Accounts**

6.1 **Supervisor to maintain**

The Supervisor shall maintain a Unit Account in respect of each Unit.

6.2 **Further payments**

A Unit Holder may, in addition to the Issue Price of a Unit, pay further amounts in respect of any Unit held by that Unit Holder in such manner as the Manager in its discretion may determine.

6.3 **Amounts credited to Unit Account**

The following amounts shall be credited to the Unit Account of a Unit, subject to the Establishment Deed for the Fund in which the Unit was issued:

- a any amount or amounts paid in respect of the Issue Price of the Unit;
- b each day, the interest and any other income accrued on the Assets of the relevant Fund in respect of that day allocated to the Unit in accordance with the Establishment Deed;
- c any adjustment or other action taken under clause 21.8 that the Manager considers in its discretion shall be credited to the Unit Account;
- d any further amount or amounts paid by or for the benefit of a Unit Holder in respect of the Unit in accordance with clause 6.2; and
- e any other amount to be credited to the Unit Account under this deed or the Establishment Deed for the relevant Fund.

6.4 **Amounts debited from Unit Account**

The following amounts shall be debited from the Unit Account of a Unit, subject to the Establishment Deed for the Fund in which the Unit was issued:

- a any amount paid or payable to the Unit Holder in respect of the redemption of the Unit under clause 10;
- b any amount paid or payable to a Unit Holder in respect of a withdrawal of any Unit Value under clause 11;

- c any adjustment under clause 21.8 that the Manager considers in its discretion shall be debited from the Unit Account; and
- d any other amount to be debited from the Unit Account under this deed or the Establishment Deed for the relevant Fund.

7 Switching Units

7.1 Unit Switch

Subject to the Act, the Manager may (but is not obliged to) at the request of a Unit Holder (a 'Switch Request') switch the Unit to which the Switch Request relates into a Unit of any other Class or Fund on the following terms:

a Form of the Request

The Switch Request shall be in writing or in such other form (whether written or not) as is from time to time prescribed by the Manager. The Switch Request shall specify:

- i the Class or Fund from which the Unit Holder wishes to switch the Unit; and
- ii the Class or Funds in which the Unit Holder wishes to take up a Unit (in this clause 7.1 called the 'Elected Unit').

b Evidence of title

The Switch Request shall, if so required by the Manager, be accompanied by certificates (if any), or such other evidence of title or of the Unit Holder's authority to deal with the Unit as the Manager may require.

c Switch Request to be delivered to the Manager

The Switch Request shall be delivered to the registered office of the Manager or any other place from time to time prescribed by the Manager.

d Deemed receipt of a Switch Request

Any Switch Request which is given on a day which is not a Business Day or is received after 2.00 p.m. on a Business Day shall be deemed to be received on the following Business Day.

e Method of switching

If the Manager agrees to switch a Unit pursuant to this clause 7.1, the Manager shall within thirty days of receipt of a Switch Request cause the redemption of the Unit specified in the Switch Request as if the Switch Request were a Redemption Notice given under clause 10.2, and shall apply the total Repayment Value payable in respect of that Unit in payment of the total Issue Price of the Elected Unit (subject, in the case of a PIE, to any adjustment made under clause 21.8).

f No switching where no redemption

The Manager shall not switch a Unit at times or in circumstances where such Unit cannot be redeemed as a result of its terms of issue or any other restriction imposed by this deed or by law.

8 Register

8.1 Register to be maintained

The Manager shall keep and maintain or cause to be kept and maintained an up-to-date register of Unit Holders. The Register may comprise a printout of information kept by computer or other equipment, so long as a printout is available to the Supervisor from time to time.

8.2 Appointment of Registrar

The Manager may itself, or appoint a registrar to, maintain a Register at the expense of the Trust.

8.3 Content of Register

There shall be entered in the Register:

- a the names and addresses of the Unit Holders;
- b where the Trust is a PIE, the Tax File Number and Prescribed Investor Rate of each Unit Holder;
- c the number of Units of each Class or Fund, the Unit Value of, and the balance of the Unit Account of, each of those Units and the numbers of the certificates (if any) issued to each Unit Holder;
- d the date on which the name of every person was entered in the Register as a Unit Holder;
- e the date on which any person ceased to be a Unit Holder;
- f where the Trust is a PIE, such details as the Manager considers are necessary or desirable for the Trust to comply with, and to enable the Manager to administer the Trust in accordance with, all relevant PIE requirements under the Tax Act and the Administration Act;
- g any other particulars specified in an Establishment Deed; and
- h any other particulars that the Manager or the Supervisor may consider desirable to include or are required by law.

8.4 Right to inspect the Register

- a Unit Holders shall have the right to inspect the Register without fee during the normal business hours of the Registrar, provided the Register is not closed pursuant to clause 8.8.
- b Any other person shall have the right to inspect a Register upon serving written notice on the Manager of intention to inspect, at the place at which the Register is kept between the hours of 9 am and 5 pm on each working day during the period commencing on the third working day after the day on which notice of intention to inspect is served on the Manager by the person concerned and ending with the eighth working day after the day of service.

- c Any person may require a copy of, or an extract from, a Register that is available for inspection by the person under paragraphs a or b to be sent to the person within five working days after the person has made a written request for the copy or extract to the Manager, upon the payment of a reasonable printing and administration fee set by the Manager from time to time in its absolute discretion. Sections 224 and 225 of the Act apply to any request under this paragraph c as if the Trust were a registered scheme (within the meaning of the Act).

8.5 Audit of Register

The Manager shall cause each Register to be audited annually by the Auditor.

8.6 Register deemed to be accurate

The Supervisor, and if the Manager does not maintain the Register, the Manager (provided in the case of the Manager that the Manager has exercised reasonable care in appointing a Registrar):

- a shall be entitled to rely absolutely on a Register as being correct; and
- b shall not be required to enquire into the authenticity of a Register; and
- c shall not incur any liability or responsibility on account of any mistake in a Register.

8.7 Unit Holders to notify changes

Any change of name or address, Tax File Number or Prescribed Investor Rate of any Unit Holder shall be notified by the Unit Holder in writing, or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

8.8 Closure of Register

The Manager may from time to time close a Register for such period or periods as the Manager may determine, provided that a Register shall not be closed for a period exceeding 30 days in aggregate in each year.

8.9 No equities to be entered upon a Register

Neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express implied or constructive) or of any security interest, charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Unit Holder, and accordingly no notice of any trust, security interest, charge, pledge or equity shall be entered upon a Register.

8.10 Inspection by Supervisor and Manager

The Supervisor and the Manager may inspect a Register at any time.

8.11 Replacement certificates

Upon the Manager being satisfied that any certificate has been lost, destroyed, worn out or defaced and upon such indemnity (if any) being given as the Manager considers adequate, and in the case of a worn out or defaced certificate upon production thereof to the Manager,

the Manager shall cancel the certificate, record such cancellation in the Register and issue a new certificate in lieu thereof.

8.12 Joint Unit Holders

Where two or more persons are registered as the Unit Holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- a **Maximum of two holders:** the Manager shall not be bound to register more than two persons (unless they are trustees, executors, or administrators of a deceased Unit Holder) as the Unit Holders of any Unit;
- b **Joint and several liability:** the joint Unit Holders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- c **Survivor of joint holders:** on the death of any one of such joint Unit Holders, the survivor or survivors of them shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- d **Receipts and payment instructions:** any one of such joint Unit Holders may give effectual receipts or instructions for amounts payable to such joint Unit Holders;
- e **First holder on Register:** only the person whose name stands first in the Register as one of the joint Unit Holders, or any other of the joint Unit Holders as the Manager may in its discretion select, shall be entitled to delivery of any certificate relating to such Unit or to receive notices from the Manager or Supervisor, and any notice given to such person shall be deemed notice to all the joint Unit Holders;
- f **Voting rights:** at any meeting of Unit Holders any one of such joint Unit Holders may vote, either personally, or by duly appointed and authorised representative, or any attorney or proxy, in respect of such Unit as if he or she were solely entitled thereto, provided that if more than one of such joint Unit Holders is present personally, or by duly authorised representative, or attorney or proxy, then (both on a poll and on a show of hands) such one of those joint Unit Holders so present whose name stands first in the Register in respect of the Unit shall alone be entitled to vote as a Unit Holder of the Unit; and
- g **Prescribed Investor Rate:** for the purposes of calculating the Trust's Portfolio Entity Tax Liability and attributing such liability to Unit Holders and for all other purposes relating to the application of the Tax Act to the Trust as a PIE, the Manager may in its complete discretion either treat the Unit Holders as separate Unit Holders (in equal shares), or treat the joint Unit Holders as a single Unit Holder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Unit Holders or such other rate as the Manager thinks fit in its complete discretion.

9 Adjustment to Unitholdings

9.1 Redemption by Manager

The Manager may direct the Supervisor to compulsorily redeem the Unit of any Unit Holder registered with less than the Minimum Balance for the Class or Fund to which that Unit

belongs. Promptly after the redemption, the Manager shall transfer to the Unit Holder the proceeds of the redemption after deduction of any amount due under this deed, including any reasonable expenses of effecting redemption, and cancel any certificates relating to the Unit held by the Unit Holder.

The Manager and the Supervisor shall have no liability for loss on any redemption made pursuant to clause 10.1.

9.2 **Consolidation or subdivision of Units**

The Manager may at any time, by notice in writing to the Unit Holders, cause the Units of a Class or Fund in existence at the date of that notice to be consolidated or subdivided. Each such notice shall specify:

- a the Class or Fund to which it relates;
- b the date on which such consolidation or subdivision is to take place (the '**Operative Date**'); and
- c the ratio which the number of Units of the Class or Fund in existence after the consolidation or subdivision will bear to the number of Units of that Class or Fund in existence before the consolidation or subdivision (the '**Ratio**').

9.3 **Effect of consolidation or subdivision**

As from the Operative Date, each Unit Holder shall be deemed to hold a number of Units in the relevant Class or Fund equivalent to the number held by him or her before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose, at the option of the Manager in each case, fractions may be dealt with by rounding upwards or downwards to the nearest whole number. The Manager shall make such arrangements as it deems appropriate, following a consolidation or subdivision, for the cancellation of existing certificates for the Units (if any), adjustments to the Unit Accounts for the relevant Units, and, if the Trust issues certificates in respect of the relevant Units, the issue of new certificates.

10 Redemption of Units

10.1 **Procedure and applicable provisions**

Subject to clause 1.6, the Manager shall cause the redemption of a Unit in accordance with clauses 10.2 to 10.7 and clause 12.

10.2 **Permitted redemptions to be exercised by notice to Manager**

Where a Unit Holder wishes to redeem any Unit held by that Unit Holder, the Unit Holder shall give the Manager a Redemption Notice (in such form and with such minimum notice period as may be prescribed by the Manager from time to time, if any) specifying the Unit it wishes to redeem. A Redemption Notice shall be accompanied by the certificate (if any) relating to that Unit. A Redemption Notice shall be irrevocable unless the Manager agrees otherwise.

10.3 **Obligation to redeem**

Unless otherwise provided in this Deed or the Establishment Deed for the relevant Fund or the Terms, the Manager must within a reasonable time on or following the Request Date

cause the Unit referred to in the Redemption Notice to be redeemed by the Supervisor out of the Assets of the Fund to which that Unit belongs.

10.4 Amount payable

Upon the redemption of a Unit, the amount payable to the Unit Holder out of the Assets of the Fund to which the Unit belongs shall be the Repayment Value of the Unit less any other deductions permitted under this deed.

10.5 Repayment Value

Unless otherwise provided in the Establishment Deed for the relevant Fund or the Terms, the Repayment Value of a Unit shall be the Unit Value of the Unit calculated by the Manager on or before the Request Date, provided that the Repayment Value paid or payable to a Unit Holder of a PIE may be adjusted in accordance with clause 21.8.

10.6 Cancellation of Unit

Where a Unit is redeemed, upon payment of the Repayment Value to the Unit Holder, the Unit so redeemed shall be cancelled as at the date of redemption and such Unit shall not thereafter be re-issued, but this shall not restrict the rights of the Manager to create additional and/or to issue further Units.

10.7 Supervisor to redeem Unit

- a The Manager may at any time request the Supervisor to redeem any Unit and the Supervisor shall as soon as practically possible redeem that Unit and pay to the Manager the Repayment Value of that Unit. If the request for redemption is made before the Manager pays the Repayment Value to the Unit Holder, the Supervisor may pay the Repayment Value directly to the Unit Holder subject to any adjustment made in accordance with clause 21.8.
- b Until such time as the Supervisor notifies the Manager otherwise, the Manager is authorised by the Supervisor to take such steps as are necessary or desirable in accordance with this deed, to effect any such redemption, including paying from the Trust's cash attributable to the relevant Fund:
 - i the amount payable to the Unit Holder in respect of the redemption under clause 10.4; and
 - ii any other unpaid amount required or permitted to be deducted from the amount payable to the Unit Holder under this deed;
- c Any amount that is required to be paid under this clause shall be paid from the Trust's cash attributable to the relevant Fund and, if there is insufficient cash, then the amount or the balance (as the case may be) shall be paid upon the realisation of Assets of the relevant Fund or at such other time as there are sufficient Assets of the relevant Fund to effect the redemption under this clause but in any case no more than 30 days following receipt of the Redemption Notice.

11 Withdrawals

11.1 Procedure and applicable provisions

Subject to clause 1.6, the Manager shall allow a Unit Holder to withdraw any Unit Value of a Unit held by that Unit Holder in accordance with clauses 11.2 to 11.6 and clause 12.

11.2 Permitted withdrawals to be exercised by notice to Manager

Where a Unit Holder wishes to withdraw any Unit Value of a Unit held by that Unit Holder, the Unit Holder shall give the Manager a Withdrawal Notice (in such form and with such minimum notice period as may be prescribed by the Manager from time to time, if any) specifying the Unit and the amount of the Unit Value that it wishes to withdraw (the '**Withdrawal Amount**'). A Withdrawal Notice shall be irrevocable unless the Manager agrees otherwise.

11.3 Limit on withdrawals

Where the Manager receives a Withdrawal Notice in respect of a Unit, the Manager may in its sole discretion:

- a **Minimum Withdrawal:** unless the Withdrawal Notice relates to the entire Unit Value of the Unit, refuse a withdrawal if the Withdrawal Amount is less than the Minimum Withdrawal for the Class or Fund to which the Unit belongs; and
- b **Exceeds Repayment Value:** refuse a withdrawal if the Withdrawal Amount exceeds the Repayment Value of the Unit;
- c **Redeem all Unit Value:** if the remaining Unit Value of the Unit to which the Withdrawal Notice relates (after excluding the Withdrawal Amount) is less than the Minimum Balance for the relevant Class or Fund, cause the Unit to be redeemed.

11.4 Obligation to allow withdrawal

Unless otherwise provided in this Deed or the Establishment Deed for the relevant Fund or the Terms, the Manager must within a reasonable time following the Request Date cause the Unit Value of the Unit held by the Unit Holder referred to in the Withdrawal Notice to be withdrawn by the Supervisor out of the cash or other Assets of the Fund to which the Unit belongs, as long as the Unit Value being withdrawn exceeds the Minimum Withdrawal of a Class in the Fund or the Fund, does not exceed the Repayment Value of the Unit at the time of the withdrawal, and the Minimum Balance of a Class in the Fund or the Fund is maintained.

11.5 Amount payable

Upon the withdrawal of Unit Value of a Unit of a Unit Holder, the amount payable to the Unit Holder out of the Assets of the Fund to which the Unit belongs shall be the Withdrawal Amount and any other deductions permitted under this deed.

