

Premium Income Fund

NSX Release: 20 July 2009



Wellington

Mercedes Holdings Pty Ltd & Ors v KPMG & Ors – Class Action

Wellington Capital Limited, as responsible entity of the Premium Income Fund, has been advised by IMF (Australia) Limited (ASX:IMF) ('IMF') that documentation has been mailed to all Unitholders in the Premium Income Fund for the purposes of the class action proceedings currently before the Federal Court of Australia.

IMF is seeking to ascertain which Unitholders wish to join the current Applicants in this proceeding against the partners of KPMG as auditors of the Premium Income Fund and those persons who were directors of MFS Investment Management Limited (now called Wellington Investment Management Limited) on or before 29 January 2008 in respect of alleged breaches of the *Corporations Act 2001* (Cth).

A copy of the IMF documentation follows this release.

Unitholders should carefully read the IMF documentation and note that if a Unitholder wishes to have an opportunity to join the class action funded by IMF, the Funding Agreement must be returned to IMF by **3 August 2009**.

Unitholders should note that the proceedings proposed to be funded by IMF will be for a 'closed class'. Unitholders will not be included as a member of the class simply because they held units in the Premium Income Fund as at 29 January 2008. One of the criteria for membership of the class is entry into a Funding Agreement with IMF prior to 3 August 2009. Any settlement of the funded class action will be for the benefit of the class members only.

As advised on 26 June 2009, following negotiations with the Applicants' legal representative these proceedings have by mutual agreement agreed to be discontinued against Wellington Investment Management Limited with no order as to costs. This means that Wellington Investment Management Limited will not be a party to these proceedings going forward.

Unitholders with queries in relation to the IMF documentation should contact IMF directly:

Mr Tim McLernon

Toll Free 1800 016 464

Direct: +618 9225 2300

Email tmclernon@imf.com.au

For further information please contact:

Jenny Hutson
Chairperson
Wellington Capital Limited
as responsible entity of the Premium Income Fund
ACN 114 248 458 AFSL 291 562

Phone: 1300 854 885

Email: investorrelations@newpif.com.au



Contact: Tim McLernon
Toll Free: 1800 016 464
Direct Line: + 61 (0)8 9225 2300
Email: tmclernon@imf.com.au

17 July 2009

"Confidential"

Dear Unit Holder

Premium Income Fund ("PI Fund") unit holder action against partners of KPMG and directors of the Responsible Entity

1. IMF (Australia) Ltd ("IMF") is proposing to fund a unit holder class action conducted by Carneys Lawyers against partners of KPMG and the directors of the Responsible Entity, Wellington Investment Management Ltd (formerly MFS Investment Management Ltd) ("MFSIM"), to the Premium Income Fund (the "PI Fund") for losses caused by alleged breaches of the Corporations Act.
2. Subject to receiving sufficient signed KPMG Funding Agreements from affected unit holders, IMF is proposing to fund a class action for unit holders who held units in the PI Fund as at 29 January 2008.
3. Please find attached:
 - a) Overview of the Claim;
 - b) Frequently Asked Questions;
 - c) IMF's Combined Financial Services Guide and Product Disclosure Statement; and
 - d) KPMG Investigation, Management and Funding Agreement.
4. If you wish to have the opportunity to join the proposed class action funded by IMF, you need to complete and **return** to IMF **by 3 August 2009** the **first two pages** of IMF's KPMG Funding Agreement (please in particular sign and date the first page). **It is very important that you provide us with the correct name of the registered holder of the units.** This information will help validate your claim in the event of a successful outcome to any proceedings.
5. You should carefully read the KPMG Funding Agreement to fully understand its terms and conditions. However, in summary, IMF offers to conduct an investigation into your potential claim against the partners of KPMG and directors of MFSIM (the "**Respondents**"), and to pay for any legal proceedings brought against the Respondents on your behalf in accordance with the terms of the KPMG Funding Agreement. IMF also agrees to pay any legal costs awarded to the Respondents if any legal action taken on your behalf is not successful (in Australia, the losing side in litigation is typically ordered to pay a proportion of the winning side's costs).

6. Unless you are successful in obtaining either a settlement or judgment against the Respondents,

Level 5, 32 Martin Place
Sydney NSW 2000
GPO Box 5457
Sydney NSW 2001
T +61 2 8223 3567
F +61 2 8223 3555

Level 6, 37 St George's Terrace
Perth WA 6000
PO Box Z5106
Perth WA 6831
T +61 8 9225 2300
F +61 8 9225 2399

Level 5, 232 Adelaide Street
Brisbane QLD 4000
GPO Box 2222
Brisbane QLD 4001
T +61 7 3221 7651
F +61 2 8223 3555

Level 3, 480 Collins Street
Melbourne VIC 3000
#146565_2
T +61 3 9629 1211
F +61 2 8223 3555

you will not have to make any payments. If you are successful, you will only be required to make the payments referred to in Clause 12 of the KPMG Funding Agreement.

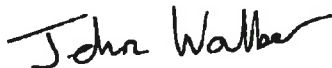
7. **Please return the material referred to in paragraph 4 above. If possible, could you please scan and email the documents to tmclernon@imf.com.au and post the original documents to the address below:**

**IMF (Australia) Ltd
PO Box Z5106
St George's Terrace
PERTH WA 6831**

Please ensure you include details of all your purchases and redemptions of units in the Fund and the number of units you still hold (if any).

8. Once you sign the KPMG Funding Agreement, you have a 21 day cooling off period, so if you change your mind during that period just let us know and you will be excluded from any legal action funded by IMF which may be taken against the Respondents.
9. IMF is licensed as an Australian financial services provider and is listed on the Australian Securities Exchange ("**ASX**"). You can find details about IMF at www.imf.com.au. We are required by law to provide you with information regarding our business.
10. If you have any queries about this proposed action, please contact Tim McLernon of IMF on toll free 1800 016 464 or at tmclernon@imf.com.au.

Yours faithfully,



**John Walker
Executive Director
IMF (Australia) Ltd**

KPMG / MFS PREMIUM INCOME FUND

OVERVIEW OF THE CLAIM¹

1 The Claim

1.1 The funded proceedings is proposed to be against:

- (a) directors of Wellington Investment Management Ltd (formerly MFS Investment Management Ltd) ("**MFSIM**") the Responsible Entity of the Premium Income Fund (the "**PI Fund**") alleging they breached the Corporations Act 2001 ("**the Act**") in relation to related party transactions in 2006 and 2007 (the "**Transactions**"); and
- (b) partners of KPMG alleging they breached the Corporations Act in relation to their audit of the PI Fund's Compliance Plan; and
- (c) potentially other respondents for whom IMF (Australia) Ltd ("**IMF**") accepts adverse cost order liability.

1.2 The Transactions are alleged to have been entered into without approval by the members of the PI Fund in contravention of the Act.

1.3 It is further alleged that KPMG, as auditor of the PI Fund's Compliance Plan, was aware of circumstances sufficient to give rise to a reasonable suspicion that the Transactions, without member approval, were in breach of the PI Fund's Compliance Plan and the Act.

1.4 The principal allegations against the partners of KPMG is that they contravened s601HG(4)(c) of the Act by failing to report to the Australia Securities & Investments Commission ("**ASIC**") that the Transactions, without member approval, contravened s208(1) of the Act, as modified by s601LC.

1.5 In particular, it is alleged that:

- (a) KPMG's September 2005 Audit Report ought to have noted that MFSIM contravened Section 208(1) of the Act, as modified by Section 601LC, by lending related party MFS Pacific Finance \$5 million on an unsecured basis; and accordingly
- (b) by 1 January 2006, ASIC would have taken action to restrict subsequent breaches or members would have ceased to invest in the PI Fund.

1.6 The members' primary case is that if the partners of KPMG had properly performed their functions, then MFSIM would not have entered into or continued to enter into the Transactions with the consequence that the losses to the PI Fund would have been avoided.

1.7 PI Fund members who held units as at 29 January 2008 suffered loss caused by MFSIM entering into the Transactions.

¹ This overview does not constitute legal advice and should not be relied upon as constituting legal advice. The Lawyers will advise claimants separately on the validity and value of their claims as appropriate.

IMF#146845v1

2 Claim Group

2.1 IMF is offering to fund the proposed proceedings.

2.2 It is anticipated that the claim group will comprise unit holders who:

- (a) held units in the PI Fund on 29 January 2008;
- (b) suffered loss or damage by or from the conduct of the partners of KPMG and / or the directors of the MFSIM; and
- (c) have, as at 3 August 2009, entered into a litigation funding agreement with IMF.

CLASS ACTION BY UNIT HOLDERS OF THE PREMIUM INCOME FUND FREQUENTLY ASKED QUESTIONS

1. Who is IMF?

IMF (Australia) Ltd (“IMF”) is a public company listed on the Australian Securities Exchange (ASX code: IMF). IMF holds an Australian Financial Services Licence, number 286906. IMF provides funding for significant and large-scale litigation. Information about IMF and the major cases being funded by it can be found on the IMF website at www.imf.com.au

2. Who is the claim against and what is the claim for?

The claim is against directors of Wellington Investment Management Limited (formerly MFS Investment Management Ltd) (“MFSIM”), the Responsible Entity of the Premium Income Fund (the “PI Fund”), and partners of KPMG in respect of alleged breaches of the Corporations Act 2001.

The claim will be on behalf of unit holders in the PI Fund as at 29 January 2008.

The claimants will allege an entitlement to compensation and/or damages for losses caused by the alleged breaches.

3. Why is this class action being funded by a third party?

In Australia, law firms are not ethically permitted to act on a contingency fee basis and may seek funding for major legal proceedings from a litigation funder, such as IMF. The law firm is paid on an hourly rate by the funder and the funder is paid its costs and a percentage from any settlement or judgment proceeds. It is proposed that IMF provide litigation funding to law firm Carneys Lawyers (“the Lawyers”) who will conduct proceedings against directors of MFSIM and partners of KPMG on the unit holders behalf.

4. When must I have held units in the PI Fund to be eligible?

To be eligible to claim, you must have held units in the PI Fund as at 29 January 2008. We ask that if you wish to participate in the proposed class action, you inform IMF of all of your acquisitions and redemptions of units in the Fund when you return your signed KPMG Funding Agreement to us.

You do not have to have redeemed your units and crystallised your loss to be included in the proposed class action. That is, you may still hold some or all of the units you held at 29 January 2008 to be eligible.

5. How much is my claim?

Assuming that either the directors of MFSIM and/or KPMG are found to have engaged in misconduct during the Relevant Period which caused you loss, the size of your claim depends upon how the Court assesses your loss.

The methodology that a Court may ultimately adopt when assessing your loss is not yet settled in Australian law. It may, for example, be your share of the diminution in the value of the net assets of the PI Fund caused by the Transaction (“Your Loss Share”).

In due course, you will receive an estimate of Your Loss Share based on your unit holding at 29 January 2008.

While this calculation will give you an idea of your possible loss on one of the methods which might be employed by the Court, all claims will be the subject of further investigation and legal advice and your loss figure may change. In providing the estimate, IMF does not guarantee that you will be held to have suffered any loss or any particular level of loss.

6. What will the claim cost?

IMF will conduct the investigation into your claim at its own expense. Further, any legal proceedings will be funded by IMF on a “no win, no pay” basis. This means that you do not have to pay anything in the event that your claim is unsuccessful. If your claim is successful, IMF will be entitled to a commission, management fee and the reimbursement of the costs it has paid, but only from what is recovered.

7. What will it cost if any legal proceedings are not successful?

Nothing – subject to the terms of the KPMG Funding Agreement, IMF will pay any costs order which may be made against you if you act as a representative applicant (in Australia, the losing side in litigation is typically ordered to pay a proportion of the winning side’s costs) and will provide any security for costs ordered by a court in relation to any legal proceedings. If you are a class member only (and not a representative), the Court has no power to make a costs order directly against you in any proceedings brought by the representative.

8. What will IMF receive?

If any proceedings are brought and are successfully resolved, IMF will receive a return of the costs it has paid, a Project Management Fee based on those costs and between 25% and 35% of the recovery proceeds for your claim, depending upon the time it takes to achieve the recovery. Clause 12.1 of the KPMG Funding Agreement, which is enclosed with these FAQs, sets out IMF’s commission.

9. How long will any legal proceedings take?

We expect any proceedings will take between twelve months and three years or more from their commencement to resolve.

10. Where will the legal proceedings be prosecuted?

The claim will be prosecuted in the Federal Court of Australia.

11. Do I have to sign a Funding Agreement to “participate”?

Yes - the proceedings proposed to be funded by IMF will be for a “closed class”. One of the criteria for membership of the class is entry into a KPMG Funding Agreement with IMF prior to 3 August 2009. You will not be included as a member of the class simply because you held units in the PI Fund as at 29 January 2008. Any settlement of the funded class action will be for the benefit of class members only.

12. Who should sign the Funding Agreement if the units are registered in the name of a custodian or nominee company?

Generally the KPMG Funding Agreement should be signed by the registered holder of the units that were acquired during the Relevant Period. IMF will, however, accept a

KPMG Funding Agreement signed by the beneficial owner of the units if there is a custodian or nominee company registered as the owner of those units and that entity is unwilling or unable to sign the agreement.

13. Is there any precondition to the commencement of funding of the proceedings by IMF?

Yes. There needs to be sufficient (estimated) losses by persons who sign KPMG Funding Agreements to make the proceedings commercially viable. IMF will inform you if funded proceedings are ultimately not viable.

14. What if I decide to withdraw from the action?

You may opt out of the class action in accordance with a notice that will be sent to you in the course of the proceedings. If you choose to opt out, you will no longer be included in the proceedings and your KPMG Funding Agreement will terminate. However, some terms of the KPMG Funding Agreement you signed will continue to apply with the effect that if you receive a settlement or judgement after you opt out, you will remain liable to pay your share of IMF's commission, management fee and costs that IMF has paid from any recovery you receive (see clause 20.3 of the KPMG Funding Agreement).

15. Will my contact and investment details be kept private?

We will only use and/or disclose your personal information strictly for the purpose of the legal proceedings, or as required by the Court or by law or as requested by the Lawyers. In all other cases, we will seek your consent before disclosing any of your personal information. We will not disclose any personal information to third parties, including other unit holders funded by IMF. IMF's privacy policy can be found under the Corporate Governance Section of the IMF website at www.imf.com.au.

16. How much time will I have to devote to the legal proceedings?

Initially we will only require you to provide the information referred to in the first two pages of the KPMG Funding Agreement. Ultimately you may need to provide further information about your claim, including providing a written witness statement and possibly you may need to give evidence in Court. Provided you are not a representative party, it is extremely unlikely that you will be required to provide evidence until after the representative party's case has been determined by the Court.

17. What do I have to do to join the claim?

In order to participate in the proposed class action to be funded by IMF you must sign a KPMG Funding Agreement and return it to IMF prior to the cut-off date specified in the covering letter.

1. APPLICANT DETAILS

PLEASE PRINT IN CAPITAL LETTERS

Note: The Applicant must have acquired units in the PI Fund (being those units the details of which are sought on the next page). If the Applicant is a trustee please specify "as trustee for [Insert Name]":

Full Name of Applicant:

If Applicant is a company insert ABN/ACN/
Registration No. (if overseas Company):

Street Address:
(not PO Box)

Suburb/Town:

State:

Postcode:

Country:

2. CONTACT DETAILS (This is the party to whom all correspondence will be sent, including any cheques)

PLEASE PRINT IN CAPITAL LETTERS

Contact Name:

(TITLE)

(FIRST NAME)

(SURNAME)

Street Address:
(not PO Box)

Suburb/Town:

State:

Postcode:

Country:

Contact Email:

(Our preferred method of correspondence is by email. Please keep IMF informed of your current email address.)

Phone:

Mobile:

3. SIGNING OF THE KPMG INVESTIGATION, MANAGEMENT & FUNDING AGREEMENT

Signing below operates as the Applicant's agreement to this KPMG Investigation, Management & Funding Agreement, and is subject to the cooling off period referred to in clause 3.

SIGNED by, or on behalf of and with
the authority of, the **Applicant** (as
specified above)

SIGNATURE

SIGNATURE

PRINT NAME

PRINT NAME

DATE: / /

DATE: / /

SIGNED by IMF (Australia) Ltd

John Walker

Diane Jones

John Walker
DIRECTOR

Diane Jones
COMPANY SECRETARY

DATE: / /

DATE: / /

4. INVESTMENT DETAILS FOR MFS Premium Income Fund Units

If your PI Fund units were or are held under different registered names, or the holdings have different SRN/HIN numbers, please copy and complete this page for each holding.

Full Name of Registered Owner:
(name of entity on the share register):

5. TRADE DETAILS FOR MFS Premium Income Fund Units

PLEASE:

(A) ATTACH HOLDING STATEMENTS AND/OR CONTRACT NOTES IF AVAILABLE; and

(B) ATTACH TRADE INFORMATION IN EXCEL FORMAT, IF THE APPLICANT IS CLAIMING ON BEHALF OF MULTIPLE FUNDS.

OPENING BALANCE:

Number of units held on 1 January 2006

PURCHASES

LIST PURCHASES FROM 1 JANUARY 2006 TO
29 JANUARY 2008 INCLUSIVE

TRADE DATE	QUANTITY	GROSS PRICE PAID (incl. brokerage)

REDEMPTIONS

LIST REDEMPTIONS FROM 1 JANUARY 2006 TO 29 JANUARY
2008 INCLUSIVE

TRADE DATE	QUANTITY	NET PRICE RECEIVED

CLOSING BALANCE:

Number of units held on 29 January 2008

If there is not sufficient space on this page for all of your relevant information, please copy & attach additional pages. You should retain a copy for your records.