11.6 Effecting a withdrawal

- a The Manager may at any time request the Supervisor withdraw any Unit Value of a Unit and the Supervisor shall as soon as practically possible withdraw that Unit Value and pay to the Manager the Withdrawal Amount. If the application for withdrawal is made before the Manager pays the Withdrawal Amount to the Unit Holder, the Supervisor may pay the Withdrawal Amount directly to the Unit Holder subject to any deduction made under clause 11.5 or adjustment made under clause 21.8.

- b Until such time as the Supervisor notifies the Manager otherwise, the Manager is authorised by the Supervisor to take such steps as are necessary or desirable in accordance with this deed, to effect any such withdrawal, including paying from the Trust's cash attributable to the relevant Fund:
 - i the amount payable to the Unit Holder in respect of the withdrawal under clause 11.5; and
 - ii any other unpaid amount required or permitted to be deducted, from the amount payable to the Unit Holder under this deed.
- c Any amount that is required to be paid under this clause shall be paid from the Trust's cash attributable to the Fund to which the Unit belongs and, if there is insufficient cash, then the amount or the balance (as the case may be) shall be paid upon the realisation of Assets of that Fund or at such other time as the Supervisor has sufficient Assets of the relevant Fund to meet to effect the withdrawal under this clause but in any case no more than 30 days following receipt of the Withdrawal Notice.

12 Provisions that apply to redemptions and withdrawals

12.1 Delay if consideration not otherwise received

Where the consideration in respect of a Unit has not been received or cleared, the transfer of the consideration has not been completed, or the consideration has been retrieved or reversed, the Manager need not cause the redemption of the Unit or withdrawal of the Unit Value requested until such unpaid payment is received by, transferred to, or such retrieved or reversed amount is repaid to, the Manager.

12.2 Manager to use reasonable endeavours to ensure sufficient cash for redemptions and withdrawals

The Manager shall use all reasonable endeavours to ensure that a sufficient amount of Assets of each Fund is available in cash to enable any payment for a redemption or withdrawal to be made.

12.3 Manager's statement on withdrawal request

If, at the date the Manager applies to the Supervisor for a redemption or withdrawal, there is likely to be insufficient cash attributable to the relevant Fund to enable the relevant redemption or withdrawal to be made, then the Manager shall immediately furnish to the Supervisor a statement in writing:

- a **Certifying insufficient cash:** certifying that there is insufficient cash attributable to the relevant Fund for such purpose;
- b **Specifying cash required:** specifying the amount of cash required to meet such withdrawal;
- c **Recommending sale or borrowing:** certifying that it is either necessary to sell, dispose of or otherwise realise Assets of the relevant Fund (and, if so, recommending the Assets to be sold, disposed of or realised) or alternatively recommending that borrowings be made; and

- d **Advising value and costs:** advising as to the Current Value of the Assets of the relevant Fund and the total of all costs and other disbursements and expenses incurred or expected to be incurred by the Supervisor and the Manager in the sale, disposal or realisation by the Supervisor of all Assets recommended to be sold, disposed of or realised or in the borrowing to be made (as the case may be).

12.4 **Entry on Register**

On redemption of a Unit or the withdrawal of any Unit Value of a Unit, the Manager shall cause an appropriate entry to be made in the relevant Register in respect of the Unit and, where relevant, the Unit Value withdrawn, and on redemption or withdrawal shall produce to the Supervisor such evidence of payment as shall from time to time be required by the Supervisor.

12.5 **Sums owed to Manager or Supervisor**

The Supervisor must deduct from the Repayment Value or Withdrawal Amount payable to a Unit Holder any unpaid moneys due by the Unit Holder to the Manager, if the Manager requests, and may deduct such moneys if due to the Supervisor. Where the Trust is not a Multi-rate PIE, the Manager at its discretion shall further be entitled to deduct an amount assessed by the Manager as the value of imputation credits (as defined in the Tax Act) attached to any redemption amount or withdrawal amount which is in excess of the relevant Unit's Proportion of that part of the Trust's imputation credit account that is attributable to the Fund to which the Unit belongs. In the event of any such deduction being made, the same shall form part of the Assets of the relevant Fund of the relevant Unit. The total amount to be paid to the Unit Holder shall be rounded downwards to the nearest cent.

12.6 **Transfer of Assets**

The Manager may request the Supervisor to transfer Assets to a Unit Holder, or with the Supervisor's consent to hold such Assets on trust solely for such a Unit Holder on such terms as the Supervisor requires, rather than pay cash on the redemption of a Unit or the withdrawal of Unit Value of any Unit. These Assets must be attributable to the Fund to which the relevant Unit belongs and of equal value to the Repayment Value or Withdrawal Amount, as applicable, less any deductions permitted by this deed.

12.7 **Payment in cash**

For any proceeds of redemption or withdrawal paid in cash (subject to any deductions permitted under the provisions of this deed), payment in accordance with the Unit Holder's instructions shall discharge the Manager and the Supervisor from any further payment obligation in respect of that redemption or withdrawal.

12.8 **Payment other than in cash**

For proceeds of redemption or withdrawal paid by transferring Assets (subject to any deductions permitted under the provisions of this deed), payment by transferring such Assets into the name of or to the order of the Unit Holder shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation in respect of that redemption or withdrawal.

13 Transfer of Units

13.1 Instrument of transfer

Subject to any contrary provisions of this deed as may be applicable, any Unit Holder may transfer any Unit held by him or her by providing an instrument of transfer to the Manager. An instrument of transfer shall be in writing in such form and execution satisfactory to the Manager and shall comply with any applicable law and any other reasonable requirements as the Supervisor or the Manager may from time to time prescribe.

13.2 Registration of transfer

The instrument of transfer with any stamp duty or other duties payable thereon having been paid and any certificates relating to the Unit being transferred shall be delivered to the Manager or, if the Manager has appointed a registrar, the Registrar for registration. Subject to clause 13.3, the Manager will promptly cause the transfer to be registered in the relevant Register.

13.3 Manager may decline to register transfers

The Manager may decline to register any transfer in the following circumstances:

- a **Non-compliance:** where the provisions of clause 13.2 or any applicable statutory provisions have not been complied with;
- b **Minimum Balance:** if the Unit Value of the Unit is less than the Minimum Balance for the Class or Fund to which the Unit belongs;
- c **Portfolio Investment Entity:** if registration of the transfer would result in the Trust becoming ineligible as a PIE, or would operate to threaten any such eligibility;
- d **Unpaid amounts:** if there are unpaid amounts owing from the vendor of the Unit to the Supervisor or the Manager;
- e **Failure to deliver certificates:** if any certificate for the Unit being transferred has not been delivered to the Manager or the Registrar; or
- f **Best interests:** if the Manager determines that registration of the transfer is not in the best interest of the Unit Holders.

13.4 Manager to return unregistered transfers

All instruments of transfer which are registered will be retained by the Manager but any instrument of transfer which the Manager declines to register shall be returned promptly to the person lodging the same.

13.5 Suspension of registration

Subject to any relevant legal requirements, registration of transfers may be suspended at such times and for such period or periods (not exceeding in the whole 30 days in any year) as the Manager may from time to time determine.

13.6 Transfers where the Trust is a PIE

Where the Trust is a PIE and the Manager receives an instrument of transfer for any Unit, or a Unit is transmitted to another person, the Manager may adjust the Unit Account of that Unit in

accordance with clause 21.8p and may elect to effect the transfer or transmission either by registering a transfer of the Unit from the transferor to the transferee or by:

- a redeeming the Unit sought to be transferred without any payment to the Unit Holder; and
- b issuing to the person named as transferee in the instrument of transfer a new Unit and applying the Unit Value of the redeemed Unit in payment of the total Issue Price of the new Unit.

14 Transmission of Units

14.1 Persons recognised by the Manager

The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) and in the case of the death of one or more of several joint Unit Holders the survivor or survivors of such joint Unit Holders shall be the only persons recognised by the Manager as having any title or interest in any Unit held by such Unit Holder or Unit Holders.

14.2 Claimants to prove entitlement

Any person becoming entitled to any Unit in consequence of the death or bankruptcy of any Unit Holder may, upon producing such evidence as the Manager shall think sufficient to establish that person's entitlement to such Unit, be registered as the Unit Holder of such Unit or, subject to the provisions as to transfer contained in clauses 13.1 to 13.6, may transfer such Unit.

14.3 Entitlement on transfer or transmission of Units

Upon the registration of any transfer or transmission of any Unit from any person, the benefit of the Unit (including the rights to any income) shall be deemed to be transferred to the Unit Holder into whose name the Unit shall be registered.

15 Investment

15.1 Investment procedure

The Assets shall from time to time be invested by the Manager in Authorised Investments, provided that the investments satisfy the Investment Policies of the relevant Fund and (where the Trust is a PIE) the Assets are invested as far as practically possible so the Trust continues to be eligible as a PIE.

15.2 Investment Policy

The Investment Policies of a Fund, shall be the investment policies described in the relevant Establishment Deed. The Manager may vary those policies from time to time, with the Supervisor's prior written consent.

15.3 Supervisor's role

- a **Supervisor to give effect to directions:** Subject to its duties as Supervisor (including, without limitation, the duties set out in paragraph b), the Supervisor must give effect to the Manager's directions in relation to the investment of the Assets. The Supervisor

must not acquire or dispose of any Asset except as directed by the Manager until the Trust terminates.

- b **Supervisor's duty to refuse to act:** The Supervisor shall not act on any direction of the Manager to acquire any Assets for the Trust or dispose of any Assets if, in the Supervisor's opinion conveyed in writing to the Manager, the proposed acquisition or disposal is manifestly not in the interests of the Unit Holders. The Supervisor shall not be liable to the Unit Holders or to the Manager for so refusing to act on any direction of the Manager.

15.4 Manager's power of investment

Subject to the provisions of this clause 15, including clause 15.3b and any applicable legislation, (and if the Trust is a PIE, the requirements prescribed by the Tax Act), the Manager shall have absolute and uncontrolled discretion as to the investment of any Assets and as to how the Assets and Liabilities are dealt with and the purchase, sale, transfer, exchange, lease, alteration of or other dealing with any of the Assets from time to time.

15.5 Interested party transactions

Notwithstanding any other provision of this deed:

- a **Sale to Related Party:** no sale or disposal of any Assets shall be made to the Manager or any Related Person of the Manager unless the Supervisor is satisfied the sale or disposal is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Investment Policies; and
- b **Purchase from Related Party:** no purchase or acquisition of any Assets shall be made from the Manager or any Related Person of the Manager unless the Supervisor is satisfied the purchase or acquisition is on normal commercial terms, or terms as favourable to the Trust as normal commercial terms, and in accordance with the Investment Policies; and
- c **Manager's certificate:** the Supervisor shall not be required to consider any transaction described in clauses 15.5a and b until such time as the Manager has certified to the Supervisor that in the Manager's opinion:
 - i the transaction is:
 - A on normal commercial terms, or terms as favourable to the Trust as normal commercial terms; and
 - B in accordance with the Investment Policies;
 - ii and the Manager considers that the transaction is in the best interests of Unit Holders of any affected Funds.

It shall be the responsibility of the Manager to advise the Supervisor before such transaction that any such sale, disposal, purchase or acquisition involves the Manager or any Related Person of the Manager.

15.6 Bonus Assets

Any shares or other Property received by way of bonus or in lieu of or in satisfaction (in whole or in part) of a dividend in respect of any Asset or from amalgamation or reconstruction of any

corporation in which the Trust is invested may either be retained as part of the Trust, or sold, with the proceeds remaining part of the Trust, or retained as to part and sold as to the balance.

15.7 **Investment record**

The Manager shall keep a record of all investments of the Trust, which record shall state in respect of each investment:

- a the nature of the investment;
- b the date of acquisition thereof by the Trust;
- c the cost thereof;
- d the date of maturity thereof (if any);
- e particulars of the security thereof (if applicable);
- f such particulars as to the Value thereof as the Supervisor and the Manager from time to time agree;
- g any other information that the Supervisor and the Manager regard as desirable in respect of the investments comprising the Trust.

The record shall be available for inspection by the Supervisor without charge at any time on any Business Day. The Manager will provide a copy of the investment record to the Supervisor on request.

15.8 **Voting rights of investment:**

- a **Manager to decide:** Subject to the provisions of this deed, all voting rights conferred by the Assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.
- b **No liability:** Subject to the provisions of this deed, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney referred to in clause 15.8a shall be liable or responsible for any vote cast or not cast.

16 **Valuations**

16.1 **Valuation Register**

The Manager shall maintain a Valuation Register in which the Manager shall record the Value determined in accordance with this clause 16 of all Assets.

16.2 **Periodic valuations of Assets**

Subject to clause 1.6:

- a **Manager may value:** The Manager shall be entitled to value all or any of the Assets at any time or times on any Business Day, including at the end of any Business Day.

- b **Supervisor may require valuation:** If the Supervisor so requires, the Manager will have any Asset valued in accordance with clause 16.3.
- c **Manager shall value on particular days:** The Manager shall value each Asset (other than a real property) on any day on which the Issue Price or Redemption Value is calculated in accordance with this deed, or at such times or within such period as the Supervisor and the Manager shall from time to time agree in respect of that Asset or as otherwise set out in the relevant Establishment Deed.

16.3 Basis for valuation

Subject to clauses 1.6 and 16.5, the Value of each Asset shall be:

- a **Unlisted debt securities:** in the case of debt securities (other than cash or a call or term deposit with Kiwibank), at any of (at the Manager's discretion):
 - i the principal amount (subject to any bad debt provision made against it by the Manager);
 - ii a value determined using a net present value calculation incorporating the current interest rate on debt securities of the same or a similar issuer and maturity, market value; or
 - iii such other valuation methodology as the Manager and the Supervisor shall agree in accordance with proper prudent principles of valuation;
- b **Cash:** in the case of cash or a call or term deposit with Kiwibank, its face value as confirmed in writing by Kiwibank from time to time;
- c **Other Authorised Investments:** in the case of any other Authorised Investment, the amount agreed upon between the Manager and the Supervisor as the estimated market value after taking account of the most recent material sales, valuation, and other information that the Manager and the Supervisor consider to be appropriate in accordance with proper prudent principles of valuation or, failing such agreement, the fair market value determined by a Valuer.

16.4 Current Value of each Fund

Subject to clause 1.6, the Manager may ascertain the Current Value of a Fund on any day it chooses, and shall ascertain the Current Value of each Fund at least once every 12 months.

16.5 Manager's decision is final

Subject to clause 16.6, the Current Value of a Fund ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any applicant or subscriber for, or purchaser of Units, and all Unit Holders.

16.6 Valuation on a consistent basis

Subject to clause 1.6, the Manager shall ascertain the Current Value of each Fund and the Value of the Assets on a consistently applied basis accepted as being appropriate by the Supervisor. The Manager shall however be entitled at any time or times to alter that basis and the application, provided the Manager first obtains the consent of the Supervisor to the alterations proposed by the Manager and such altered basis and application accords with proper prudent principles of valuation.

17 Records and Financial Statements

17.1 Records

The Manager shall keep such accounting records as correctly record and explain the transactions and the financial position of the Trust. The Supervisor shall from time to time upon request furnish the Manager with any information necessary for this purpose. The Manager shall keep at its registered office or such other place approved by the Supervisor, proper books of account that will enable the Financial Statements of the Trust to be prepared and conveniently and properly audited in accordance with this deed and the Act.

17.2 Full Year Financial Statements

As soon as practicable, and at least within three months after the end of each Financial Year, the Manager shall prepare or procure the preparation of the Financial Statements for the Trust for that Financial Year.

17.3 Financial Statements to comply with legislation

The Financial Statements shall comply with the Financial Reporting Act 2013, the Act, and all other relevant statutory requirements.

17.4 Annual Financial Statements to Supervisor

When the Financial Statements referred to in clause 17.2 have been prepared and audited, the Manager shall forward a copy of such Financial Statements promptly to the Supervisor and make the Financial Statements available for every Unit Holder to access.

17.5 Manager's report

The Manager shall, in respect of each month during the currency of the Trust, furnish to the Supervisor a report in respect of the Trust by the last Business Day of the following month, in a form to be agreed in a separate written agreement between the Manager and the Supervisor, which sets out in detail the performance of the Trust for that month in meeting its objectives as set out in this deed and the Investment Policies.

17.6 Certificate from the Manager

Within fifteen days of the last day of each calendar quarter, the Manager shall furnish to the Supervisor a certificate in relation to the Trust which must:

- a be signed on behalf of the Manager by two directors of the Manager (or, if the Manager has only one director, by that director) or an authorised representative of the Manager;
- b set out in detail for and as at the date to which the certificate relates (or in relation to the period from the date to which the previous certificate relates up to the date to which the present certificate relates) any matters which since the date of the last such certificate (or in the case of the first of such certificates since the date of this deed) any matters which have, in the Manager's opinion, occurred to materially and adversely affect the interests of the Unit Holders;
- c state, without prejudice to the generality thereof to the best of the directors' or authorised representative's knowledge and belief after having made all reasonable enquiry:

- i whether or not all amounts due and payable to the Unit Holders (whether by way of withdrawal, redemption, payment of a Distributable Amount or otherwise) have been paid;
- ii whether or not the relevant Register has been duly maintained in accordance with this deed;
- iii whether or not the Manager has duly observed and performed its obligations under this deed;
- iv whether or not there has been any deviation in the accounting method or method of valuation of Assets or Liabilities;
- v whether the Trust's investment performance returns (excluding tax and management fees) for the month have varied by more than 5% from any relevant benchmark used for monthly reporting by the Trust;
- vi whether or not any material contingent liabilities have been incurred by the Trust and, if so, the amount thereof, and whether or not any contingent liability has matured or is likely to mature within the succeeding 12 months which will materially affect the Trust;
- vii whether any circumstance has arisen which renders adherence to the existing method of valuation of any part of the Assets or Liabilities misleading or inappropriate and, if so, particulars thereof;
- viii whether or not the directors or authorised representative of the Manager consider that the Investment Policies and any investment guidelines are currently appropriate and have been adhered to at all times, and the Assets at all times have been invested in accordance with other representations contained in the current Terms;
- ix as at the monthly or other date to which the certificate relates:
 - A the Current Value of each Fund;
 - B the Classes on issue in each Fund;
 - C the number of Units in each Fund;
 - D the number of Units of each Class on issue in each Fund; and
 - E the aggregate Unit Value of all Units of each Class and Fund on issue;
- x whether or not all moneys intended for the Trust have been paid into the relevant bank account and no such moneys have been applied in any other way;
- xi whether or not:
 - A all moneys paid out of the relevant bank account have been paid for Authorised Investments or for fees or expenses authorised by this deed and in no other way;
 - B all moneys paid out of the relevant bank account for Authorised Investments are held in accordance with the provisions of this deed or, if not, their absence is accounted for; and

- C all Assets are vested in the name of the Supervisor or its Nominated Company or Nominee;
- xii whether or not all fees have been calculated in accordance with the provisions of this deed;
- xiii whether or not all calculations of any Distributable Amounts and the valuation of the Units and the Assets and Liabilities of each Fund have been carried out in accordance with the provisions of this deed;
- xiv whether or not there has been any derogation from the requirements of this deed relating to the attribution or application of Assets or Liabilities of a Fund;
- xv whether or not all Unit Holders who in accordance with clauses 9, 10 and 11 have requested that any Unit held by the Unit Holder be redeemed, or to withdraw any Unit Value of a Unit held by that Unit Holder, have received payment of the amounts to which they are entitled within the periods specified in this deed;
- xvi whether or not certificates have been issued to all Unit Holders in accordance with clause 5.1c;
- xvii whether or not the Manager has maintained the Valuation Register in accordance with clause 16;
- xviii whether or not there are current Terms in place;
- xix the amount of any Distributable Amount paid to the Distribution Account since the previous certificates furnished under this clause 17.6;
- xx whether or not there have been any significant departures from applicable financial reporting standards or internal control procedures that should be brought to the attention of either the Auditor or the Supervisor;
- xxi whether or not proper accounting and internal control procedures have been maintained;
- xxii whether or not appropriate control procedures are in place for the operation of each bank account held in the name of the Supervisor's Nominated Company or Nominee, these bank accounts are reconciled and reviewed on a daily basis and, if there are any outstanding items, details will be provided;
- xxiii whether or not procedures are in place to ensure compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
- xxiv if the Trust is a PIE:
 - A the Manager has taken all reasonable steps to ensure that no one Unit Holder exceeds the investor interest size requirement prescribed in section HM 15(1) of the Tax Act;
 - B the Manager has taken all reasonable steps to comply fully with the Tax Act and the Administration Act during the period and that any Portfolio Entity Tax Liability of the Trust has been paid by the due date;

- C the Trust has met the applicable PIE eligibility requirements for the period, and that reasonable measures were in place to monitor and manage any potential breaches of the PIE eligibility criteria;
- D the Manager has taken all reasonable steps to allocate income, expenses, losses, tax credits and rebates to Unit Holders, calculate Tax, and adjust Unit Holders' interests in accordance with the Tax Act;
- E within the last 12 months, the Manager has requested all Unit Holders to provide or confirm their Prescribed Investor Rate; and
- F all discretions exercised by the Manager in relation to applying the requirements of the PIE regime to the Trust and its Unit Holders have been exercised in accordance with the paragraph headed 'Manager's discretion in relation to PIE regime' in clause 1.2.

d the Supervisor and the Manager may, by agreement in writing, vary the content of the monthly certificate required in this clause 17.6.

17.7 **Audit**

The Manager shall ensure that the Financial Statements for each Financial Year prepared in accordance with clause 17.2 are audited and reported on by the Auditor, and that a copy of the Auditor's report is forwarded with the relevant Financial Statements when they are forwarded to the Supervisor for the time being pursuant to clause 17.4.

17.8 **Auditor's Annual Direct Report**

The Manager will furnish (or cause to be furnished directly by the Auditor) to the Supervisor within three months of the end of each Financial Year a certificate prepared by the Auditor covering the Financial Year just ended, stating:

- a whether or not in the performance of its duties as Auditor it has become aware of any matter which in its opinion is relevant to the exercise or performance of the powers or duties conferred or imposed upon the Manager or the Supervisor by the Act, or by this deed or in any Investment Policy or similar agreements entered into by the Manager and the Supervisor in relation to this deed, any Establishment Deed or Terms (copies of which have been provided to the Auditor) or by law and if so, giving particulars thereof;
- b whether or not its audit has disclosed any breach of this deed or any Establishment Deed or any matter whether related to the Trust on any other matter (and if so particulars thereof) calling in its opinion for further investigation by the Supervisor in the interest of the Unit Holders;
- c that it has perused the certificates given by the Manager pursuant to clause 17.6 for the Financial Year just ended and, so far as matters which it has observed in the performance of its duties as Auditor are concerned, whether or not anything has come to the Auditor's attention that would cause them to believe that any of the statements made in those certificates is materially incorrect, as the context may require;
- d whether or not the Manager has duly maintained each Register in accordance with this deed;

- e whether or not from normal audit tests it has conducted, it is satisfied that all redemptions, withdrawals or requests under Redemption Notices or Withdrawal Notices have been correctly processed and paid to Unit Holders;
- f whether or not in the Auditor's opinion:
 - i proper accounting records have been kept by the Trust as far as it appears from the Auditor's examination of those records; and
 - ii the Financial Statements for the Financial Year just ended:
 - A comply with Generally Accepted Accounting Practice; and
 - B presents fairly the financial position of the Trust as at the date of those financial statements and the Trust's financial performance and cash flows for the period ended on that date.

18 The Auditor

18.1 Appointment

- a The Manager shall, after consultation with the Supervisor in accordance with the Act, appoint an auditor or auditors for the Trust, who shall be a chartered accountant or firm of chartered accountants that is qualified to act as Auditor.
- b The Auditor's terms of appointment must:
 - i include any matters required by the Act; and
 - ii require the Auditor to, in addition to its functions as set out in this deed, perform any other functions required by the Act and comply with any obligations it has under the Act.

18.2 Auditor may act for others

The Auditor may also be auditor of the Supervisor, the Manager, or any other trust whether of a similar nature to the Trust or otherwise but may not be an officer or employee (or the partner of an officer or employee) of the Manager or of the Supervisor.

18.3 Auditor's remuneration

The remuneration of the Auditor shall be fixed by the Manager and may be paid out of the Trust.

18.4 Retirement or removal of Auditor

The Auditor may at any time be removed from office by the Manager or by an Extraordinary Resolution of Unit Holders. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager.

18.5 Vacancy in office of Auditor

Any vacancy in the office of Auditor occurring under clause 18.4 shall be filled by the Manager (after consultation with the Supervisor) appointing an auditor qualified for appointment in terms of clause 18.1.

18.6 Information to Auditor

The Supervisor and the Manager shall give to the Auditor such information as the Auditor reasonably requires for the performance of its duties with respect to the Trust.

19 Distributions to Unit Holders

19.1 Distributable Amount

The Manager shall specify its policy relating to distributions to Unit Holders in the first prospectus or other offering document relating to the Trust pursuant to which Units are offered, but may vary that policy from time to time provided that such varied policy is specified in the Terms. The Distributable Amount for each Unit Holder shall be determined in accordance with the Manager's policy specified for the time being under this clause.

19.2 Entitlement to Distributable Amount

Unless otherwise agreed by the Manager and the Supervisor, and subject to the rights, terms of issue, restrictions and obligations attaching to any particular Units:

- a **Payment to Distribution Account:** the Distributable Amount in respect of a Fund is to be transferred to a Distribution Account for that Fund as soon as practicable after the relevant Record Date and ceases to be an Asset when it is transferred into the Distribution Account;
- b **Registered holders entitled:** subject to clauses 19.2e and 21.8, each holder of a Unit of the relevant Fund registered in the Register at the relevant Record Date is presently entitled to its Unit's Proportion of the Distributable Amount in respect of that Fund;
- c **Payment from Distribution Account:** payments must be made out of the Distribution Account as soon as practicable after the relevant Record Date;
- d **Pro rata distributions:** subject to clauses 19.2e, 19.2f and 21.8, the Distributable Amount must be distributed to any holder of Units of the relevant Fund according to the Proportion of that holder's Unit as at the relevant Record Date.
- e **Portfolio Investment Entity:** the Distributable Amount to be distributed to any Unit Holders may differ as between Unit Holders as a result of the exercise of the Manager's discretion in clause 21.8 to adjust Unit Holder's Distributable Amounts to reflect the effect of a Unit Holder's Prescribed Investor Rate, Attributed PIE Income, Attributed PIE Loss and all allocated tax credits on the Trust's Portfolio Entity Tax Liability.
- f **Non pro rata distributions:** subject to clause 21.8, the Manager may elect to pay non pro rata distributions to a Unit Holder in respect of any Unit held by that Unit Holder provided the amount of any such distribution is no more than entire balance of, and the amount paid to that Unit Holder is debited from, the Unit Account of the relevant Unit of that Unit Holder.
- g **In specie distributions:** Subject to the rights, terms of issue, obligations and restrictions attaching to any Units or Classes of Units, the Manager may at any time direct the Supervisor to distribute any amount of capital or income attributable to a Fund to holders of Units of that Fund (and, in the case of a PIE subject to any adjustment made to the Distributable Amount to be distributed to a Unit Holder pursuant to clause 21.8), pro rata

according to the Unit Value of the Units of that Fund held by those Unit Holders or non-pro rata in accordance with clause 19.2f, as the Manager elects, as at a time decided by the Manager. The distribution may be made in cash or in specie or by way of bonus Units and any such bonus Units are to rank equally with existing Units of that Fund for the purposes of distributions of income and capital as determined by the Manager.

19.3 **Payment**

The Manager must arrange for distributions to be paid.

19.4 **Transfers**

Entitlements to distributions in a Distribution Account when a transfer or transmission of Units is registered remain credited to the transferor.

19.5 **Classes**

The rights of a Unit Holder under this clause 19 are subject to the rights, terms of issue, obligations and restrictions attaching to the Unit which they hold.

20 Tax

20.1 **Deduction of Tax in respect of a Unit Holder**

The Supervisor or the Manager may deduct from any amounts payable to a Unit Holder (including, without limitation, from the proceeds of any redemption or withdrawal under clause 21.8) any Tax paid or payable on behalf of or in respect of that Unit Holder. All amounts deducted shall be applied in reimbursing the Trust for any corresponding amount paid or reimbursed out of the Trust or reimbursing the Supervisor or the Manager for the payment thereof or in the payment of the Tax to the person or authority entitled thereto (as the circumstances may require).

20.2 **Indemnity for Tax**

To the maximum extent permitted by law, every Unit Holder shall indemnify the Supervisor and the Manager in respect of any Tax paid or payable by the Supervisor or the Manager on behalf of or in respect of the Unit Holder.

20.3 **Tax Bank Account**

The Supervisor or its Nominated Company or Nominee shall establish a non-interest bearing account with Kiwibank for the purpose of the Manager managing taxation obligations in relation to the Trust. While the Trust is a PIE, the Tax Bank Account will be operated as follows:

- a any amounts deducted from distributions or other sums on account of the Trust's Portfolio Entity Tax Liability, any proceeds of any Unit redeemed or Unit Value withdrawn under clause 21.8, and any rebates received from the Commissioner of Inland Revenue that are attributable to Unit Holders, will be paid into the Tax Bank Account pending payment to the Commissioner of Inland Revenue or the relevant Unit Holder, as applicable;
- b any amounts received from the Commissioner of Inland Revenue in respect of Unit Holders will be paid into the Tax Bank Account and subsequently paid to the Trust in

respect of the Fund to which the relevant Units belong and the relevant Unit Accounts will be adjusted appropriately;

- c payments will be made by the Supervisor or its Nominated Company or Nominee from the Tax Bank Account, as and when directed by the Manager, for the following purposes only:
 - i to the Commissioner of Inland Revenue, in respect of the Trust's Portfolio Investment Entity Tax Liability;
 - ii to the extent that a rebate or refund of tax is attributable to a particular Unit Holder, to or for the benefit of that Unit Holder in accordance with clause 21.8; and
 - iii to the extent of any surplus Tax Bank Account Balance from time to time after making adequate provision for the purposes of paragraphs i and ii above, to the Trust;
- d the Manager will maintain records for the Tax Bank Account for the purpose of being able to determine if required, for each Unit Holder, the Portfolio Entity Tax Liability of the Trust in respect of the income allocated to that Unit Holder and any rebate or refund of tax attributable to that Unit Holder;
- e the Tax Bank Account Balance will not otherwise be segregated into individual entitlements and is expressly permitted to be co-mingled and no Unit Holder shall have any interest or rights in relation to the Tax Bank Account or any part of it except to the extent expressly provided for in clause 20.3c; and
- f any costs incurred in operating the Tax Bank Account will be met by the Manager.