RETURN the FRONT TWO PAGES to IMF

RECITALS

- A. IMF is licensed as a commercial agent and as a private inquiry agent in New South Wales and is entitled to be licensed as such under mutual recognition legislation in other States of Australia.
- B. IMF is the holder of Australian Financial Services License Number 286906.
- C. The Applicant has one or more Claims and other persons have claims which are the same or similar to the Claims.
- D. A Class Action has been commenced against the Respondents in respect of some or all of the Claims and the Other Claims.
- E. The Applicant has requested IMF to provide the management and funding components of the Project. The Applicant consents to IMF conducting such investigations as IMF may consider appropriate.
- F. IMF is prepared to conduct the Project Investigation and Project Management and pay the Project Costs pursuant to the terms of this IMF Agreement.
- G. IMF proposes to enter into an agreement with the Lawyers in the same or similar terms as the Standard Lawyers Terms.
- H. The Applicant is aware that IMF will also provide funding to Other Funded Persons and may fund other actions against the Respondents unrelated to the Claims.
- I. The Applicant is aware that where the Applicant has more than one Claim, it is possible that separate Proceedings will be instituted against different Respondents in relation to those Claims.
- J. The Applicant is aware that his, her or its Claims may be pursued in common with some but not all of the Other Claims and may be against one or more Respondent.
- K. The Applicant acknowledges that IMF has, by virtue of its obligations and entitlements (including to receive a percentage of the Resolution Sum) set out in this IMF Agreement, an interest in the Claims and the Proceedings.

AGREEMENT

1. Definitions

1.1. In this IMF Agreement, unless the contrary intention appears:

“Acquisition” has the same meaning as in the GST Act

“Adverse Costs Order” means any costs order made in favour of the Respondents (or any of them) in the Proceedings in respect of costs incurred during the term of this IMF Agreement.

“Applicant” means the company or individual whose details appear on the front page of this IMF Agreement and the successors or assigns of that company or individual.

“Applicant’s Share” means the share borne by the Applicant calculated by reference to the proportion that the amount of the Claims the subject of the Proceedings or the Settlement concerned bears to the total amount of the claims of all Funded Persons the subject of the Proceedings or the Settlement concerned. Where there are no other claims so subject, then the Applicant’s Share is 100%. The amount of the Claims and the claims of all Funded Persons and the Applicant’s Share will be determined by the Lawyers.

“Claims” means the claims the Applicant has or may have against some or all of the Respondents for loss and damage caused to the Applicant by the conduct of one or more of the

Respondents in the period 1 January 2006 to 29 January 2008, inclusive, or such other period as the Lawyers advise and IMF accepts.

“Class Action” means proceedings commenced under Part IVA of the *Federal Court of Australia Act 1976 (Cth)* against the Respondents.

“Consideration” has the same meaning as in the GST Act

“Costs Order” means an order made by a Court requiring one or more parties to any of the Proceedings and/or IMF to pay the costs incurred by another party or other parties to the Proceedings.

“Court” means the court in which the Proceedings are conducted.

“Date of Commencement” means the date this IMF Agreement signed by the Applicant is received by IMF.

“External Controller” means:

- (a) in relation to an individual, the Official Trustee in Bankruptcy, an Official Receiver in Bankruptcy, a trustee in bankruptcy and a controlling trustee; and
- (b) in relation to a body corporate, an administrator (including a voluntary administrator and an administrator under a deed of company arrangement, scheme of arrangement, compromise or other arrangement), a provisional liquidator and a liquidator.

“Funded Person” means the Applicant and any person who has entered or enters into an Other Funding Agreement.

“GST” has the same meaning as in the GST Act.

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“IMF” means IMF (Australia) Limited (ACN 067 298 088).

“IMF Agreement” means this agreement between the Applicant and IMF and, if amended, this agreement as amended and (for the avoidance of doubt) includes Schedules 1, 2 and 3.

“Input Tax Credit” has the same meaning as in the GST Act.

“Investigation Product” means all information, documentation, analyses, results and conclusions obtained, conducted or reached (as the case may be) by IMF in or as a result of the Project Investigation.

“Judgment” means any judgment of a competent Court against one or more of the Respondents in respect of any Claim or Other Claim or part of any Claim or Other Claim.

“Lawyers” means Carneys Lawyers of Level 5, 70 Castlereagh Street Sydney NSW 2000 or any other solicitors appointed in their place as agreed between IMF and the Representative.

“Legal Work” means advice and other legal services which the Lawyers consider reasonably necessary to prosecute the Proceedings.

“Other Claims” means claims Other Funded Persons have or may have against some or all of the Respondents for loss and damage caused to those Other Funded Persons by the conduct of one or more of the Respondents which claims are the same or similar to the Claims.

“Other Funding Agreement” means any agreement for the provision of funding by IMF to a person with Other Claims.

“Other Funded Persons” means all persons who enter into or have entered into Other Funding Agreements.

“Pre Project Costs” means the costs and disbursements of Carneys Lawyers incurred in respect of the Project up to 30 June 2009 to a maximum of \$150,000.

“PI Fund” means the Wellington Premium Income Fund (formerly called the MFS Premium Income Fund).

“Privilege” unless the context otherwise requires, means legal professional privilege and includes any joint privilege and common interest privilege.

“Proceedings” means any and all Class Actions to prosecute and/or resolve all or some of the Claims and all or some of the Other Claims, proceedings brought in contemplation of a Class Action including without limitation proceedings for preliminary discovery, and any other proceedings or process as part of or consequent on a Class Action to prosecute and/or resolve all or some of the Claims and/or all or some of the Other Claims. If any of the Respondents (or any of their assets) come under the control of an External Controller, the Proceedings will also include all relevant methods of pursuing some or all of the Claims in that context including the lodgement of proofs of debt.

“Project” means the Project Investigation and the Project Management and the conduct of the Proceedings in order to achieve Resolution of the Claims and the Other Claims, with the aim of maximising Settlement or judgment proceeds, net of costs, in respect of the Claims and the Other Claims as quickly as possible, having due regard to all risks, and, in particular, the Proceedings being unsuccessful.

“Project Estimates and Time Line” means the set of estimates (inclusive of any GST payable) and time line for the Project prepared by IMF and the Lawyers at the Commencement of the Standard Lawyers Terms in the format of Schedule 2 to this IMF Agreement and any amended or varied Project Estimate and Time Line from time to time accepted by IMF.

“Project Costs” means those costs and expenses incurred during the term of this IMF Agreement, comprising:

- (a) the costs and expenses associated with the Project Investigation and Project Management;
- (b) the costs involved in the provision by IMF of any security for costs;
- (c) any Adverse Costs Order paid by IMF;
- (d) the reasonable legal costs and disbursements of the Lawyers incurred for the sole purpose of prosecuting and/or resolving the Proceedings;
- (e) all of IMF's out of pocket costs and expenses paid or incurred in relation to the Project, including in relation to any consultants engaged by IMF (other than those costs and expenses already referred to in this definition); and
- (f) any GST payable on any Supply made by any entity as a result of the above costs or expenses being incurred.

“Project Investigation” means the investigation referred to in clause 4.1 of this IMF Agreement.

“Project Management” means the management described in clause 7 of this IMF Agreement.

“Project Management Fee” means a fee, payable as Consideration for the Project Management and calculated as 15% of the total Project Costs.

“Remaining Costs” means the amount which is determined as being payable by IMF pursuant to term 7 of the Standard Lawyers Terms.

“Representative” means any Funded Person who is a representative party in the Class Action.

“Resolution” means when all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, or where there is more than one Proceeding, a “Resolution” occurs each time a part is received and in respect of each Proceeding.

“Resolution Sum” means the amount or amounts of money or the value of goods, services or benefits for which the Claims are Settled, or for which Judgment is given in favour of the Applicant in any Proceedings and includes any interest pursuant to an order or by agreement. The Resolution Sum will include any ex gratia payments, and any payments in respect of the Claims where the Respondents or any of their assets are, or comes under, the control of an External Controller.

“Respondents” means the directors of Wellington Investment Management Ltd referred to in the Statement of Claim filed in the Class Action, Andrea Jane Waters and the persons listed in Schedule B to the Statement of Claim trading as KPMG and any others against whom Proceedings are commenced and in respect of whom IMF accepts Adverse Costs Order exposure.

“Settlement” means any settlement, compromise, discontinuance or waiver, except where approval of the Court is required, in which case it means any settlement, compromise, discontinuance or waiver with the approval of the Court and “Settles” shall be construed accordingly.

“Standard Lawyers Terms” means the terms and conditions attached as Schedule 1 to this IMF Agreement.

“Supply” has the same meaning as in the GST Act.

“Taxable Supply” has the same meaning as in the GST Act.

“Termination” means:

- (a) a termination in accordance with clauses 19 or 20; and
- (b) any completion, failure, avoidance, rescission, annulment or other cessation of effect of this IMF Agreement.