21 Manager's powers

21.1 General powers

Subject to the provisions of the Act, this deed, and any other applicable legislation the Manager shall manage and administer or cause to be managed or administered the Trust for the benefit of Unit Holders generally with full and complete power of management. In particular, the Manager shall, subject to the provisions of this deed, take all steps which in its discretion it considers are necessary or desirable in relation to the Trust, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Assets. Subject to the provisions of this deed and the Act and the power vested in the Supervisor to settle all transactions of the Trust set out in clause 24, the Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full and absolute power to do the following in relation to the Trust:

- a **Decide investments:** make all investment decisions in relation to the Trust (in the case of a PIE, in compliance with the requirements of the Tax Act);
- b **Manage:** manage the Assets on a day to day basis;
- c **Fix terms:** determine the terms of all sales, purchases or other dealings with Assets, and all contracts, rights and other matters relating to such Assets or Liabilities;

- d **Buy and sell:** subject to compliance with the Investment Policies, make all decisions relating to the acquisition and sale of Assets for cash or upon terms;
- e **Elect or opt out of the Portfolio Investment Entity regime:** elect that the PIE regime apply to the Trust or, where an election has previously been made for the Trust, opt out of the PIE regime;
- f **Lease:** subject to compliance with the Investment Policies, make all decisions relating to the leasing of all or any part of any Assets on such terms as it thinks fit;
- g **Vote:** attend and vote at meetings of companies or managed investment schemes in which the Trust holds shares or units;
- h **Lend:** subject to compliance with Investment Policies, make all decisions relating to lending money;
- i **Borrow:** subject to compliance with the Investment Policies, make all decisions relating to borrowing money unsecured or secured and the terms of such borrowing subject to the conditions contained in clause 24.4;
- j **Instruct:** subject to compliance with the Investment Policies, instruct persons to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- k **Takeover:** make all decisions relating to, and carry out, any takeover proposal, offer or invitation;
- l **Guarantee:** subject to compliance with the Investment Policies, make all decisions relating to the giving of any guarantee of the performance of any person in relation to any agreement, contract, undertaking or promise, provided such guarantee is in the reasonable opinion of the Manager in the interests of the Trust;
- m **Charge Assets:** subject to compliance with the Investment Policies, make all decisions relating to the creation, grant, renewal, alteration or variation of any mortgage, charge, or other encumbrance over all or any Assets for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- n **Vary rights:** initiate or agree to the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
- o **Reconstruction/ amalgamation or merger/ disposal of undertakings:** initiate or agree to any one or more of the following:
 - i **Variation of rights:** the release, modification or variation of any rights, privileges or liabilities of or in relation to any Assets from time to time forming part of the Trust;
 - ii **Reconstruction:** the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - iii **Amalgamation or merger:** the amalgamation or merger of any corporation with any other corporation;
 - iv **Disposal of undertakings:** the sale or other disposition of all or any part of the property or undertaking of any corporation;

- p **Acquire rights from authorities:** enter into any arrangements with any government, public body or authority to obtain any rights, authorities, concessions or clearances and to give any undertakings binding upon the Manager either generally or on such conditions as the Manager deems fit and to carry out, exercise and comply with any of the same;
- q **Equity of redemption:** acquire and accept for the Trust any equity of redemption;
- r **Partnerships or joint ventures:** participate in the rights and obligations, including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments, or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- s **Make agreements:** subject to compliance with the Investment Policies and the role of the Supervisor, enter into, perform and enforce agreements;
- t **Underwrite:** underwrite offers of securities out of the Assets;
- u **Joint ventures:** participate in joint ventures in relation to real properties and real property developments.

21.2 **Bank all cash**

Cash received by the Manager or the Supervisor for the account of the Trust shall be banked to the credit of, and held in, the appropriate bank account of the Trust, pending the investment or other application of the money standing to the credit of that bank account in accordance with and subject to the provisions of this deed. The bank account shall be at all times held in the name of the Supervisor or its Nominated Company or Nominee and operated only by such authorised persons, and in accordance with such directions, as the Supervisor and the Manager may agree from time to time.

21.3 **Power to delegate**

Subject to clause 21.5, the Manager may, with the prior approval of the Supervisor (such approval not to be unreasonably withheld), delegate to its officers and employees or any of them or to any Related Person of the Manager or any of the officers and employees of such Related Person or any other person or persons all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this deed and any things required by this deed to be done by the Manager may be done by its delegate on its behalf. Without in any way affecting the generality of the foregoing, the Manager may in carrying out and performing the duties and obligations on its part contained in this deed:

- a by power of attorney or other authorisation appoint any person to be attorney or agent or sub-delegate of the Manager for such purposes and with such powers, authorities and discretions as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities or discretions and also to authorise the issue in the name of the Manager of documents bearing facsimile signatures of the Manager or of the attorney or agent either with or without proper manuscript signatures of its officers thereon provided that the Manager in any such power of attorney or other authorisation and the attorney or agent or sub-delegate by the terms of any such sub-delegation may insert such provisions for the protection and convenience of those dealing with any such attorney or agent or sub-delegate as they may think fit;

- b appoint or employ by writing or otherwise any person to be sub-agent for the Manager as the Manager may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Manager) as it thinks fit,

provided that the Manager shall at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.

21.4 **Appoint agents**

Subject to clause 21.5 the Manager may appoint and engage any investment, administration, and/or property manager, valuer, barrister, solicitor, accountant, stock and share broker, and any such other person or persons as may be necessary, usual or desirable for the purpose of exercising its powers and performing its obligations under this deed (which person or persons may be a Related Person of the Manager, subject to any applicable legislation).

21.5 **Terms of delegation:**

- a Except as set out in paragraph b:
 - i all reasonable and proper fees, charges and money payable to, and all properly chargeable disbursements, expenses, duties and outgoings of, any agent appointed under clause 21.4 ('Appointee') may be payable out of the Assets pursuant to the Manager's right of reimbursement pursuant to clause 22.2;
 - ii the terms of appointment of any Appointee may indemnify the Appointee for liabilities or expenses incurred in relation to its contracted functions; and
 - iii those terms will be as agreed between the Manager and the Appointee from time to time.
- b The terms of appointment of an investment manager (within the meaning of the Act):
 - i must require the investment manager to, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances; and
 - ii may only indemnify the investment manager for liabilities or expenses incurred in relation to the performance of its contracted functions to the extent that the investment manager has, in exercising any powers or performing any duties, exercised the level of care, diligence, and skill required by paragraph bi.
- c Where the Manager delegates or contracts out any of its functions as manager under this deed the Manager must take all reasonable steps to:
 - i ensure that the functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
 - ii monitor the performance of those functions.
- d The Manager remains liable for the performance of the functions delegated or contracted out.

21.6 Covenants by Manager

The Manager covenants with the Supervisor and with the intent that the benefit of these covenants shall continue to be for the benefit of not only the Supervisor but the Unit Holders:

- a **Ensure efficient operation:** The Manager will ensure that the operation of the Trust is carried on and conducted in a proper and efficient manner.
- b **Comply with duties:** Comply with its duties under clause 21.7 and all applicable legislation.
- c **Issue at Issue Price:** Except with the approval of the Supervisor, the Manager shall not issue any Unit otherwise than at the Issue Price of that Unit.
- d **Provide information:** As the Supervisor may from time to time require, the Manager will:
 - i make available to the Supervisor for inspection all the accounting and other records of the Manager relating to the Trust held by the Manager;
 - ii provide the Supervisor with copies of the Trust's Financial Statements in accordance with clause 17.4;
 - iii give to the Supervisor such information as the Supervisor may reasonably require with respect to the Trust and its Assets.
- e **Provide reports:** The Manager shall provide the Supervisor (or any other person required by law) with (or procure the provision of) such reports, records and certificates in such form, and with such content and at such times as is prescribed by law or as the Manager and the Supervisor agree in writing from time to time (such agreement not to be unreasonably withheld).
- f **Convene meetings:** The Manager will convene meetings of Unit Holders in accordance with clause 28.
- g **Pay money to Trust account:** The Manager will promptly (and in any case within seven days of receipt) pay all money belonging to the Trust, received by the Manager, into the Trust's bank account.
- h **Maintain PIE eligibility:** The Manager will use its reasonable endeavours to ensure that the Assets are properly managed and supervised and, if the Trust is a PIE, that the Assets are such that the Trust is eligible to be a PIE.
- i **Pay other money:** The Manager will pay all moneys belonging to the Trust, received by the Manager, to the Supervisor or the Nominated Company or Nominee company, in accordance with the directions from time to time of the Supervisor.
- j **Provide disclosure documents:** The Manager will provide the Supervisor with a copy of the Terms and will allow the Supervisor a reasonable time to comment on such Terms prior to the issue of such Terms.
- k **Give notice of changes:** If the Manager proposes to alter the Investment Policy in relation to a Fund in a manner which materially affects existing Unit Holders the Manager shall, prior to effecting any such alteration, give notice to the holders of Units in that Fund.

- I **Notify the Supervisor of adverse effect:** The Manager will notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Investors or on the reputation of the Manager.

21.7 Manager's duties

- a The Manager must:
 - i act honestly in acting as manager of the Trust;
 - ii in exercising any powers or performing any duties as manager of the Trust:
 - A act in the best interests of the Unit Holders;
 - B treat the Unit Holders equitably; and
 - iii not make use of information acquired through being the manager of the Trust in order to:
 - A gain an improper advantage for itself or any other person; or
 - B cause detriment to the Unit Holders.
- b The Manager must also carry out the functions of the manager of the Trust in accordance with this deed, the Establishment Deeds, the Investment Policies, and all other issuer obligations (as defined in the Act, to the extent that such definition is relevant to the Trust).
- c The Manager has the same duties and liability in the performance of its functions as manager of the Trust as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act).
- d The Manager must, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in the profession of acting as the manager of a registered scheme other than a restricted scheme (each as defined in the Act) would exercise in the same circumstances.

21.8 Powers if a PIE

The Manager may elect that the Trust be a PIE, or cease to be a PIE, in its absolute discretion. The Manager shall have the following additional powers and discretions if the Trust is a PIE:

- a to determine, on such basis as the Manager thinks appropriate in its complete discretion (subject to the terms of this deed and the terms of any Establishment Deed in respect of a Fund), classes of Unit Holders applying the definition of Investor Class in section HM 5 of the Tax Act.
- b to determine the Attribution Period for the Trust in accordance with section HM 34 of the Tax Act.
- c to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Net Income or the Net Loss, as the case may be, for each Investor Class for an Attribution Period for the purposes of section HM 35 of the Tax Act.

- d to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Taxable Income or the Tax Loss, as the case may be, for each Investor Class:
 - for an Attribution Period, for the purposes of section HM 36 of the Tax Act; and
 - for a tax year, for the purposes of section HM 36 of the Tax Act.
- e to determine each Unit Holder's Percentage in respect of a Unit for any period, based on the Unit's Proportion.
- f to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Portfolio Entity Tax Liability or Rebate of the Trust and attributable to each Fund, as the case may be, for the applicable Calculation Period, for the purposes of section HM 47(5) of the Tax Act.
- g to elect (taking into account such factors as the Manager considers relevant in its complete discretion) whether the payment of the Portfolio Entity Tax Liability of the Trust is determined pursuant to section HM 42 or section HM 43 or section HM 44 of the Tax Act, and to make any elections required to give effect to such determination.
- h to retain any amount to which a Unit Holder otherwise would be entitled in respect of a Unit if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to section HM 42(4) of the Tax Act and debit any such amount from the Unit Account of the Unit as the Manager considers appropriate in its complete discretion.
- i to determine, on such basis as the Manager considers appropriate in its complete discretion, the amounts of any Rebates under section LS 1 of the Tax Act available to the Trust by virtue of section HM 53 and section HM 55 of the Tax Act.
- j to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any Rebate referred to in paragraph i that is attributable to a Unit Holder and to make available to the Unit Holder the benefit of that Rebate in such manner as the Manager considers appropriate in its complete discretion.
- k to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any credits against income tax that are available to the Trust by virtue of section HM 49 of the Tax Act.
- l to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any tax credit referred to in section HM 50(1) of the Tax Act that is available to be allocated to a Attributed Period and allocating (in such manner and on such basis as the Manager considers appropriate in its complete discretion), such tax credit to that Attributed Period for the purposes of section HM 50(2) of the Tax Act.
- m to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of Tax paid or payable by the Trust that is attributable to a Unit Holder in respect of a Unit and to reduce the amount of any distribution otherwise payable to the Unit Holder in respect of that Unit by the amount of such Tax or, if the Manager considers it appropriate in its complete discretion, debit the Unit Account of that Unit by the amount of such Tax.
- n to make any other elections or exercise any options as to the method of calculation, allocation, attribution or payment of tax as it thinks fit having regard to the interests of Unit Holders generally and the requirements of the Tax Act.

- o to carry out any other tax calculations, allocations or attributions required by the Tax Act.
- p to adjust the balance of a Unit Account as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the redemption or switch of the Unit Holder's Unit or a withdrawal of any Unit Value of that Unit), having regard to the effect of:
 - i the Unit Holder's Prescribed Investor Rate; and
 - ii the Unit Holder's Attributed PIE Income, Attributed PIE Loss and allocated tax credits, on the Trust's Portfolio Entity Tax Liability and the amount of any Rebate under section HM 53 or HM 55 of the Tax Act.
- q to deduct or credit any amount on account of Portfolio Entity Tax Liability from or to any Unit Account, Distributable Amount, Repayment Value, or Withdrawal Amount in respect of a Unit or to credit any amount to such Unit Account, Distributable Amount, Repayment Value or Withdrawal Amount on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HM 48 of the Tax Act or otherwise to the extent permitted by law, as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption or switch of the Unit Holder's Units or a withdrawal of any Unit Value of that Unit) having regard to the effect of:
 - i the Unit Holder's Prescribed Investor Rate; and
 - ii the Unit Holder's Attributed PIE Income, Attributed PIE Loss and allocated tax credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge on a Unit Holder specific basis,

on the Portfolio Entity Tax Liability of the Trust attributable to the relevant Fund and the amount of any Rebate under sections HM 53 or HM 55 of the Tax Act.

- r to elect to offset tax liabilities and refunds attributable to more than one Unit Holder and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act.
- s to allocate the costs associated with being a PIE between Unit Holders and Funds (and Classes within Funds) on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion.
- t to take all steps as the Manager considers necessary or desirable to ensure the Trust is eligible or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs, including (in the Manager's complete discretion):
 - i rejecting applications for Units;
 - ii treating a Unit issued to a Unit Holder as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Unit Holder acknowledges that any Unit Value of a Unit issued which exceeds the investor interest size requirement prescribed in section HM 15(1) of the Tax Act, shall be deemed to be held by that

Unit Holder on trust for the Manager and the Manager shall, subject to clause 21.9, have full powers of direction in relation to that Unit including when, how and to whom they shall be disposed of;

- iii subject to clause 21.9, redeeming a Unit Holder's Unit, withdrawing all or some of the Unit Value of a Unit Holder's Unit, or switching a Unit Holder's Unit from one Class or Fund to another Class or Fund as if the PIE had received a Redemption Notice, Withdrawal Notice, or Switch Request to that effect from the relevant Unit Holder.
- u to disclose any information, including issuing any statements and providing any information to Unit Holders as required by the Tax Act and the Administration Act and in respect of their tax position in relation to the Trust, and providing any information (including personal information) to the Inland Revenue Department or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Trust's taxation obligations.
- v subject to the paragraph headed 'Generally Accepted Accounting Practice' in clause 1.2, to value tax losses of the Trust for the purpose of determining the Current Value of any Fund as the Supervisor thinks fit in its complete discretion having regard to section HM 66 of the Tax Act and to the Trust's stated policies (if any) from time to time.
- w to make a distribution to Unit Holders prior to the Trust becoming a PIE or ceasing to be a PIE, of such amount as the Manager thinks desirable in its absolute discretion having regard to the interests of Unit Holders generally, and if the Manager thinks desirable in its absolute discretion to reinvest such special distributions on behalf of Unit Holders in Units.
- x without being limited by any other part of clause 21.8, to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition the Trust to and from being a PIE or to administer the Trust as a PIE (including anything necessary or desirable as a result of an amendment to the Tax Act or Administration Act, which may be inconsistent with any of the powers or discretions given to the Manager to administer the Trust as a PIE under any other part of clause 21.8 or this deed).