“Trust Account” means the account referred to in clause 9.1(b).

2. General

- 2.1. The written terms of this IMF Agreement constitute the entire agreement between the parties.
- 2.2. Neither the Applicant nor IMF intend to be partners or fiduciaries with or to each other. Nothing in this IMF Agreement shall constitute the Applicant and IMF as partners or fiduciaries.
- 2.3. There will be no variation or amendment to the terms of this IMF Agreement except in writing signed by each of the Applicant and IMF.
- 2.4. A facsimile transmission of this IMF Agreement signed by any party to it will be treated as an original signed by that party.
- 2.5. If any provision of this IMF Agreement, or the application thereof to any person or circumstances, shall be or become invalid or unenforceable, the remaining provisions shall not be affected and each provision shall be valid and enforceable to the full extent permitted by law.
- 2.6. The Applicant and IMF will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this IMF Agreement and any transaction contemplated by it.
- 2.7. The singular includes the plural in this IMF Agreement and vice versa.

3. Cooling Off Period

- 3.1. The Applicant may, by written notice given to IMF within 21 days after the Date of Commencement, withdraw from this IMF Agreement. Such withdrawal will cause this IMF Agreement to terminate but will not be treated as a Termination. Time is of the essence.
- 3.2. If the Applicant withdraws in accordance with clause 3.1, the Applicant shall have no continuing or further obligation to IMF save for any obligations of confidence arising in respect of information received by the Applicant prior to the withdrawal. Nothing in clause 3.1 shall derogate from any obligations in relation to Privilege attaching to any information received by the Applicant or IMF prior to the withdrawal.

4. Project Investigation

- 4.1. The Applicant acknowledges that by virtue of the terms of this IMF Agreement, IMF has an interest in the outcome of the Proceedings and hereby consents to IMF:
 - 4.1.1. investigating the evidentiary basis for the Claims (documentary and oral);
 - 4.1.2. collating the material documents and obtaining statements;
 - 4.1.3. investigating the capacity of the Respondents to meet any award or order made against them relating to the Claims;
 - 4.1.4. investigating the interest of the Respondents to resolve the Claims by non-litigious means;
 - 4.1.5. investigating any other matter that IMF determines is relevant to the Claims;
 - 4.1.6. designing and implementing any process for the resolution of the Claims and the Other Claims, other than through legal proceedings; and
 - 4.1.7. reviewing and analysing the documents to be provided by the responsible entity for the PI Fund.
- 4.2. The Applicant will provide, or procure the provision of, such information, documentation and assistance as IMF may reasonably request in order to conduct the Project Investigation on the basis that the information and documentation is confidential in accordance with clause 14.3 hereof, provided for the purpose of resolving the Claims, remains the exclusive property of the Applicant and will be returned by IMF at the conclusion of the Project.
- 4.3. Notwithstanding clause 4.2 the Applicant agrees that any information and documentation provided to IMF may be used by IMF in the Project Investigation and may be disclosed by IMF for the purposes of the Proceedings.
- 4.4. The Applicant hereby authorises IMF to seek and obtain any information and documentation which IMF believes may be relevant to the Claims from any person or entity.
- 4.5. The Applicant consents to IMF providing a copy of this IMF Agreement to third parties who request evidence of the authority granted to IMF pursuant to clause 4.4.
- 4.6. IMF may, in its absolute discretion, communicate with the Applicant from time to time about the progress and results of the Project Investigation.
- 4.7. Without derogating from anything else in this clause 4, IMF may use the Investigation Product:
 - (a) to assist the preparation or prosecution of any proceedings to which this IMF Agreement or Other Funding Agreements apply;
 - (b) to monitor its actual and potential obligations under this IMF Agreement and Other Funding Agreements;

- (c) to review whether it provides or continues to provide funding in respect of the Claims and the Other Claims or some of the Claims or the Other Claims;
- (d) to obtain legal or financial advice, or financial services, in connection with or in support of its performance of this IMF Agreement and Other Funding Agreements; and
- (e) in any alternative process set up under clause 4.1.6 hereof.

4.8. IMF may retain and use the Investigation Product as set out in clause 4.7 notwithstanding any Termination or withdrawal by the Applicant pursuant to clause 3.1.

4.9. IMF may, in its absolute discretion, provide the Lawyers with some or all of the Investigation Product.

5. Proceedings

5.1. The Applicant agrees:

- (a) that the Representative will determine, in consultation with the Lawyers and IMF what Claims and Other Claims should be pursued in the Proceedings;
- (b) that, subject to clause 13 of this IMF Agreement, IMF will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings and may give binding instructions to the Lawyers and make binding decisions on behalf of the Applicant in relation to the Claims and the Other Claims; and
- (c) that the Lawyers may determine the amount of the Claims and the Other Claims and the Applicant's Share of the amounts referred to in clause 12.1(a) and (b) hereof.

6. Obligations of Applicant

6.1. The Applicant must:

- (a) do anything reasonably requested by IMF and / or the Lawyers promptly in such manner as to avoid unnecessary cost and delay to the Project;
- (b) inform the Lawyers and IMF of any change in contact details or any information, circumstance or change in circumstances likely to affect any issue in any of the Proceedings;
- (c) provide full and honest instructions to the Lawyers;
- (d) conduct all Proceedings relevant to his, her or its Claims and the Other Claims in such manner as to avoid unnecessary cost and delay; and
- (e) subject to this IMF Agreement, accept and follow the Lawyers' reasonable legal advice, including advice as to any compromise of the Claims.

6.2. The Applicant agrees to keep and preserve any documents relating to the Respondents, the Proceedings and or the Claims and Other Claims that the Applicant has in his, her or its possession, custody or control and the Applicant:

- (a) will provide to the Lawyers all information and documents relevant to the Proceedings and the Claims and Other Claims if and when so requested by the Lawyers;
- (b) authorises the Lawyers, without waiving privilege, to provide the information and documents referred to above to IMF; and
- (c) if ordered to do so by a Court in any Proceedings, relevant to his, her or its Claims authorise the Lawyers to provide the information and documents to the Respondents and any third party the subject of a Court order.

- 6.3 The Applicant will, if requested by the Lawyers, provide a written statement in relation to the Claims and the Other Claims, give evidence and attend upon the Court in order to give evidence and where appropriate will procure its officers, servants and agents to do so.
- 6.4 The Applicant:
- (a) will immediately notify IMF if the Applicant is requested or required to disclose any information relating to the negotiation, existence, terms or performance of this IMF Agreement and if so requested by IMF will take such steps as may reasonably be available to prevent disclosure of such parts of the information as IMF may nominate;
 - (b) will not disclose to any person, save for its legal and financial advisors for the purpose of obtaining confidential legal or financial advice, or IMF, any information:
 - (i) to which Privilege or obligations of confidence attach; or
 - (ii) which is or may be protected from disclosure by reason that disclosure would or may provide the Respondents with a strategic or tactical advantage in any Proceedings;save in accordance with advice from the Lawyers for the purposes of the prosecution of those Proceedings.
- 6.5 The obligations in clause 6.4 are continuing obligations.
- 6.6 The Applicant will not during the period of this IMF Agreement have any communication with the Respondents or their agents relating to the Claims and/or the Other Claims, or any compromise of the Claims and/or the Other Claims, other than through the Lawyers or upon their reasonable advice.

7. Project Management

- 7.1 IMF will provide the following management services in respect of the Project during the term of this IMF Agreement:
- (a) advising the Applicant and Other Funded Persons on strategy;
 - (b) seeking compliance with the Project Estimates and the estimates provided under term 3.1(d) of the Standard Lawyers Terms;
 - (c) considering the advice of the Lawyers and providing day-to-day instructions to the Lawyers subject to clause 13 of this IMF Agreement;
 - (d) database and document management;
 - (e) facilitating periodic meetings between Project participants and reporting to the Applicant and Other Funded Persons in respect of progress; and
 - (f) facilitating non litigious means of resolving the Claims.
- 7.2 IMF may cause its investigators to carry out further or other investigations during the course of the Project.
- 7.3 Subject to clauses 7.4 to 7.7 hereof, the Applicant hereby appoints John Walker and Clive Bowman of IMF (**"the IMF Appointees"**), and the IMF Appointees hereby accept such appointment, jointly and severally, as:
- (a) if the Applicant is an individual, his or her attorneys; or
 - (b) if the Applicant is a body corporate, its representatives pursuant to section 250D of the Corporations Act 2001;

in each case to do all or any of the acts and/or exercise all or any of the powers referred to in clause 7.4 hereof.