21.9 Reduction of Unit Value to avoid exceeding investor interest size requirements

If a Unit Holder or an Investor (where any Portfolio Investor Proxy holds Units on behalf of Investors) exceeds the investor interest size requirement prescribed in section HM 15(1) of the Tax Act (the '**Breach**') in respect of the Trust, the Breach shall be remedied within the period determined in accordance with section HM 25 of the Tax Act (the '**Remedy Period**') and the Manager may take the following steps to ensure that the Breach is remedied:

- a as soon as practicable after the Manager becomes aware of the Breach, the Manager shall give written notice to the relevant Unit Holder of the Breach, including details of the Unit, and the amount of the Unit Value of that Unit (the '**Excess Unit Value**'), that gives rise to the Breach;
- b the Unit Holder shall have a period consisting of the relevant Remedy Period less 30 days to remedy the Breach, but if the Manager becomes aware of the Breach and determines that there are 30 days or less to remedy the Breach then the Breach shall be deemed to have not been remedied under this clause 21.9b;

- c if the Breach has not been remedied upon expiry of the period in clause 21.9b, then the Manager shall within the remaining 30 days of the Remedy Period, in its discretion, cause the Excess Unit Value to be withdrawn in order to remedy the Breach, and:
 - i the Manager shall account to the relevant Unit Holder for the proceeds of any withdrawal of the Excess Unit Value after deduction of all expenses arising from such withdrawal; and
 - ii neither the Manager nor the Supervisor is required to maximise the amount payable for any withdrawal and in any event, shall not be liable to any Unit Holders for any loss on withdrawal.

21.10 Fair Dividend Rate Powers

Where the Manager considers it necessary or desirable in the Manager's complete discretion that the Trust should be the type of entity to which section EX 53(1) of the Tax Act refers, the Trust shall be treated as having assigned to each Unit of a Fund an interest in a proportion of the net returns from investments of the Trust attributable to a Fund corresponding to the Unit's Proportion.

21.11 Portfolio Investor Proxies

The Manager shall have the power to enter into any contractual or administrative arrangements with any Portfolio Investor Proxy for the purposes of ensuring that:

- a the Portfolio Investor Proxy meets its responsibilities under part HM of the Tax Act;
- b the application of the PIE tax regime to the Investors is managed efficiently, on a timely basis and so as to generate accurate outcomes for the Investors with respect to the allocation of income, losses, tax credits and Rebates to Investors and the payment of Tax on behalf of Investors; and
- c the Manager can require the Portfolio Investor Proxy to take such steps as are necessary to ensure that the Trust continues to be eligible to be a PIE.

21.12 Provision of Information where Trust is a PIE

The Manager may request any Unit Holder to provide information to the Manager to enable the Manager to determine whether the Trust continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Unit Holder to:

- a provide details of any Unit held by any associated person (as set out in the Tax Act for the purposes of section HM 16 of the Tax Act) of the Unit Holder (including any associated person for whom Units are held by a Portfolio Investor Proxy) where the associated person holds 5% or more of the aggregate Unit Value in the Trust; and
- b confirm that the Unit Holder either is or is not eligible to be a PIE.

If the Manager requests a Unit Holder to provide information to the Manager pursuant to this clause, the Unit Holder shall supply such information within 30 days of the request.

22 Fees and expenses - Manager

22.1 Manager's fees

- a The Manager shall not be entitled to receive any fees from the Trust, except to the extent expressly provided otherwise in relation to a Fund in the Establishment Deed for that Fund.
- b Instead of contracting other parties to do so, the Manager may, with the Supervisor's approval (such approval not to be unreasonably withheld or delayed), itself provide services in relation to registry management and accounting. The Manager is not entitled to any fees for these services if it provides them itself. Such services shall be on normal commercial terms, or terms as favourable to the Trust as normal commercial terms.
- c Nothing in this deed shall restrict or prevent the Manager from receiving any fees in respect of the Trust from any person.

22.2 Reimbursement of expenses

In addition to any fees provided for in any Establishment Deed in accordance with clause 22.1a but subject to clause 27.23, the Manager is entitled to be reimbursed out of the Trust for the following items of expenditure in relation to the Trust:

- a All costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, ownership, disposal of or other dealing with Assets including costs incurred pursuant to clause 21.11, commission, bank charges and stamp duty;
- b The costs of convening and holding any meetings of Unit Holders;
- c The reasonable fees and expenses of the Auditor;
- d All Taxes payable in respect of the Trust except for any Portfolio Entity Tax Liability of the Trust, if the Trust is a PIE, if the Manager, in its complete discretion, determines that such Portfolio Entity Tax Liability has been borne by or is recoverable from one or more Unit Holders;
- e Costs of postage in respect of all certificates, distribution statements, notices and other documents posted to all or any Unit Holders or other persons in accordance with the provisions of this deed;
- f The costs of preparation of this deed, including the fees of solicitors and other advisors in relation thereto;
- g The following costs, charges and expenses incurred by the Manager (or by the Supervisor with the approval of the Manager) in respect of the Trust:
 - i fees and expenses of any solicitor, barrister, chartered accountant, computer expert or other professional adviser or other expert from time to time employed by the Manager in relation to this deed;
 - ii all costs, charges and expenses incurred in relation to the preparation, registration and distribution of any Terms or other offer document issued by the Manager and the preparation, registration (if requisite) and distribution of any periodical or other report or document required by law to be prepared in respect of the Trust;

- iii costs of preparing and printing certificates, financial statements and distribution statements in respect of the Trust;
- iv expenses in connection with the keeping of accounting records and the Register; and
- v all other costs, charges and expenses incurred in connection with the ordinary administration of the Trust by the Manager (or by the Supervisor with the approval of the Manager) excluding any internal administration expenses of the Manager or the Supervisor.

h Any other expenditure properly and reasonably incurred by the Manager in connection with carrying on its duties under this deed.

Where any item of expenditure relates to more than one Fund the amount thereof shall be apportioned among the Funds in such manner as the Manager, with the approval of the Supervisor, determines.

Nothing in this deed shall restrict or prevent the Manager from receiving any reimbursement for items of expenditure in respect of the Trust from any person.

22.3 Supervisor to assist management

Subject to this deed, the Supervisor is empowered to advance or otherwise make available to the Manager out of the Assets of a Fund or to authorise the Manager to retain out of such Assets such amount as the Supervisor from time to time considers to be reasonable and proper in order to enable the Manager to perform and carry out its powers and obligations with regard to the management of those Assets but any such amount shall be on account only of costs, charges and expenses that are or would become or are anticipated by the Supervisor to be the subject of reimbursement to the Manager or are or would become or are anticipated by the Supervisor to become owing in respect of Assets of that Fund. Where any such cost, charge or expense relates to more than one Fund, the amount thereof shall be apportioned among the Funds in such manner as the Manager, with the approval of the Supervisor, determines. The Manager shall, whenever so required by the Supervisor, furnish to the Supervisor such evidence as the Supervisor may require as to the utilisation of any such amounts and the purpose for which the same have been or are intended to be applied by the Manager.

22.4 Auditor's certificate

The Supervisor may request, and accept as satisfactory evidence of the amounts properly payable to the Manager under the provisions of this clause 22, a certificate of the Auditor. Any amounts which may be overpaid or over-provided to the Manager pending the furnishing of such certificate, shall be repaid by the Manager to the Supervisor forthwith after the completion of the next succeeding audit report in relation to the Trust by the Auditor.

22.5 Waiver of fees and remuneration

The Manager may at any time and from time to time, by notifying the Supervisor in writing, in its absolute discretion, waive payment of fees, remuneration or reimbursement due to it generally or in relation to any particular Unit Holder or potential Unit Holder.

23 Appointment, Removal and Retirement of Manager

23.1 Qualifications of Manager

The Trust must have a single Manager, who must not be the Supervisor or an associated person (as defined in the Act) of the Supervisor.

23.2 Criteria for removal

The Manager shall cease to hold office as Manager if:

- a **Removal:** the Manager is removed from office by the High Court pursuant to any applicable legislation on the application of Supervisor, any Unit Holder, or any other entitled person;
- b **Supervisor's certificate:** the Supervisor certifies that it is in the interests of Unit Holders that the Manager should cease to hold office; or
- c **Meeting of Unit Holders:** Unit Holders who hold not less than three-quarters of the aggregate Unit Value of all Units, at a meeting held pursuant to clause 28.2, so direct; or
- d **Receivership or liquidation:** the Manager shall have a receiver appointed or if an order is made or a resolution passed for the appointment of a liquidator of the Manager.

23.3 Manager to cease activities

If the Manager ceases to hold office pursuant to clause 23.2, the Manager shall immediately desist from all activities in relation to the Trust.

23.4 Manager may retire

The Manager may retire at any time, without assigning any reason, upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed in relation to the Trust pursuant to clause 23.5 and has executed the deed referred to in clause 23.6.

23.5 Supervisor to appoint a new or temporary Manager

Where there is a vacancy in the office of manager or the Manager has retired, a temporary manager shall be appointed by the Supervisor, and the Supervisor shall summon a meeting of the Unit Holders, and shall take such steps as that meeting or any subsequent meeting of those Unit Holders may require to secure the appointment of that temporary manager or some other qualified company as manager of the Trust. If the Supervisor has not appointed a temporary manager or the Supervisor requests the FMA to do so, the FMA may, where relevant law so requires, appoint a temporary Manager that satisfies any legal requirements. The FMA's costs and expenses incurred in connection with any such appointment of a temporary Manager will be reimbursed out of the Trust.

23.6 Provisions in relation to new manager

A new or temporary manager appointed under clause 23.5 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new or temporary manager undertakes to the Supervisor and the Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants

hereunder (save in respect of any antecedent breach hereof) and the new or temporary manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new or temporary manager had been originally named as a party hereto.

23.7 Manager's entitlements preserved

Nothing in this clause 23 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this deed prior to the date of or arising on the Manager's retirement or removal from office.

23.8 Settlement of amounts owing

The Supervisor may settle with the Manager the amount of any sums payable by the Manager to the Supervisor or by the Supervisor to the Manager and may give to or accept from the Manager a discharge in respect thereof and any such settlement or discharge shall be conclusive and binding.

23.9 Transfer of management to members of New Zealand Post Group

Notwithstanding any other provision of this deed, the Manager may, with consent of the Supervisor (such consent not to be unreasonably withheld), transfer its office of manager under this deed to any other member of the New Zealand Post Group. Where such transfer occurs, the Manager, Supervisor and new manager shall execute a deed in such form as the Supervisor may require whereby the new manager undertakes to the Supervisor and the Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all duties and obligations of the Manager hereunder in all respects as if such new manager had been originally named as a party hereto.

24 Supervisor's Powers

24.1 General powers

Subject to the provisions of this deed, the Act, and any other applicable legislation and the powers, rights and discretions given to the Manager by the Act, this deed, and any other applicable legislation, the Supervisor shall have the rights and powers in respect of the Trust and over and in respect of the Assets which it could exercise if it were the absolute and beneficial owner of such Assets. Notwithstanding the preceding references to the provisions of this deed, the Supervisor shall have the power to settle and complete all transactions in respect of the Trust.

24.2 Limited Investment Policy

The Supervisor acknowledges and relies upon the intention of this deed that, unless the Manager in its absolute discretion decides otherwise, the only transactions intended to be entered into on behalf of the Trust are those which are consistent with the Investment Policies, and the Supervisor is directed to act in accordance with this intention.

24.3 Limitation on investment duty

Accordingly, notwithstanding the provisions of the Trusts Act which impose obligations on the Supervisor in respect of investments (which it is expressly recorded are not intended by the parties to have application to the Trust), but to the extent that any provisions in this deed expressly or impliedly impose any obligation on the Supervisor in respect of such investments, the Supervisor is not, and will not be, required to exercise any care, diligence and skill that a prudent person might otherwise exercise in diversifying the Assets irrespective of any belief or opinion or advice that the Manager or the Supervisor may hold or receive as to the prospects for the relevant Assets and the possibility of appreciation or depreciation on the Unit Value of the Units, to the intent that the benefit to be derived or derivable by Unit Holders and the investment risks they bear shall continue to reflect the limited investment policy set out in clause 24.2.

24.4 Power to borrow and give guarantees:

- a **Power to borrow and guarantee:** Subject to clauses 24.4b to 24.4d, the Supervisor shall have the power to, and at the direction of the Manager if the Investment Policies so allow shall, raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of the Trust, and may give any guarantee or undertaking or security in relation to the repayment of money and interest, costs and other charges and expenses upon such terms and conditions in all respects as the Supervisor and the Manager may think fit and in particular but without limiting the generality of the terms of this clause by becoming a party to a bill of exchange or by charging or mortgaging all or any of the Assets, provided the aggregate total borrowings made by the Supervisor together with any amounts guaranteed shall not exceed 20% of the value of the Assets.
- b **Manager to determine if necessary or desirable:** All borrowings, raising of money, charging of Assets, guarantees or other similar transactions entered into or undertaken pursuant to this clause 24.4 ('**Security Transactions**') shall be entered into or made only where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Unit Holders or for the purposes of conducting the investment or management or other operation of the Trust pursuant to this deed including the redemption of any Unit or withdrawal of any Unit Value from time to time and the Supervisor or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.
- c **Notice to Supervisor:** The Manager shall determine and give notice to the Supervisor of the amounts, name of the lender, and other terms and conditions of all borrowing, credit accommodation, or finance to be undertaken by the Trust and all securities to be entered into. The Supervisor shall subject to clause 24.4d enter into and execute all loan documents, guarantees and securities and will take all other steps necessary to give effect to any such borrowing, credit accommodation, or finance or the giving of such guarantees and securities.
- d **Supervisor's liability limited:** There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clause 24.4a or clause 24.4c or to complete any documents, guarantees or securities unless the Supervisor is satisfied that the Supervisor's liability is restricted to the Assets from time to time constituting the Trust.

24.5 Appointment of advisors

Without in any way affecting the generality of the foregoing, the Supervisor in carrying out and performing the duties on its part as owner of the Assets may appoint, engage, employ and contract any Valuer, barrister, solicitor, accountant, stockbroker, and such other person or persons as may be necessary usual or desirable for the purpose of assisting it in exercising its powers and performing its obligations under this deed and all reasonable and proper fees, charges and money payable to any such person or persons and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Supervisor from the Trust unless the Manager elects to pay such amounts. Any person appointed by the Supervisor pursuant to this clause shall be appointed subject to prior consultation with the Manager.

24.6 Nominated Company or Nominee:

- a **Power to appoint:** The Supervisor shall be entitled to nominate another person in writing in which shall be vested the Assets ('**Nominated Company**'), provided that the Nominated Person is not:
 - i the Manager or a proposed manager of the Trust; or
 - ii an associated person (as defined in the Act) of the Manager.
- b **Appointment of Nominee:** A Nominated Company may, if authorised in writing by the Supervisor, appoint one or more nominees in which shall be vested the Assets (each a '**Nominee**'), provided that the Nominee is not:
 - i the Manager or a proposed manager of the Trust; or
 - ii an associated person (as defined in the Act) of the Manager.
- c **Duties of appointing entity:** If:
 - i the Supervisor nominates a Nominated Company, the Supervisor in addition to its own obligations as supervisor in relation to the Trust, is jointly and severally liable with the Nominated Company for the due and faithful performance and observance by the Nominated Company of all the duties and obligations imposed on the Nominated Company in relation to the Trust by the Act, this deed, or by law; and
 - ii a Nominated Company appoints one or more Nominees, the Supervisor and the Nominated Company, in addition to their own obligations in relation to the Trust, are jointly and severally liable with the Nominee for the due and faithful performance and observance by the Nominee of all the duties and obligations imposed on the Nominee in relation to the Trust by the Act, this deed, or by law.
- d **Supervisor's obligations:** The Supervisor shall (without prejudice to its liability under clause 24.6c) cause any Nominated Company or Nominee to comply with all of the covenants and obligations on the part of the Supervisor expressed or implied in this deed.
- e **Nominated Company or Nominee's fees and expenses:** If the Manager agrees, the fees and expenses of a Nominated Company or Nominee may be payable out of the Assets and shall be as agreed between the Supervisor, Manager, and the Nominated

Company or Nominee from time to time provided that those fees are determined on an arm's-length basis.