7.4 The IMF Appointees may in their absolute discretion and are authorised to:

- (a) prepare, complete, sign and lodge any claim and any formal proofs of debt or claim on the Applicant's behalf in respect of the Claims and any matters incidental to the Claims with any External Controller appointed by or to any Respondent or in respect of any property, assets or liabilities of any Respondent;
- (b) attend, speak and vote on behalf of the Applicant at any and all meetings of creditors of any Respondent in relation to any matter then before the meeting; and
- (c) generally exercise all and any of the rights and powers of the Applicant in respect of the matters referred to in clause 7.4(a) and (b) hereof;

and the Applicant acknowledges and agrees that in so doing IMF may benefit, directly or indirectly, in a manner that is contemplated by this IMF Agreement.

7.5 The appointment in clause 7.3 is a standing appointment and ceases upon termination of this IMF Agreement.

7.6 The Applicant undertakes, if requested by IMF, to ratify and confirm in writing the validity of any act or exercise of power by the IMF Appointees done in good faith purportedly pursuant to clauses 7.3 to 7.5 hereof.

7.7 Nothing in clauses 7.3 to 7.6 hereof authorises or permits the IMF Appointees to do any act or exercise any power in a manner or with an effect which is contrary to or inconsistent with the terms of this IMF Agreement.

8. Project Costs

8.1 IMF will pay the Project Costs and the Pre Project Costs on the terms of this IMF Agreement.

8.2 IMF will not seek reimbursement from the Applicant or Other Funded Persons of any internal overheads incurred as part of the Project Costs, other than the Project Management Fee.

8.3 If the Respondents or any of them, make any payment by way of costs during the course of the Proceedings then such payment will be made into the Trust Account on trust for IMF and may be utilized by IMF in paying or reimbursing Project Costs and the Remaining Costs. The Lawyers will make payment of such monies in accordance with this IMF Agreement as directed by IMF from time to time.

8.4 IMF will pay any Adverse Costs Order. If there is any Resolution Sum or other monies in the Trust Account at the time of the Adverse Costs Order being made then those monies will first be employed to pay the Adverse Costs Order and IMF will pay any balance outstanding after such payment. The Lawyers will pay out those monies from the Trust Account at the request of IMF.

8.5 As soon as is reasonably practicable after the issue of any Proceedings, IMF will execute a Deed Poll in the form set out in Schedule 3 hereto and will deliver a copy of the Deed Poll to the Respondents and the Court.

8.6 IMF will provide any security for costs in the Proceedings, in the form of the Deed Poll referred to in clause 8.5 or a written undertaking to meet the Respondents' costs or in such other form that IMF determines and the Respondents or the Court accept, relating to costs incurred during the term of this IMF Agreement.

8.7 IMF's obligations in clauses 8.1 to 8.6 do not arise before the expiry of the 21 day period referred to in clause 3.1.

- 8.8. IMF will only be liable to pay the Pre Project Costs if IMF has not exercised its rights under clause 19.1 to terminate this IMF Agreement at a time within 60 days after the analysis and review referred to in clause 4.1.7.

9. Receipt of Resolution Sum

- 9.1. The Applicant and IMF agree that the Lawyers will (and are hereby directed to):
- (a) receive any Resolution Sum;
 - (b) immediately pay any Resolution Sum into a trust account to be kept for that purpose;
 - (c) maintain separate records for each Resolution Sum arising from the Proceedings; and
 - (d) forthwith pay out of the Trust Account all payments referred to in clause 12.1 upon cleared funds becoming available.
- 9.2. The Applicant consents to the Resolution Sum being combined in the Trust Account with the resolution sums under Other Funding Agreements.
- 9.3. The Lawyers will hold that part of the Resolution Sum disposed of or otherwise due to IMF under this IMF Agreement on trust for IMF and the balance on trust for the Applicant to be dispensed in accordance with the directions of the Applicant.
- 9.4. The Applicant acknowledges that:
- (a) the conduct of Proceedings will or may encourage some or all of the Respondents to seek to compromise the Claims or the Other Claims; and
 - (b) Proceedings may have the effect set out in 9.4(a) notwithstanding that the Applicant may have terminated this IMF Agreement and terminated its involvement in those Proceedings.
- 9.5. If, in spite of clause 9.1, the Applicant directly or indirectly receives all or any part of the Resolution Sum, the Applicant will pay it over, together with the reasonable market value of any non monetary component of the Resolution Sum received, to the Lawyers to be paid into the Trust Account and dealt with on the terms of this IMF Agreement.
- 9.6. The obligation in clause 9.5 is a continuing obligation and survives any Termination of this IMF Agreement save for a Termination pursuant to clause 20.1.

10. Application of Resolution Sum

- 10.1. Subject to any Court order, if a lump sum amount is received by way of Settlement of the Claims and Other Claims, or by way of an ex gratia payment, the balance, after firstly deducting all amounts as required by this IMF Agreement, and secondly deducting any amounts as required by the Standard Lawyers Terms and any retainer agreement entered into between the Lawyers and the Applicant, will be distributed to the Applicant and Other Funded Persons (whose Other Claims are the subject of the Settlement) on a pro rata basis by reference to the amount of the Claims and the Other Claims the subject of the Settlement, such amount to be determined in each case by the Lawyers.
- 10.2. The obligations imposed by clauses 9, 10.1 and 12 hereof are to be met prior to the payment from the Resolution Sum of any other expenses or obligations of the Applicant including any other fees or costs.
- 10.3. If any part or all of the Resolution Sum is not money, the Applicant will, as soon as the part or all of it is received, pay to the Lawyers for deposit in the Trust Account an amount equal to the reasonable market value of the non monetary component of the Resolution Sum so received.

11. Appeals

- 11.1. If there is a final judgment in the Proceedings which is not in favour of the Applicant (or the Representative) and IMF wishes an appeal to be lodged, then where the Applicant is a Representative in the proceedings concerned, the Lawyers will lodge and prosecute the appeal/appeals in the name of the Applicant. IMF will pay the legal costs and disbursements in connection with the appeal/appeals and will pay any adverse costs order if the appeal/appeals is or are unsuccessful.
- 11.2. If there is a final judgment in the Proceedings in favour of the Applicant (or the Representative) and the Respondent appeals, then IMF may elect to fund the legal costs and disbursements of the appeal/appeals. If IMF so elects, where the Applicant is the Representative in the proceedings concerned, the Lawyers will defend the appeal/appeals in the name of the Applicant. IMF will pay any adverse costs order if the appeal/appeals is or are lost by the Applicant.
- 11.3. If IMF funds an appeal or appeals pursuant to clause 11.1 or 11.2 then an additional 5% will be added to the percentages referred to in clause 12.1(e) hereof in respect of each appeal so funded and "Proceedings" will be read as including the appeal or appeals.

12. Repayment of Project Costs and Payment of Commission

- 12.1 Upon Resolution the Applicant will pay to IMF from the Resolution Sum in accordance with clause 9 hereof:
- (a) an amount equal to the Applicant's Share of the Project Costs and Pre Project Costs (reduced by an amount equal to the sum of any Input Tax Credits received by IMF on Acquisitions made in incurring the Project Costs and Pre Project Costs including pursuant to clause 12.4) paid by IMF in relation to the Claims or Other Claims the subject of the Proceedings or Settlement to which the Resolution Sum relates;
 - (b) an amount equal to the Applicant's Share of the Project Management Fee;
 - (c) left blank intentionally;
 - (d) an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST (currently 10%) by an amount equal to the Consideration to be received by IMF for any Taxable Supply made to the Applicant by IMF under or in connection with this IMF Agreement (apart from any Consideration to be provided pursuant to this clause 12.1(d));
 - (e) an amount, as Consideration for the financing of the Claims and Proceedings, being equal to an amount calculated as follows:
 - (i) a percentage (determined by reference to the table below and increased if clause 11.3 applies) of that part of the Resolution Sum which is sourced from, or paid in respect of the claim against, the persons listed in Schedule B to the Statement of Claim filed in the Proceedings, trading as KPMG ("KPMG Partners"); and
 - (ii) a percentage (determined by reference to the table below and increased if 11.3 applies) of that part of the Resolution Sum which is not sourced from, or paid in respect of the claim against, the KPMG Partners.

Source of Resolution Sum	Resolution before 01/01/11	Resolution on or after 01/01/11 and before 01/01/12	Resolution on or after 01/01/12
KPMG Partners	25%	30%	35%
Others	25%	27.5%	30%

- 12.2. Subject to clause 12.4, no fees, commissions or other payments will become due or owing by the Applicant to IMF unless and until Resolution and then will not exceed the Resolution Sum.
- 12.3. The Applicant hereby disposes and assigns to IMF, as Consideration for the financing of the Claims and Proceedings, that part of the Resolution Sum equal to:
- (a) the amount referred to in clause 12.1(e) hereof; and
 - (b) the total of the amounts referred to in clauses 12.1(a) to (d) inclusive hereof, but where that total is greater than the amount of the balance of the Resolution Sum after the disposition and assignment referred to in clause 12.3(a) (if any) then the assignment and disposition under this clause 12.3(b) will be limited to that balance.
- 12.4. The Applicant will, at IMF's request, pay to IMF any Input Tax Credit to which the Applicant is entitled under the GST Act in respect of the incurrence of the Project Costs and Pre Project Costs. Any such amount (if IMF makes a request) is payable at the earliest time the Applicant can claim the benefit of the Input Tax Credit from the Commissioner of Taxation. If upon Resolution, there is any Input Tax Credit not paid to IMF, that is payable, or would be payable if IMF had made a request under this clause, then IMF will be entitled to receive payment of the GST (paid by IMF) to which that Input Tax Credit relates or would relate, under clause 12.1.
- 12.5. Upon resolution, the Applicant will pay to the applicants in the Proceedings prior to 1 July 2009 from the Resolution Sum an amount equal to the Applicants' Share of any adverse cost orders paid by those applicants.
- 12.6. If there is any dispute between the parties as to which part, if any, of the Resolution Sum is sourced from, or paid in respect of the claim against, the KPMG Partners for the purposes of clause 12.1(e)(i), the Lawyers will determine that question.