- f **Nominated Company or Nominee's indemnity:** If the Manager agrees, the terms of appointment of a Nominated Company or Nominee may indemnify the Nominated Company or Nominee for liabilities or expenses incurred in relation to the performance of its contracted functions.

24.7 **Information sharing**

The Supervisor may share any information that the Manager (or any investment, administration, and/or property manager appointed pursuant to clause 21.4) provides to the Supervisor, with the Supervisor's own advisers, with any experts appointed under the Act or this deed (provided that any such adviser or expert is bound by confidentiality obligations not to disclose the information) and/or with the FMA to the extent that the Supervisor reasonably considers that it is required to do so by relevant law or the Supervisor reasonably considers it necessary to do so in order to perform its functions under this deed and/or its functions as a supervisor under the Act.

24.8 **Covenants by Supervisor**

The Supervisor covenants with the Manager and with the intent that the benefit of this covenant shall continue for the benefit of not only the Manager but also the Unit Holders:

- a **To act continuously:** the Supervisor will act continuously as Supervisor until the Trust is terminated as herein provided or it has retired or been removed as Supervisor in the manner herein provided.
- b **Comply with duties:** comply with its duties under this clause 24.8 and all applicable legislation.
- c **To keep Assets safely:** subject to the terms of this deed, the Supervisor shall use all reasonable endeavours to ensure the Assets are kept safely and shall hold them as Supervisor for the Unit Holders upon the terms of this deed.
- d **Not to dispose of Assets except as directed:** except as directed by the Manager, the Supervisor shall not sell, mortgage, charge or part with possession of (or permit any Nominated Company or Nominee so to do) any of the Assets.
- e **To forward notices to Manager:** the Supervisor shall without delay forward to the Manager all notices, reports, circulars and other documents received by it or on its behalf as holder of the Assets.
- f **To take legal proceedings as directed:** the Supervisor will institute, prosecute, defend and compromise all such legal and arbitral proceedings related to its duties and obligations as Supervisor, and refer all such matters to arbitration and submit to arbitration, as the Manager may request in writing and in such places and jurisdictions as the Manager may so request.
- g **To enable Manager to manage:** subject to the terms of this deed, the Supervisor shall execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Supervisor under this deed, to enable the Manager or any person nominated by the Manager to exercise the powers of management or other rights of the Manager in relation to this deed,

provided that the Supervisor shall be entitled to require, to the extent permitted by law, prior to acting in any circumstances where in the Supervisor's view it is reasonable to do so, evidence satisfactory to it that it will be indemnified for any costs or expenses incurred as a consequence of so acting and shall not be liable or responsible for any losses arising from its failure to act in such circumstances.

24.9 **Supervisor's duties**

- a The Supervisor must:
 - i act honestly in acting as supervisor of the Trust;
 - ii in exercising its powers and performing its duties as supervisor of the Trust, act in the best interests of the Unit Holders; and
 - iii exercise reasonable diligence in carrying out its functions as Supervisor.
- b The Supervisor must, in exercising its powers and performing its duties as supervisor of the Trust, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a licensed supervisor (within the meaning of the Act) would exercise in the same circumstances.
- c The Supervisor must also:
 - i do all the things it has the power to do to cause any contravention or alleged contravention of the Manager's issuer obligations (within the meaning of the Act), or of the Act by any other person in connection with the Trust, to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Unit Holders); and
 - ii act in accordance with any direction given by an Extraordinary Resolution of the Unit Holders that is not inconsistent with any enactment, rule of law, this deed, or an Establishment Deed in relation to:
 - A seeking a remedy to a contravention referred to in paragraph ci; and
 - B any other matter connected with the Supervisor's functions.

The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Unit Holders.

- d The Supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or are inconsistent with the Act).

24.10 **Supervisor's indemnity**

Subject to clause 27.3, should the Supervisor purchase or otherwise acquire or sell or otherwise dispose of any Asset in relation to which there is a liability, the Supervisor will have a right of indemnity out of the Trust in respect of the liability except to the extent that such liability may be attributable to the Supervisor's own gross negligence or wilful act or default.

25 Fees and expenses - Supervisor

25.1 Supervisor's fees:

The Supervisor shall be entitled to receive and retain for its own use and benefit out of the Trust, by way of remuneration for its services as Supervisor, such fees as may be agreed upon in writing between the Supervisor and the Manager.

Nothing in this deed shall restrict or prevent the Supervisor from receiving any fees in respect of the Trust from any person".

25.2 Reimbursement of expenses

Subject to the provisions of this deed, in addition to its fees referred to in clause 25.1, the Supervisor is authorised to pay out of the Trust or reimburse itself from the Trust for the following items of expenditure that may from time to time be met by the Supervisor from its own funds:

- a The remuneration of the Auditor and any reasonable expenses of the Auditor sustained in the course of the performance of the duties of the Auditor;
- b All mailing and postage costs from time to time incurred in sending documents to Unit Holders in conformity with any requirement of this deed and the Act;
- c All disbursements properly incurred in connection with the acquisition or disposal of an Asset including legal costs, stamp duties, valuation fees, search and enquiry fees, brokerage, commission, registration fees and other outgoings of and in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Asset;
- d All Taxes payable in respect of the Trust except for any Portfolio Entity Tax Liability of the Trust, if the Trust is a PIE, if the Manager, in its discretion, has determined that such Portfolio Entity Tax Liability has been borne by or is recoverable from one or more Unit Holders;
- e Fees paid or becoming payable for valuations of the Assets carried out in conformity with any provision of this deed;
- f Such other fees, charges and amounts as have been paid or as are payable to any person appointed or engaged by the Supervisor pursuant to a provision of this deed authorising such appointment or engagement to the extent that such fees, charges and amounts would be payable or reimbursable to the Supervisor under any other provision of this clause or under any other provision of this deed if the services performed by the person so appointed or engaged had been carried out directly by the Supervisor;
- g All disbursements incurred in relation to the holding of meetings of Unit Holders;
- h Any other expenditure properly and reasonably incurred by the Supervisor in connection with carrying out its duties under this deed;
- i Such other amounts for which, pursuant to any other provision of this deed, the Supervisor is properly entitled to be reimbursed.

- j Where any item of expenditure relates to more than one Fund the amount thereof shall be apportioned among the Funds in such manner as the Manager, with the approval of the Supervisor, determines.
- k Nothing in this deed shall restrict or prevent the Supervisor from receiving any reimbursement for items of expenditure in respect of the Trust from any person".

26 Appointment, Removal and Retirement of Supervisor

26.1 Qualifications of Supervisor

The Trust must have a single Supervisor, who:

- a must hold a licence under the Financial Markets Supervisors Act 2011 that covers supervision of managed investment schemes (as defined in the Act); and
- b must not be the Manager or an associated person (as defined in the Act) of the Manager.

26.2 Removal of Supervisor

The Supervisor may be removed from office as Supervisor:

- a by the Manager with the approval of the High Court; or
- b by an Extraordinary Resolution of Unit Holders, if:
 - i all functions and duties of the position have been performed;
 - ii a new Supervisor has been appointed, and accepted the appointment, in its place and all of the Assets have been transferred to it; or
 - iii the High Court consents
- c otherwise in accordance with any applicable legislation.

26.3 Retirement of Supervisor

The Supervisor may retire as Supervisor at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention to do so if:

- a all functions and duties of the position have been performed;
- b a new Supervisor has been appointed, and accepted the appointment, in its place and all of the Assets have been transferred to it; or
- c the High Court consents.

26.4 Appointment of a new Supervisor

The power of appointing a new Supervisor (in place of a Supervisor which has retired pursuant to clause 26.3 or been removed from office pursuant to clause 26.2) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless qualified to act as such pursuant to clause 26.1.

27 Indemnity and responsibilities

27.1 Indemnity

Subject to clause 27.23, the Supervisor and the Manager shall each be indemnified out of the Trust from and against any and all losses, costs, and expenses incurred by the Supervisor or Manager in performing any of their respective duties or exercising any of their respective powers in relation to the Trust pursuant to this deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing relating to the Trust, including all actions in relation to the offer and issue of Units, with the exception of any loss, costs and expenses arising from a breach of trust where the Supervisor or Manager, as the case may be, fails to show the degree of care and diligence required of a trustee or manager having regard to the provisions of this deed and the powers, authorities and discretions conferred on the Supervisor or Manager thereby, provided that the Unit Holders may by Extraordinary Resolution release the Supervisor or Manager or both, from any such liability and indemnify the Supervisor or Manager or both from and against any such liability either with respect to specific acts or omissions or on the Supervisor or Manager ceasing to act.

27.2 Lien

The Supervisor and the Manager shall have a lien on and may use any, or any part of, any Asset for the time being in the hands or coming into the hands of the Supervisor or the Manager for the indemnity referred to in clause 27.1 and also for the payment of all fees, charges, reimbursements and other amounts which may be charged against or deducted from the Assets under this deed.

27.3 Reliance of Manager and Supervisor

Subject to clause 27.23, neither the Supervisor nor the Manager shall incur any liability in respect of any action taken or thing suffered by the Supervisor or Manager in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Supervisor or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

27.4 Prohibited performance

Subject to clause 27.23, neither the Supervisor nor the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provisions of any present or future law or ordinance rule regulation or by-law made pursuant thereto or of any decree, order or judgment of any competent court, the Supervisor or the Manager shall be hindered, prevented or forbidden from so doing or performing.

27.5 Tax payments in good faith

Subject to clause 27.23, neither the Supervisor nor the Manager shall be liable to account to any Unit Holder or otherwise for any payments made by the Supervisor or the Manager in good faith to any fiscal authority for Taxes upon the Trust or in respect of Unit Holders or upon any Unit certificates or with respect to any transaction under this deed notwithstanding that any such payment need not have been made.

27.6 Supervisor relying on advice

Subject to clause 27.23, the Supervisor, in relation to this deed, may rely on:

- a the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Supervisor shall not be responsible for any loss occasioned by so acting so long as the Supervisor has no reason to believe that the opinion or advice is not authentic. Any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Supervisor shall not be liable for acting thereon although the same may contain some error or may not be authentic;
- b a certificate signed by not less than two directors of the Manager on behalf of the Manager,
 - i as to any fact or matter *prima facie* within their knowledge and which the Supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or
 - ii that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Unit Holders or any of them;as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;
- c the statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this deed, as conclusive evidence of the facts stated therein,

and any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Supervisor shall not be liable for acting thereon although the same may contain some error or may not be authentic.

27.7 Manager relying on advice

Subject to clause 27.23, the Manager may act on the opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be a Related Person of the Manager or the Supervisor) (whether obtained by the Manager or the Supervisor) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic. Subject to clause 27.23, any such opinion, advice, certificate or information may be sent or obtained by letter, facsimile transmission or other electronic means and the Manager shall not be liable for acting thereon although the same may contain some error or may not be authentic.

27.8 Communication between Manager and Supervisor

Subject to clause 27.23, whenever pursuant to any provision of this deed any certificate, notice, instruction or other communication is to be given by the Manager to the Supervisor, or the Supervisor to the Manager, the Supervisor or the Manager, as the case may be, may

accept as sufficient evidence thereof a document signed on behalf of the Manager or Supervisor by any one of their directors or by any other person or persons duly authorised by the Manager or Supervisor or any other form of communication as agreed.

27.9 Discretion of Supervisor

The Supervisor shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, subject to clause 27.23 and provided it shall not have acted fraudulently or with gross negligence, by act or omission, the Supervisor shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof.

27.10 Discretion of Manager

The Manager shall (save as otherwise provided in this deed) as regards all the powers, authorities and discretions vested in it by this deed or by operation of law have absolute and uncontrolled discretion as to the exercise or non-exercise thereof and, provided it shall not have acted fraudulently or negligently by act or omission, the Manager shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof. Subject to clause 27.23, the Manager shall have no liability for any loss suffered by a Unit Holder on any action taken or adjustment made pursuant to clause 21.8 or clause 21.9.

27.11 No conflicts of interest for Supervisor or Manager

Subject to any restrictions on who may invest in the Trust set out in the Terms, nothing in this deed or any rule of law shall prevent the Supervisor, or any Related Person of the Supervisor or any shareholder, director, officer, or employee of the Supervisor or its Related Person, or the Manager, or any Related Person of the Manager, or any shareholder, director, officer, or employee of the Manager or its Related Person, from:

- a subscribing for, purchasing, holding, dealing in, or disposing of any Unit;
- b otherwise at any time contracting or acting in any capacity (whether as principal, representative or agent) for or entering into any sale or purchase, financial, banking, agency, or other transaction with either or both of the Supervisor or Manager (whether in respect of the Trust or otherwise) or with any Unit Holder or any person whatsoever;
- c being interested in any such contract, transaction or otherwise;
- d acting as supervisor or manager of any other managed investment scheme; or
- e holding any Asset jointly with the Trust;

and none of them shall be in any way liable to account either to any other of them, the Trust, or to the Unit Holders or any of them for any profits or benefits (including, without limitation, any customary bank charges, commission, exchange, brokerage and fees) made or derived thereby or in connection therewith.

For the avoidance of doubt, it shall not be a conflict of interest if any person (including without limitation the Supervisor and the Manager) receives payment from another person" in relation to its duties under this deed.

27.12 Limitation on payments to Unit Holders

Except in respect of any fraud or wilful default on the part of the Supervisor or the Manager and as otherwise provided in clause 27.23, in no event shall the Supervisor or the Manager, as the case may be, be bound to make any payment to Unit Holders except out of funds held by it for that purpose under the provisions of this deed.

27.13 Failure to carry out agreement

Subject to the provisions of this deed neither the Supervisor nor the Manager will be liable for the failure of any person to carry out any agreement with the Trust.

27.14 Validity of signatures

The Supervisor shall be entitled to rely on the Manager as to the validity of any signature on any transfer, form of application or other instrument so long as the Supervisor has no reason to believe that such signature is not genuine.

27.15 No dealings with instruments where unpaid charges

The Manager and the Supervisor shall not be required to effect any transaction or dealing with any certificate, transfer or other instrument on behalf of or for the benefit or at the request of any Unit Holder unless such Unit Holder shall first have paid in cash or otherwise provided to the Manager's and the Supervisor's satisfaction for all duties, Taxes, governmental charges, brokerage, transfer fees registration fees and other charges (whether similar to the foregoing or not) whether in respect of the certificate, transfer or other instrument or otherwise (in this clause called collectively '**duties and charges**') which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Supervisor shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unit Holder and to retain the amount so paid out of any money or Property to which such Unit Holder may be or become entitled hereunder. This clause shall not affect the obligations of the Supervisor or the Manager elsewhere contained in this deed relating to duties and other expenses in respect of any Assets.

27.16 Legal proceedings by Supervisor

The Supervisor may bring legal proceedings:

- a **To recover money:** to obtain or recover any money that is payable to the Supervisor or any Assets that are to be vested in the Supervisor in accordance with the provisions of this deed;
- b **For damages:** for damages against any person arising out of any loss suffered by any Unit Holder or Unit Holders which the Supervisor or the Manager considers is recoverable; or
- c **To secure compliance:** to secure compliance with the provisions of this deed and the terms of the Terms.

27.17 Resolutions of Unit Holders

Subject to clause 27.23, neither the Supervisor nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Unit Holders in respect whereof minutes have been made and signed even though it may subsequently be

found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the relevant Unit Holders.