13. The Lawyers' Retainer and Settlement

- 13.1. The Applicant acknowledges and accepts that the Lawyers have or will enter into an agreement with IMF in the same or similar terms to the Standard Lawyers Terms.
- 13.2. The Applicant agrees that if there is any inconsistency between the terms of any retainer agreement between the Applicant and the Lawyers and this IMF Agreement or the Standard Lawyers Terms, the terms of this IMF Agreement or the Standard Lawyers Terms, as applicable, will prevail.
- 13.3. IMF will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings, however the Applicant may override any instruction given by IMF by giving instructions to the Lawyers.
- 13.4. Except in relation to Settlement, which is dealt with below, if the Lawyers notify IMF and the Applicant that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to IMF and those they owe to the Applicant, the Applicant and IMF agree that, in order to resolve that conflict, the Lawyers may:
- (a) seek instructions from the Applicant, which instructions will override those that may be given by IMF;
 - (b) give advice to the Applicant and take instructions from the Applicant, even though such advice and instructions is or may be contrary to IMF's interests; and
 - (c) refrain from giving IMF advice and from acting on IMF's instructions, where that advice or those instructions is or may be contrary to the Applicant's interests.
- 13.5. Nothing in clauses 13.3 or 13.4 entitles the Applicant to breach, or authorises the breach, of any terms of this IMF Agreement.
- 13.6. The Applicant acknowledges that he, she or it will be bound by an order of the Court made in any Class Action in which the Applicant is a Representative or is represented approving the Settlement of that Class Action (unless the Applicant has opted out of the Class Action).

- 13.7. In recognition of the fact that IMF has an interest in the Resolution Sum, if the Representative:
- (a) wants to Settle the Class Action, for less than IMF considers appropriate; or
 - (b) does not want to Settle the Class Action, when IMF considers it appropriate to do so;
- then the Applicant agrees that IMF and the Representative must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Class Action on the terms and in the circumstances identified by either IMF or the Representative or both, is reasonable in all of the circumstances.
- 13.8. In the first instance counsel will be the most senior counsel of those retained by the Lawyers in respect of the Class Action concerned. If no counsel has been retained then the Lawyers in consultation with the Representative and IMF will appoint senior counsel for that purpose. If IMF and the Representative are unable to agree on the selection of a senior counsel then the senior counsel will be one appointed by the President of the New South Wales Bar Association for that purpose.
- 13.9. Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion. If Counsel's opinion is that the Settlement is reasonable then the Applicant agrees that the Lawyers will be instructed to do all that is necessary to Settle the Class Action, provided that the approval of the Court to the Settlement is sought and obtained.
- 13.10. IMF will pay the costs of counsel in providing the opinion referred to in clause 13.9 as part of the Project Costs.
- 13.11. Subject to Clause 13.12, the procedure set out in clauses 13.7 to 13.10 above will also apply where the Applicant:
- (a) wants to Settle any Claim not yet the subject of Proceedings for less than IMF considers appropriate; or
 - (b) does not want to Settle any Claim not yet the subject of Proceedings, when IMF considers it appropriate to do so.
- 13.12. Where there is a proposed Settlement of any Claims not yet the subject of proceedings, which also involves the Settlement of Other Claims, the Applicant agrees to be bound by that proposed Settlement, and the Lawyers are authorised and instructed to settle the Claims as part of that proposed Settlement, provided more than 50% by value of Funded Persons whose claims are the subject of that proposed Settlement vote in favour of it and advice is received from either counsel retained by the Lawyers or by the Lawyers themselves, that the proposed Settlement is reasonable in all of the circumstances. The Lawyers will determine the value of each claim for the purposes of this clause.
- 13.13. IMF may at its discretion require that the Lawyers submit any one or more of their invoices forming part of the Project Costs or the Pre Project Costs to taxation. If required to do so by IMF, the Applicant will take all steps necessary to achieve the commencement, processing and conclusion of that taxation. Any costs of taxation will be paid by IMF as part of the Project Costs.
- 13.14. IMF and the Applicant agree that, should any conflict arise as between the interests of IMF and the interests of the Applicant, then the Lawyers may continue to provide the Legal Work to the Applicant and IMF will raise no objection to them doing so.
- 14. Confidentiality and Provision of Documents**
- 14.1. In providing to IMF any documents or information about the Claims and the Proceedings, the Applicant does not intend to waive any Privilege that may attach to such documents or information.

- 14.2. Unless specifically prohibited by the terms of a court order or any professional obligation, the Lawyers will provide to IMF a copy of any document obtained in the Proceedings by way of discovery, subpoena or any other coercive power of the Court, subject to IMF's, and its officers' and employees', implied undertaking given to the Court.
- 14.3. IMF agrees that information, communications and documentation provided to it or that is generated by IMF in the course of the Project Investigation or Project Management or that is provided to it by the Applicant, the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Applicant is contemplating, participating in or conducting litigation against the Respondents and IMF and the Applicant acknowledge that all such information, communications and documentation are confidential within the meaning of equity and the communications are "confidential communications" and any documents are "confidential documents" within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth) unless already in the public domain. IMF agrees, subject to the terms of this IMF Agreement, to preserve that confidentiality unless disclosure is authorised, agreed or contemplated by this IMF Agreement, or is otherwise required by law.

15. No Charge or Other Encumbrance

- 15.1. The Applicant warrants that, as at the date of this IMF Agreement there is no charge, lien or other encumbrance over the Resolution Sum nor is there any creditor holding security over property of the Applicant other than as has been disclosed to IMF in writing.
- 15.2. The Applicant will not dispose of or cause, permit or assert any charge, lien or other encumbrance or right over or otherwise attaching to the Claims or the Resolution Sum after the date of this IMF Agreement, except with the prior written consent of IMF which consent may be withheld by IMF at its discretion.

16. Disclosure of Information

- 16.1. The Applicant warrants that, to the best of the Applicant's knowledge, at the date of this IMF Agreement there is no information in the custody, possession or control of the Applicant materially relevant to the Claims or the outcome of the Proceedings or the potential for any judgment sum to be recovered in respect of the Claims, which has not been disclosed to IMF.
- 16.2. If, after the date of this IMF Agreement, the Applicant becomes aware of any information which has or may have a material impact on the Claims, the Proceedings or the potential for any judgment sum to be recovered, the Applicant will immediately inform IMF of that information.

17. Miscellaneous

- 17.1. The Applicant and IMF will not do or permit to be done, save as provided in this IMF Agreement, any thing likely to deprive any party of the benefit for which the party entered into this IMF Agreement.
- 17.2. The Applicant will use his, her or its best endeavours to cause any Resolution Sum to be received or recovered as quickly as possible and particularly after any Settlement or judgment in respect of the Claims.
- 17.3. If this IMF Agreement or any part thereof is annulled, avoided or held unenforceable the Applicant will forthwith do all things necessary, including without limitation executing any further or other agreement or instrument, to ensure that IMF receives any remuneration, entitlement or other benefit to which this IMF Agreement refers or is contemplated by this IMF Agreement. The Applicant irrevocably agrees that production of a copy of this IMF Agreement shall be conclusive evidence of the Applicant's undertaking as set out in this clause.
- 17.4. The Applicant will not seek any order from any court which may detrimentally affect IMF's rights under this IMF Agreement other than with the consent of IMF and other than as arises out of any serious breach by IMF.
- 17.5. If the Applicant acts in breach of this IMF Agreement, clauses 9, 10 and 12 will continue to apply to any consideration received by the Applicant in respect of the Claims.

- 17.6. The Applicant and IMF will keep the contents of this IMF Agreement confidential in so far as it concerns the terms of the relationship between the Applicant and IMF, except where disclosure to the Australian Securities Exchange or to a Court is required or disclosure is, in IMF's absolute discretion, made by IMF to the Respondents or their agents.
- 17.7. The Applicant acknowledges and accepts that:
- (a) IMF has either entered into or will enter into Other Funding Agreements;
 - (b) IMF may fund other claims and proceedings against the Respondents which are unrelated to the Claims; and
 - (c) IMF may fund any claims arising out of the Respondents or any of the Respondents' property, assets or liabilities coming under the control of an External Controller, for consideration additional to that receivable by IMF from Funded Persons.
- 17.8. The Applicant accepts that it is possible that if the Proceedings are conducted as a Class Action there may be members of the class who have not entered into a funding agreement with IMF.
- 17.9. Termination of this Agreement will not affect IMF's right to do any thing authorised or contemplated by any Other Funding Agreement.