27.18 **Forged certificates**

Subject to clause 27.23, the Supervisor and the Manager shall not be liable to each other or any Unit Holder by reason of having accepted as valid or not having rejected any certificate purporting to be such and subsequently found to be forged or not authentic.

27.19 **Reliance by Manager and Supervisor:**

- a **No liability for other's fault:** Subject to clause 27.23, the Manager shall not be responsible for any loss arising as a result of any act or omission of the Supervisor except to the extent that such loss is caused by the negligence or default of the Manager and the Supervisor shall not be responsible for any loss arising as a result of any act or omission of the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Supervisor.
- b **No liability for failure to check:** Subject to clause 27.23, the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Supervisor except to the extent that such loss is caused by the negligence or default of the Manager and the Supervisor shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager except to the extent that such loss is caused by the gross negligence or wilful default of the Supervisor.

27.20 **Disclosure of Information**

Subject to the terms of this deed, neither the Manager nor the Supervisor shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Unit Holder confidential, financial or other information made available to it by the other in connection with this deed. Notwithstanding any provision of this deed or the provisions of the Privacy Act 1993, the Unit Holders authorise the Manager and the Supervisor to provide information relevant to a Unit Holder to any fiscal authority in connection with Tax as may be deemed necessary by the Manager or the Supervisor.

27.21 **Priority for remuneration**

The Supervisor and the Manager may retain and pay in priority to any claim by Unit Holders their respective fees and reimbursement of expenditure out of any money for the time being held by the Trust whether in the nature of income or in the nature of capital.

27.22 **Limit on Supervisor's responsibility**

The Supervisor shall not be responsible for any loss or damage resulting from any act, omission, neglect, mistake or default in relation to the Trust save to the extent that the loss or damage is caused by the Supervisor's failure to:

- a show the degree of care and diligence required of the Supervisor in that capacity, having regard to the provisions of this deed and the relevant Establishment Deed, and the powers, authorities, and discretions conferred thereby; or

- b discharge its duty to observe the same care and diligence in the performance of its duties as any other trustee.

27.23 Limitation on indemnities

No provision of this deed or an Establishment Deed shall have the effect of indemnifying the Manager or the Supervisor against any liability or expense incurred in relation to the performance of the Manager's issuer obligations or the Supervisor's licensee obligations (each within the meaning of the Act) where the relevant party has failed to comply with its duties under clauses 21.7a or 21.7d (in the case of the Manager) or clauses 24.9a or 24.9b (in the case of the Supervisor).

28 Meetings of Unit Holders

28.1 Manager may convene meetings

The Manager may at any time convene a meeting of Unit Holders of the Trust, a Fund or a Class. The meeting shall be conducted in accordance with the applicable requirements of the Act, the Regulations, and any other applicable legislation, except as otherwise provided in this deed to the extent permitted by law.

28.2 Unit Holders or Supervisor may request convening meetings

On request in writing of the Supervisor, or of either a Unit Holder or Unit Holders holding (at the date of the receipt by the Manager of the request) not less than one-tenth of the value of the Units of the Trust, a Fund or of a Class then on issue, the Manager shall convene a meeting of Unit Holders of the Trust, a Fund or that Class, respectively. Any such request shall state the nature of the business to be conducted, and the terms of any resolution to be proposed, at the meeting.

28.3 Content and period of notice

- a At least fifteen (15) days' written notice specifying:
 - i the time, date and place of the meeting;
 - ii the nature of the business to be transacted at the meeting in sufficient detail to enable a Unit Holder to form a reasoned judgement in relation to it;
 - iii the text of any Extraordinary Resolution to be submitted to the meeting (but it is not necessary to state the text of any Ordinary Resolution to be submitted to the meeting);
 - iv the information required by clause 28.5; and
 - v such other information as the person convening the meeting may think fit,

shall be given to all Unit Holders in the Trust, Fund or Class (as applicable) at their last known address and to the Supervisor, the Manager, every director of the Manager and the Manager's auditor as appropriate.

- b A notice of meeting that contains an Extraordinary Resolution to approve a related party benefit (as defined in the Act) must contain, and be accompanied by, the matters required by the Act.

28.4 Omission to give notice and irregularities in notice

- a The accidental omission to give such notice to or the non-receipt of a notice of meeting by a Unit Holder shall not invalidate the proceedings at the meeting.
- b An irregularity in a notice of meeting is waived if:
 - i all the Unit Holders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Unit Holders agree to the waiver; or
 - ii the Supervisor indicates at the meeting that the Supervisor is satisfied that the irregularity has not resulted in and is unlikely to result in any material prejudice to the Unit Holders.

28.5 Notice of right to appoint proxies

In each notice of meeting there shall appear with reasonable prominence a statement that a Unit Holder is entitled to appoint a proxy and that a proxy need not also be a Unit Holder.

28.6 Attendance at meetings

The Supervisor, the Manager and the Auditor and their duly appointed representatives may attend and address any meeting of Unit Holders (including any adjourned meeting).

28.7 Quorum required

No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business.

28.8 Quorum for Ordinary Resolution

The quorum necessary for a meeting at which an Ordinary Resolution only is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least ten per cent of the aggregate Unit Value of Units in the Trust, Fund or Class (as applicable) on issue at the date of the meeting carrying the right to vote on the business to be transacted at that meeting.

28.9 Quorum for Extraordinary Resolution

The quorum necessary for a meeting at which an Extraordinary Resolution is to be proposed shall be at least five persons holding or representing by proxy or as representative or attorney at least twenty five per cent of the aggregate Unit Value of Units in the Trust, Fund or Class (as applicable) on issue at the date of the meeting carrying the right to vote on the business to be transacted at that meeting.

28.10 No quorum

If within thirty minutes from the time appointed for any meeting a quorum is not present the meeting shall:

- a **Adjournment for Ordinary Resolution:** if called for the purpose of passing an Ordinary Resolution, otherwise than pursuant to a request of Unit Holders, stand adjourned to the same day in the next week at the same time and the same place;

- b **Dissolved if called by Unit Holders:** if called pursuant to a request of Unit Holders, dissolve;
- c **Adjournment for Extraordinary Resolution:** if called for the purpose of passing an Extraordinary Resolution, otherwise than pursuant to a request of Unit Holders, stand adjourned to the day that is 10 working days after the date appointed for the meeting at the same time and place, or to such other date, time, and place as the Supervisor may appoint.

If, at such an adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting the Unit Holders present in person or by proxy or by attorney (whatever their number and whatever the number of Units held by them) shall form a quorum.

To avoid doubt, a Unit Holder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

28.11 **Chairman's discretion**

The chairman of a meeting at which a quorum is present may, with the consent of the Unit Holders present and entitled to be at that meeting, adjourn the meeting from time to time and from place to place.

28.12 **Chairman**

At every meeting of Unit Holders a person nominated by the Supervisor (who may or may not be a Unit Holder) shall preside as chairman.

28.13 **By voice or show of hands**

Every question submitted to a meeting shall be decided by voice or, if the Chairman thinks necessary or desirable, by a show of hands unless a poll is properly demanded pursuant to clause 28.22.

28.14 **No Chairman's casting vote**

In the case of an equality of votes the chairman of the meeting shall both on a show of hands and on a poll not have a casting vote in addition to the vote or votes (if any) to which he may be entitled as a Unit Holder or as a proxy.

28.15 **Voting entitlements**

On a vote by voice or show of hands every Unit Holder who is present in person or any person who is present and representing a Unit Holder as his or her proxy, attorney or representative shall have one vote and on a poll every such Unit Holder, proxy, attorney or representative shall have one vote for each dollar of Unit Value of each Unit carrying the right to vote at that meeting of which he or she is the registered Unit Holder or in respect of which he or she has the authority to vote for the registered Unit Holder.

28.16 **Votes of joint Unit Holders**

In the case of joint Unit Holders of a Unit, the vote of the senior who tenders a vote whether in person or by proxy or by attorney shall be accepted to the exclusion of the vote of other joint Unit Holders and for this purpose seniority shall be determined by the order in which their names stand in the register.

28.17 **Votes of corporations**

A corporation being a Unit Holder may vote by any officer or representative duly authorised in writing who shall be entitled to speak, demand a poll, vote, act as proxy or attorney and in all other respects exercise the rights of a Unit Holder and shall be reckoned as a Unit Holder for all purposes.

28.18 **Votes of Unit Holder by Court Appointed Managers**

A Unit Holder in respect of whom an order has been made by any court under section 31 of the Protection of Personal and Property Rights Act 1988 may vote whether on a show of hands or on a poll by his Court appointed manager, and such manager may, on a poll vote by proxy or as attorney, if so authorised by such Court order.

28.19 **All votes valid if not challenged at the meeting**

No objection shall be raised to the qualification of any voter or vote except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting and his or her decision shall be final and conclusive.

28.20 **Votes by proxy, representative or attorney**

On a vote by voice or a show of hands and on a poll, votes may be given either personally or by proxy or by attorney and a proxy, representative or an attorney shall have the same right of audience and to demand a poll as a Unit Holder appointing them.

28.21 **Chairman's declaration final**

At any meeting of Unit Holders, unless a poll is demanded, a declaration by the chairman of the meeting that the resolution has been carried or carried by any particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact.

28.22 **Polls:**

- a **Who may demand poll:** A poll may be demanded by the chairman of the meeting or by at least five Unit Holders of the Trust, a Fund or a Class (as applicable) entitled to vote on the proposed resolution or the holders of five per cent of the aggregate Unit Value of Units in the Trust, Fund or Class (as applicable) on issue present in person or by proxy or by attorney entitled to vote on the proposed resolution;
- b **Timing of demand:** A poll may be demanded either before or after any question is put to a show of hands;
- c **Manner of poll:** If at any meeting a poll is demanded as aforesaid, it shall be taken in such manner and either at once or after an adjournment as the chairman of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded;
- d **Withdrawal of demand:** The demand for a poll may be withdrawn;
- e **Adjournment:** Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment. The

demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.

28.23 Instrument of proxy

The instrument appointing a proxy or an attorney shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or if the appointor is a corporation under the hand of an officer or attorney so authorised.

28.24 Proxy need not be a Unit Holder

Any person may act as a proxy or as an attorney whether or not he or she is a Unit Holder.

28.25 Time for Manager to receive instrument

The instrument appointing a proxy or an attorney and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority shall be deposited with the Manager not less than two (2) clear days before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy or attorney (as the case may be) shall not be treated as valid without the approval of the Manager.

28.26 Content of instrument

An instrument appointing a proxy may be in the following form or in any other form which the Manager shall approve:-

'I [] of [] being a Unit Holder in the [], hereby appoint [] of [] as my proxy to vote for me and on my behalf at the Meeting of Unit Holders of the [] [Trust/Fund/Class to be held on the [] day of [] and at any adjournment thereof.

I direct this form is to be used *in favour of/against the resolution

Signed at [] by me this [] day of []

*Strike out whichever is not desired.'

28.27 Validity of proxy's vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or attorney or of the authority under which the proxy or attorney was executed unless notice in writing of such death, insanity or revocation as aforesaid shall have been received by the Manager before the commencement of the meeting or adjourned meeting at which the proxy or attorney is used.

28.28 Unit Holders bound by resolutions

A resolution (whether Ordinary or Extraordinary) passed by the Required Majority at a meeting of Unit Holders of the Trust, a Fund or a Class (as applicable) duly convened and held in accordance with this deed shall be binding upon all the relevant Unit Holders in that Trust, Fund or Class (as applicable) whether present or not present at such meeting and each

of the Unit Holders and the Supervisor and the Manager shall be bound to give effect thereto accordingly.

28.29 **Powers exercisable by Extraordinary Resolution of Unit Holders**

A meeting of Unit Holders of the Trust, a Fund or a Class (as applicable) shall have the following powers exercisable by Extraordinary Resolution:

- a **To sanction alterations of rights:** power to sanction a Manager's proposal to alter, release, modify, waive, vary or compromise or approve any arrangement in respect of the rights of Unit Holders in the Trust, Fund or Class (as applicable);
- b **To amend deed:** subject to the proviso to clause 30.1, power to assent to any amendment to the provisions contained in this deed or any deed supplemental thereto in relation to the Trust, a Fund or a Class (as applicable) or the conditions attaching to the Units and to authorise the Manager and the Supervisor to concur in and execute any supplemental trust deed or other document embodying any such alteration or addition;
- c **To sanction default:** subject to the Act, power to give any sanction, assent, release or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this deed;
- d **To exonerate Manager or Supervisor:** subject to the Act, power to discharge, release or exonerate the Manager or the Supervisor from all liability in respect of any act of commission or omission for which the Manager or the Supervisor has or may become responsible under this deed in relation to the Trust, a Fund or a Class (as applicable);
- e **To appoint Supervisor:** power to appoint a new Supervisor in relation to the Trust if a vacancy arises in the office of Supervisor and the Manager fails to appoint a new Supervisor pursuant to clause 26.4;
- f **To appoint Manager:** power to appoint a new manager if a vacancy arises in the office of manager and the Supervisor fails to appoint a new temporary manager pursuant to clause 23.5;
- g **To sanction exchange or conversion of Units:** power to sanction the exchange of any Unit for, or the conversion of any Unit in the Trust, a Fund or a Class (as applicable) into units or notes or interests in any other managed investment scheme or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Extraordinary Resolution;
- h **To remove Auditor:** power to remove the Auditor pursuant to clause 18.4; and
- i **To terminate the Trust:** power to terminate the Trust with effect from a date identified in the Extraordinary Resolution.

28.30 **Resolutions where more than one Class**

Where there is more than one Class of Units, a Resolution of Unit Holders in relation to any matter affecting the Trust (as applicable) as a whole shall require the approval of all Classes of Units (as applicable) by the Required Majority.

28.31 Directions to Supervisor

A meeting of Unit Holders in the Trust, a Fund or a Class (as applicable) shall have the power to give directions to the Supervisor in relation to the interests of those Unit Holders so long as:

- a **Consistent with deed and Act:** such directions are consistent with the provisions of this deed, the Establishment Deed for any relevant Fund and the Act, and any directions given by the FMA under the Financial Markets Supervisors Act 2011; and
- b **Sufficient majority:** the directions are given by a resolution passed by Unit Holders present in person or by proxy or by attorney representing 75% of the aggregate Unit Value of the Units in the Trust, Fund or Class (as applicable) represented at that meeting and representing 25% of the aggregate Unit Value of the Units in the Trust, Fund or Class (as applicable) then on issue; and
- c **No Supervisor's certificate:** the directions do not require the Supervisor to give a certificate pursuant to clause 23.2b.

Where any direction is so given to the Supervisor, the Supervisor may comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following that advice or direction. In any case where the Supervisor is of the opinion that any direction so given conflicts with the trusts, a direction of the FMA, any rule of law or is otherwise objectionable, the Supervisor may apply to the High Court for directions in the matter, and the decision and order therein shall be final, provided that nothing in this clause shall make it necessary to apply to the Court for directions.

28.32 Minutes of meetings

Minutes for all resolutions passed and proceedings held at every meeting of Unit Holders shall be made and duly entered in a book to be provided for that purpose by the Manager and any such minute as aforesaid if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting (if any) of Unit Holders shall be conclusive evidence of the matters therein stated and until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed thereat or proceedings to have been duly passed and held.

28.33 Provisions of this deed to prevail

The provisions of this deed relating to meeting procedures in respect of the Trust prevail notwithstanding anything to the contrary in the Act.

28.34 Written resolution

A written resolution is valid as if it has been passed at a meeting if it is signed in accordance with the Act by Unit Holders holding Units that have a combined value of no less than 75% of the value of the Units on issue in that Trust held by those Unit Holders who are entitled to vote on the resolution at a meeting.