18. Duration of Agreement

- 18.1. Subject to clauses 19 and 20 below, this IMF Agreement commences on the Date of Commencement and continues in operation until:
- (a) all Proceedings, and any appeals funded by IMF, have concluded; and
 - (b) IMF has complied with all of its obligations arising pursuant to this IMF Agreement or Other Funding Agreements, and the Resolution Sum (if any) has been disbursed in accordance with the said agreements.

19. Termination by IMF

- 19.1. IMF is entitled, at its sole discretion, to terminate its obligations under this IMF Agreement, other than obligations accrued, by giving 7 days written notice to the Applicant that this IMF Agreement and IMF's obligations under it are terminated.
- 19.2. If IMF terminates this IMF Agreement pursuant to clause 19.1 hereof then the disposition and assignment referred to in clause 12.3(a) will terminate and IMF will not be entitled to any amount pursuant to clause 12.1(e), but IMF will continue to be entitled to receive amounts pursuant to clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.3(b).
- 19.3. All obligations of IMF under this IMF Agreement cease on the date IMF's termination becomes effective, save for obligations accrued to that date, and IMF shall account to the Applicant for any money held by IMF on behalf of the Applicant which is payable to the Applicant pursuant to the terms of this IMF Agreement.
- 19.4. The accrued obligations of IMF referred to in clause 19.3 comprise:
- (a) payment of any outstanding Project Costs incurred up to the date the notice of termination takes effect; and
 - (b) payment of any Adverse Costs Order against the Applicant in any Proceedings in respect of costs which arise in, or are attributed to, the period beginning on the Date of Commencement and ending on the date IMF's termination becomes effective.

20. Termination by Applicant and Termination of the Standard Lawyers Terms

- 20.1. If IMF commits a serious breach of this IMF Agreement and does not remedy the breach within 30 days after receiving written notice from the Applicant, the Applicant may terminate this IMF Agreement forthwith by written notice to IMF.
- 20.2. If this IMF Agreement is terminated by the Applicant pursuant to clause 20.1 hereof then:
- (a) IMF remains liable for the obligations referred to in clause 19.4 hereof; and
 - (b) the Applicant will not be required to make any payment to IMF under clause 12 hereof and the disposition and assignment referred to in clauses 12.3(a) and 12.3(b) will terminate.
- 20.3. If the Proceedings are conducted as a Class Action and the Applicant exercises a right to opt out of the Proceedings, then upon the exercise of that right, this IMF Agreement will terminate. If there is a Resolution of the Claims of the Applicant at that time (of the termination) or at any later time, clauses 9, 10 and 12 will continue to apply and the Applicant will be liable to pay to IMF, from the relevant Resolution Sum, the amounts set out in clause 12 hereof. The obligations in this clause are continuing obligations and survive any termination of this IMF Agreement.
- 20.4. If the Standard Lawyers Terms are terminated pursuant to term 9.1 or 9.2 of the Standard Lawyers Terms, IMF will inform the Applicant as to whether IMF and the Representative have agreed to other solicitors becoming the Lawyers.
- 20.5. If clause 20.4 applies and IMF informs the Applicant that IMF and the Representative have agreed to other solicitors becoming the Lawyers, provided those solicitors agree with IMF to terms the same as or substantially the same as the Standard Lawyers Terms, those solicitors will become the Lawyers for the purposes of this IMF Agreement in place of the existing Lawyers.
- 20.6. Replacement of the Lawyers in the circumstances of clause 20.5:
- (a) will not result in a termination of this IMF Agreement; and
 - (b) will not result in the replacement solicitors assuming any obligations of the Lawyers accrued to the date the appointment of the Lawyers is terminated.
- 20.7. If clause 20.4 applies and IMF informs the Applicant that it is not proposed that any solicitors replace the Lawyers, this IMF Agreement will terminate as at the date of such notice. If this occurs then:
- (a) IMF remains liable for the obligations referred to in clause 19.4 above; and
 - (b) Clauses 9, 10 and 12 will survive and continue to apply except that where termination occurs before the Proceedings have resolved the Applicant will only be liable to account to IMF, from any Resolution Sum, for the amounts set out in clauses 12.1(a), 12.1(b), 12.1(c), 12.1(d) and 12.3(b) and the disposition and assignment referred to in clause 12.3(a) will terminate.

21. Governing Law

- 21.1. This IMF Agreement is entered into in New South Wales and is to be construed in accordance with and governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of that State.

22. Notices

- 22.1. All notices given under this IMF Agreement shall be in writing and may be served personally, by post, facsimile or by e-mail.

22.2. The address for service of IMF will be:

IMF (Australia) Ltd
Level 5, 32 Martin Place
Sydney NSW 2000
Australia
Facsimile: + 61 (0)2 8223 3555
Email: jwalker@imf.com.au

22.3. The address for service of the Applicant will be the address of the Applicant noted on the front of this IMF Agreement, or otherwise as notified to IMF in writing if that address changes.

22.4. Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email (provided that the sender of the email does not receive a non-deliverable report in relation to the email).

23. Acknowledgement

23.1. By executing this IMF Agreement the Applicant acknowledges that:

- (a) IMF recommended to the Applicant that the Applicant first obtain legal advice as to its meaning and effect; and
- (b) the Applicant has received and read the IMF Combined Financial Services Guide and Product Disclosure Statement.

STANDARD LAWYERS TERMS

This agreement is made the _____ day of _____ 200

Between: **Carneys Lawyers** of Level 5, 70 Castlereagh Street, Sydney in the State of New South Wales 2000 ("the Lawyers")

AND: **IMF (Australia) Ltd** (ABN 45 067 298 088) of Level 5, 32 Martin Place, Sydney in the State of New South Wales 2000 ("IMF")

RECITALS

- A. IMF has entered into or proposes to enter into the IMF Agreements.
- B. The IMF Agreements are all in the same or substantially the same terms.
- C. The Lawyers are aware of the terms of the IMF Agreements and have agreed to act consistently with, and in accordance with, their terms and these Standard Lawyers Terms.

1. DEFINITIONS

- 1.1 In these Terms, unless the contrary intention appears:

"Claims" means the claims each Funded Person has or may have against some or all of the Respondents for loss and damage caused by the conduct of one or more of the Respondents.

"Funded Persons" means all persons who have entered into or enter into a KPMG Investigation, Management and Funding Agreement with IMF with respect to their Claims and "Funded Person" means a person who has entered into or enters into a KPMG Investigation, Management and Funding Agreement with IMF with respect to their Claims.

"IMF Agreements" means all KPMG Investigation, Management and Funding Agreements with IMF.

"Terms" means this agreement.

- 1.2 Unless the contrary intention appears and unless defined above, the definitions of words in the IMF Agreements will apply to define the meaning of words used in these Terms.

2. THE IMF AGREEMENTS

- 2.1 The Lawyers will:

- (a) act consistently with the terms of all IMF Agreements; and
- (b) do all things which the IMF Agreements contemplate the Lawyers will do.

- 2.2 The Lawyers agree that if there is any inconsistency between these Terms and the terms of any retainer between the Lawyers and any Funded Person, these Terms prevail.

3. COMMENCEMENT OF THE PROJECT

3.1 The Lawyers will inform IMF in writing of:

- (a) the names of the Lawyers who it is proposed will provide the Legal Work, for the purposes of term 5.2;
- (b) the hourly rates of those Lawyers (inclusive of GST), for the purposes of term 5.1;
- (c) the hourly and daily rates of barristers retained or proposed to be retained (inclusive of GST); and
- (d) the Lawyers' estimate of fees and disbursements to prosecute the Claims (separately identifying the estimated fees of the Lawyers, the barristers and the experts if any, by reference to each event in the Project Estimate and Time Line).

4. REPORTING

- 4.1 The Lawyers will keep IMF fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions. The Lawyers will ensure that IMF is given all necessary information and advice in order to facilitate informed instructions and to enable IMF to provide the Project Management.
- 4.2 Without limiting term 4.1, if, after the date of these Terms, the Lawyers become aware of any information which has or may have a material impact on the Claims, the Proceedings, or the potential for any judgment sum to be recovered, the Lawyers will immediately inform IMF of that information.
- 4.3 Unless otherwise agreed in writing, the Lawyers will provide a quarterly report, at the end of March, June, September and December, to any Representative and to IMF which:
 - (a) identifies any change to the previous quarterly report and any significant developments;
 - (b) reviews the issues relevant to liability and quantum; and
 - (c) provides advice in respect of any proposed changes to the Claims' percentage chance of success, and any changes to the Project Estimate and Time Line dates and costs.