29 Termination

29.1 Term

The Trust terminates on the earlier of:

- a the date appointed by the Manager by giving not less than three months' written notice to the Unit Holders of the Trust and the Supervisor; or
- b the date set by a resolution of Unit Holders pursuant to clause 28.29; or
- c the date on which the Trust is otherwise terminated under this deed or by operation of law.

29.2 Manager's termination rights

Subject to the terms of this deed and the Manager's obligations at law, the Manager may agree in writing with Kiwibank that:

- a it will exercise its power to terminate the Trust under clause 29.1a upon the occurrence of certain events or following an agreed period of notice; and
- b certain arrangements will apply following that termination pursuant to which the costs associated with that termination are paid by the Manager or Kiwibank.

29.3 Procedure

On termination of the Trust, the Supervisor must realise the Assets if the Manager does not propose to distribute them in specie. This must be completed as soon as practicable after termination. The Supervisor may, however, postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unit Holders to do so, and will not be responsible for any consequent Unit Holder's loss.

29.4 Final distribution

Subject to the rights, terms of issue, obligations and restrictions attaching to any particular Units or a Fund, any net proceeds of realisation and any remaining Assets, after:

- a discharging or providing for any unpaid fees due to the Manager and the Supervisor and all Liabilities of the particular Units or relevant Fund; and
- b meeting any expenses (including anticipated expenses) of termination attributable to the particular Units or relevant Fund,

must be distributed pro rata in cash or in specie to holders of Units in the relevant Fund according to the respective Proportions in their Units in the relevant Fund (which, in the case of a PIE, shall be subject to adjustment in accordance with the provisions of this deed).

29.5 Resettlement

Subject to the Manager being reasonably satisfied that in each case it is not, nor is it likely to become, materially prejudicial to the interests of Unit Holders generally, and to compliance with any applicable laws, the Manager may do any or all of the following:

- a **Compulsory buyback or redemption:** Subject to the prior approval of the Supervisor, compulsorily acquire all Units or require Unit Holders to accept payment from the

Manager or redemption in respect of all or any of the Unit Holders' Units for the purposes of applying the proceeds in the manner referred to in clause 29.5b.

- b **Apply Proceeds toward a New Trust:** Subject to the prior approval of the Supervisor, apply the proceeds of repayment towards units in an alternative trust, being a new trust (the 'New Trust') with an investment policy similar in all material respects to those of the Trust (the 'Terminating Trust') as if the Unit Holder had redeemed their Unit in the Terminating Trust and reinvested the proceeds from that Unit in the New Trust.
- c **Transfer of Assets:** Subject to the prior approval of the Supervisor, sell or otherwise transfer all or any Assets of the Terminating Trust to the New Trust.
- d **Resettle New Trust:** Subject to the prior approval of the Supervisor, resettle by irrevocable deed (without infringing the rule against perpetuities) all or part of the income or capital of the Terminating Trust on the trusts and with the powers of any New Trust, or other trust approved by the Supervisor.
- e **Lend to New Trust:** Subject to the prior approval of the Supervisor, lend any sum to the Supervisor or Supervisors of the New Trust, with or without security, at an interest rate (if any) and on such other terms as in each respect the Supervisor thinks fit.
- f **Assume liabilities:** Assume liabilities of the Terminating Trust on behalf of the New Trust, subject to the approval of the supervisor of the New Trust.
- g **New manager or Supervisor:** Subject to the prior approval of the Supervisor, arrange any of the foregoing with another manager and/or supervisor for the New Trust.
- h **Terminate Trust:** Subject to the prior approval of the Supervisor, terminate the Terminating Trust in the manner outlined in clause 29.5b.

29.6 Perpetuity Period

For the purposes of the Perpetuities Act 1964, the Trust has a perpetuity period of 80 years less one day from the date it was established (the 'Perpetuity Period'). The Trust shall not terminate automatically on the expiry of the Perpetuity Period. In the event that the Trust would be invalid after the expiry of the Perpetuity Period under any rule of law relating to perpetuities due to the ability of Unit Holders to redeem their Units or the ability of the Manager to issue further Units, Units may not be redeemed or issued to the extent necessary to ensure the Units are not void under the rule of law relating to perpetuities. The Supervisor may take any action it thinks fit so as to prevent the application of any rule of law relating to perpetuities which might otherwise invalidate the Trust.

30 Amendments

30.1 Amendments by supplemental deed

Subject to any requirements of law, the Manager may, with the concurrence of the Supervisor, by deed supplemental to this deed (including any Establishment Deed) amend, add to or revoke (in whole or in part) any provision of this deed, an Establishment Deed, or any such supplemental deed if the amendment, addition or revocation:

- a **To comply with or reflect changes to law:** is in the opinion of both the Supervisor and the Manager necessary, desirable or expedient to comply with the provisions of, or to

reflect any changes to, any statute, ordinance, regulation or by-law or any law made under the authority of any statute, regulation, by-law or ordinance or is the requirement of any competent statutory authority;

- b **PIE eligibility:** is in the opinion of the Supervisor and the Manager necessary or expedient in order for the Trust to qualify as, or continue to be eligible to be, a Portfolio Investment Entity;
- c **To correct error or technical amendment:** is in the opinion of the Supervisor made to correct a manifest error or is of a formal, technical or administrative nature only;
- d **Not prejudicial:** is in the opinion of the Supervisor not materially prejudicial to Unit Holders affected by the proposed amendments, addition or revocation generally;
- e **To better administration:** will in the opinion of the Supervisor enable the provisions of this deed to be more conveniently or advantageously administered;
- f **Approved by Unit Holders:** is approved by separate Extraordinary Resolutions of each Unit Holders of Units in the Trust, a Fund or a Class which, in the opinion of the Supervisor, is likely to be affected by the proposed amendment; or
- g **Authorised by deed:** is otherwise expressly authorised by this deed;

provided that no amendment to any clause (including this proviso to clause 30.1) conferring the rights, powers and privileges of the Manager, including clause 13.1, shall be made without the agreement of the Manager.

31 Notices to Unit Holders

31.1 Notice may be given to registered address

A notice may be given by the Manager or the Supervisor to any Unit Holder personally, by leaving it at his or her address recorded in the relevant Register, by sending it addressed to such Unit Holder at his or her recorded address by ordinary prepaid post or if such address is outside New Zealand by airmail prepaid post, or by sending it by email to the last email address provided by the Unit Holder.

31.2 Deemed service

Any notice sent by post shall be deemed to have been served at the expiration of twenty-four (24) hours after the envelope or wrapper containing the same is posted and in proving such service, it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted.

31.3 Signature on notices

The signature to any notice to be given by the Manager or the Supervisor may be written or printed.

31.4 Period of notice

Subject to the Act, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

31.5 Transferees bound by notices sent to the transferor

Every person who, by operation of law, transfers, or by any other means whatsoever, shall become entitled to any Unit, shall be bound by every notice which, prior to his or her name and address being entered in the register in respect of such Unit, shall have been duly given to the person from whom he or she derives his or her title to such Unit.

31.6 Notice to deceased persons

Any notice or document delivered or sent by post or left at the address recorded in the Register or address for service of any Unit Holder in pursuance of the provisions of this deed (notwithstanding that such Unit Holder be then deceased and whether or not the Manager has notice of his or her death) shall be deemed to have been duly served in respect of any Unit, whether held solely or jointly with any other person by such Unit Holder, until some other person shall be registered in his or her stead as the Unit Holder or joint Unit Holder thereof, and such service shall for all purposes be deemed to be sufficient service of such notice or document on his or her heirs, executors or administrators and all persons (if any) jointly interested with him or her in such Unit.

32 Notice to Manager and Supervisor

32.1 Any notice, communication or information required by this deed to be given by the Manager to the Supervisor or by the Supervisor to the Manager shall be given in writing or such other manner as agreed to from time to time and addressed to the secretary or a director or other officer of the party to whom it is intended to be given at its current address or such other address as may from time to time be notified by such party to the other as the address for service of notices pursuant to this deed and shall be signed by a duly authorised officer on behalf of the party giving the same.

33 Manager, Supervisor, and Unit Holders Bound

33.1 This deed shall be binding on and be for the benefit of the Manager, the Supervisor, and the Unit Holders as if each such Unit Holder were a party hereto.

34 Limitation of Liability of Unit Holders

34.1 Notwithstanding any provision of this deed (other than clause 20.2) or any provision deemed to be included in this deed no Unit Holder shall by reason alone of being a Unit Holder or by reason alone of the relationship hereby created with the Supervisor or with the Manager be under any obligation personally to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency of Assets as compared with the liabilities of the Supervisor and the Manager in relation thereto, and the rights (if any) of the Supervisor or Manager or of such creditor in respect of the Trust to seek indemnity shall be limited to having recourse to the Trust and shall not extend personally to the Unit Holders or any of them by reason of their capacity as such under this deed.

35 Inspection of Deed

35.1 A copy of this deed, each Establishment Deed, together with copies of all deeds supplemental hereto (if any) shall at all times during usual business hours be made available by the Manager at the office of the Manager for inspection by Unit Holders.

36 Money payable to Unit Holders

36.1 Any money payable by the Supervisor or by the Manager to a Unit Holder under the provisions of this deed will be paid to an account (of a bank or financial institution) nominated by the Unit Holder or joint Unit Holders or any one of them, or otherwise paid in accordance with clause 12.7. Payment in accordance with this clause will be a full satisfaction of the money payable and will be a good discharge to the Supervisor and to the Manager.

37 Unclaimed payments

37.1 If any payment made to any Unit Holder is returned or otherwise unclaimed, the amount thereof shall be retained by the Manager for such Unit Holder without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of this deed be part of the Trust, but such amount may be invested in the Trust and any proceeds from such amount shall become property of the Trust. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager. After forfeiture of any amount pursuant to this clause the person who would have been entitled to payment of such amount had it not been forfeited, shall be entitled to payment from the Manager of any amount equal to such forfeited amount upon adducing sufficient evidence to satisfy the Manager that he or she would have been entitled to such amount had it not been forfeited.

38 Minimum economic amount

38.1 Neither the Supervisor nor the Manager shall be obliged to undertake any transaction for which a payment or transfer would be for an amount less than the out of pocket costs of effecting it.

39 Severance

39.1 Ability to read down clauses

If a provision of this deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.

39.2 Severance of invalid clause

Notwithstanding clause 39.1 if a provision of this deed is still void or voidable or unenforceable or illegal:

- a if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and

- b in any other case, the whole provision is hereby severed,

and the remainder of this deed has full force and effect.

40 Governing law

40.1 This deed shall be governed by and construed in accordance with New Zealand law.

41 Counterparts

41.1 This deed may be executed in two counterpart copies both of which, when taken together, shall constitute one and the same instrument. The parties may execute this deed by signing either such counterpart copy.

42 Provisions relating to Crown Retail Guarantee Scheme

42.1 Definitions

Unless the context otherwise requires, in this clause:

'Crown Guarantee' means, in relation to a Fund, the Relevant Guarantee and the Relevant Deed of Nomination;

'Crown Guarantee Account' means, in relation to a Fund, an account into which all Crown Guarantee payments received by the Supervisor are credited until they are distributed or credited to Relevant Persons;

'Deed of Nomination' means:

- a in relation to the Kiwibank PIE Online Call Fund and Kiwibank PIE Term Deposit Fund, the Crown Deed of Nomination (Unit Trust) dated on 3 April 2009 as amended with effect from 30 December 2009 between the Crown, the Manager and the Supervisor; and
- b in relation to any other Fund, any Nomination entered into between the Crown, the Manager and the Supervisor in respect of that Fund;

'Relevant Deed of Nomination' means, in relation to a Fund, the Deed of Nomination entered into in respect of that Fund;

'Relevant Fund' means a Fund in respect of which a Deed of Nomination has been entered into;

'Relevant Guarantee' means the Deed of Guarantee between Kiwibank Limited and the Crown executed on 29 October 2008; and

'Retail Deposit Guarantee Scheme' means the Crown Retail Deposit Guarantee Scheme established by the Minister of Finance on 12 October 2008.

42.2 Crown Guarantee Definitions

Unless the context otherwise requires, in this clause 42 any term defined in the Relevant Guarantee or the Relevant Deed of Nomination and not defined in this deed, shall have the meaning given in those documents.

42.3 Manager's Powers

In addition to, and without limiting, clause 21 or any other provisions of this deed or an Establishment Deed, the Manager may execute all documents, take all steps and do all things that the Manager thinks necessary or desirable from time to time in its absolute discretion to enter into, comply with, perform its obligations and exercise any rights under, obtain the benefit of, and administer the Crown Guarantee, including without limit:

- a to enter into any Deed of Nomination;
- b to ensure that any Relevant Fund continues to be eligible for the Crown Guarantee; and
- c to determine whether or not any Unit Holder is a Relevant Person, and the amount of any Crown Guarantee payment to which any Unit Holder may be entitled.

42.4 Requests for information

The Manager may from time to time request any information from Unit Holders that it deems necessary or desirable to determine whether or not that Unit Holder is a Relevant Person, the amount of any Crown Guarantee payment to which that Unit Holder may be entitled, or otherwise in relation to the administration of the Crown Guarantee. Each Unit Holder must comply with any such request within 30 days of receiving it, and the Manager may, in its absolute discretion, withhold the distribution of any Crown Guarantee payment to that Unit Holder until the Unit Holder complies with that request.

42.5 Crown Guarantee Account

Notwithstanding clauses 10, 11, 19 or 29, an amount received under the Crown Guarantee in respect of a Relevant Fund shall be allocated to that Relevant Fund's Crown Guarantee Account. All amounts distributed pursuant to clause 42.6 shall be deducted from the Relevant Fund's Crown Guarantee Account.

42.6 Distributions

Amounts held in a Relevant Fund's Crown Guarantee Account pursuant to a Crown Guarantee payment shall be held for the benefit of Relevant Persons in proportion to each respective Relevant Person's Capped Amount (as defined in the Relevant Deed of Nomination) for payments under that Crown Guarantee, and may be distributed or credited in such proportions to such Relevant Persons, at such times as the Manager shall decide and otherwise in accordance with the Unit Holder's instructions.

42.7 Costs

To the fullest extent permitted by law all costs associated with receiving and paying out the proceeds of the Crown Guarantee, enforcing the Crown Guarantee and administering the Crown Guarantee Account in respect of a Relevant Fund shall be deducted from that Relevant Fund's Crown Guarantee Account.

42.8 Portfolio Investor Proxy

Neither the Manager nor the Supervisor shall have any liability or obligation to any Relevant Person or any Portfolio Investor Proxy in connection with a Portfolio Investor Proxy's failure to hold Units in a Relevant Fund as bare trustee for any Relevant Person.

42.9 No change to Investment Policies

Notwithstanding clause 15 and any Establishment Deed, the Investment Policy of each Relevant Fund may not be amended so that it causes the Relevant Fund to become ineligible for the Crown Guarantee.

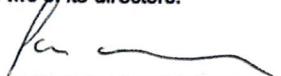
42.10 Conflicts with this clause

For the avoidance of doubt, where this clause 42 conflicts with any other provisions of this deed or an Establishment Deed, this clause 42 is to prevail.

Execution

Executed as a Deed

Signed for and on behalf of
Kiwibank Investment Management Limited
by two of its directors:



Director's signature
Paul Chambers

Director's name



Director's signature
Elliot Smith

Director's name

Signed for and on behalf of Public Trust by its attorney
in the presence of:



Attorney's signature

Ireen Muir Head of Client Services Corporate Trustee Services Public Trust Wellington
--

Witness signature



Full name

Mike Matuszek
Manager Client Services
Corporate Trustee Services
Public Trust
Wellington

Occupation

Corporate Trustee Services

Town/city

Wellington

witness:


Keryn Hewitson
Solicitor
AUCKLAND