5. COSTS AND DISBURSEMENTS

- 5.1 The Lawyers will charge for the Legal Work provided by reference to the time reasonably and properly spent at the hourly rates as notified to IMF pursuant to term 3.1, subject to an annual revision acceptable to IMF, the Representative and the Lawyers. Detailed time records must be kept to facilitate time details being provided in accordance with term 6 of these Terms.
- 5.2 No fee will be charged by the Lawyers for any fee earners, other than those notified to IMF pursuant to term 3.1(a), without the prior written consent of IMF. IMF will not be liable to pay the fees of any barristers or experts other than those notified to IMF pursuant to term 3.1 or those briefed with IMF's written consent. IMF will not unreasonably refuse to provide its written consent.
- 5.3 The Lawyers will only seek reimbursement from IMF for expenditure reasonably incurred by the Lawyers in progressing the Proceedings being:
 - (a) photocopying and scanning at the rates detailed in the current IMF/LitSupport Price List.

If the Lawyers choose not to utilise LitSupport for these services, they will ensure that:

- (i) all photocopying and scanning services are provided at prices commensurate with LitSupport pricing; and
 - (ii) the basis for their pricing policy is identified on their accounts.
- (b) local, STD and ISD facsimiles at cost; and
- (c) other reasonable expenditure supported by invoices.

6. INVOICES

- 6.1 The Lawyers will provide copies of monthly invoices to IMF (with the original to any Representative) by the 20th day of each month, accompanied by:
- (a) the details contemplated by term 6.6 of these Terms;
 - (b) a summary of the matters in respect of which time was incurred; and
 - (c) invoices from barristers, experts and for any other significant disbursements.
- 6.2 Provided invoices from the Lawyers comply with these Terms, IMF will pay them within 30 days from the end of the month in which the Lawyers' invoice is received by IMF.
- 6.3 The time details for fees of the Lawyers must be on a separate document to each invoice and must include, for each time entry:
- (a) the date upon which the time was spent;
 - (b) which solicitor or paralegal spent the time; and
 - (c) the time spent in six minute units.

7. PRIORITIES, LIEN AND INSURANCE

- 7.1 The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which IMF is liable under these Terms.
- 7.2 The Lawyers are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to term 6.2.
- 7.3 The Lawyers will maintain professional indemnity insurance in an amount of at least \$10 million for the duration of these Terms plus three years.
- 7.4 The Lawyers will provide evidence of the insurance to IMF on IMF's request from time to time.

8. TERMINATION OF THE TERMS

- 8.1 The Lawyers may terminate these Terms on 7 days written notice to IMF in the following circumstances:
- (a) if IMF fails to pay any costs in accordance with the these Terms after IMF has been given 30 days written notice to do so; or
 - (b) if the Lawyers terminate all retainers between the Lawyers and Funded Persons relating to the Proceedings in accordance with their right to do so.

- 8.2 IMF may terminate these Terms:
- (a) by agreement with the Lawyers; or
 - (b) upon 7 days written notice to the Lawyers in the event of professional misconduct or negligence by the Lawyers that has or is reasonably likely to cause material loss to a Funded Person or IMF.
- 8.3 If these Terms are terminated pursuant to either term 8.1 or 8.2, the Lawyers remain liable for obligations under these Terms accrued to the date of termination of their appointment, but thereafter all obligations and entitlements of the Lawyers cease except:
- (a) the obligations to do those things set out in clauses 9 and 10 of the IMF Agreements, where the Lawyers are not replaced by other solicitors to provide the Legal Work; and
 - (b) those entitlements under term 6 (in respect of Legal Work up to the date of termination) unless the termination of the Lawyers is under term 8.2(b).
- 8.4 If the Lawyers' appointment to provide Legal Work to a Funded Person is terminated pursuant to term 8.2(b) the Lawyers shall be entitled only to payment under term 6 (in respect of Legal Work up to the date of termination) subject to a deduction of the amount of the loss caused by Lawyer's professional misconduct or negligence.
- 8.5 These Terms will terminate when all of the IMF Agreements are terminated, with such termination to take effect upon the last date on which the last IMF Agreement is terminated. If there is a termination pursuant to this term each party will remain liable for its obligations accrued to the date of termination.
- 9. ADDRESS FOR SERVICE**
- 9.1 IMF's address for service will be as set out in the IMF Agreements.
- 9.2 The Lawyers address for service will be that address identified above (in identifying the parties to these Terms), or otherwise notified to IMF in writing if that address changes.
- 10. VARIATION**
- 10.1 These Terms may only be varied in writing signed by the Lawyers and IMF.

SIGNED by Carneys Lawyers

.....
Name
Date / /2009

.....
Name
Date / /2009

SIGNED by IMF (Australia) Ltd

.....
John Walker
Director
Date / /2009

.....
Diane Jones
Company Secretary
Date / /2009

SCHEDULE 2

RATES AND CONTACT DETAILS - LAWYERS / BARRISTERS -[INSERT INVESTMENT NAME]

NAME OF LAWYER	TITLE	EMAIL ADDRESS	TELEPHONE NO.	HOURLY RATE

NAME OF BARRISTER	TITLE	EMAIL ADDRESS	TELEPHONE NO.	HOURLY RATE	DAILY RATE

PROJECT LINE / BUDGET					
Event	Solicitor's Fees (incl GST)	Jnr Barrister's Fees (incl GST)	Snr Barrister's Fees (incl GST)	Expert Fees (incl GST)	TOTAL (incl GST)
Post Funding / Pre-Drafting Claim					\$ -
Draft Claim & Filing					\$ -
Particulars, Defence & Closing Pleadings					\$ -
Discovery					\$ -
Statements					\$ -
Subpoena					\$ -
Mediation					\$ -
Preparation for Hearing					\$ -
Hearing					\$ -
Multi-Party Function					\$ -
Interlocutory Applications					\$ -
Miscellaneous					\$ -
	\$ -	LAWYERS FEES FOR THE TRIAL (INCL. GST) PAYABLE BY IMF			\$ -
TOTALS:	\$ -	\$ -	\$ -	\$ -	\$ -

SCHEDULE 3

DEED POLL

<u>PARTY</u>	NAME	IMF (AUSTRALIA) LIMITED ("IMF")
	ACN	067 298 088
	ADDRESS	LEVEL 5, 32 MARTIN PLACE, SYDNEY NSW 2000
	TELEPHONE	02 8223 3567
	ATTENTION	JOHN WALKER
	E-MAIL	jwalker@imf.com.au

DEFINITIONS

ADVERSE COST ORDER	Means any costs order made in favour of the Respondent in the Proceedings in respect of costs incurred during the term of the LFA.
APPLICANT	*[Insert]
COURT	The Court where the Proceedings are conducted.
LFA	The litigation funding agreement which commenced on *[Insert] between IMF and the Applicant.
PROCEEDINGS	*[Insert]
RESPONDENT	*[Insert]
GOVERNING LAW	The law of New South Wales.

BY THIS DEED POLL, IMF, for the benefit of the Court and the Respondent:

- (a) submits to the jurisdiction of the Court in relation to any order the Court may wish to make directly against IMF in the Proceedings that IMF pay any Adverse Costs Order;
- (b) agrees not to oppose any joinder application made by the Respondent in the Proceedings for the purpose of seeking an order that IMF pay any Adverse Cost Order, and agrees, in circumstances where the rules of the Court prevent that joinder, at the Respondent's request, to itself apply to be joined to the Proceedings to enable such an order to be made against it;
- (c) agrees to pay to the Respondent the amount of any Adverse Cost Order to the intent that the Respondent may enforce the Adverse Cost Order as though it is a debt due and owing by IMF to the Respondent;
- (d) agrees to notify the Respondent in writing of any termination of the LFA within 7 days of it so terminating; and
- (e) acknowledges having received valuable consideration for this Deed Poll.

DATED this day of 2009.

Executed as a Deed Poll
By IMF (Australia) Limited

Director

Director (Secretary)

Level 5, 32 Martin Place
Sydney NSW 2000
GPO Box 5457
Sydney NSW 2001
T +61 2 8223 3567
F +61 2 8223 3555

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Level 5, 232 Adelaide Street
Brisbane QLD 4000
GPO Box 2222
Brisbane QLD 4001
T +61 7 3221 7651
F +61 2 8223 3555

Level 3, 480 Collins Street
Melbourne VIC 3000
T +61 3 9629 1211
F +61 2 8223 3555



IMF (Australia) Ltd

**Combined Financial Services Guide and Product
Disclosure Statement**

Dated the 20th day of May 2009

1. Introduction

- 1.1 This document is provided to you by IMF (Australia) Ltd which is referred to as "IMF", "us" or "we".
- 1.2 It is provided to you pursuant to sections 941A and 1012B of the Corporations Act ("the Act") because you have sought litigation funding services from us and is divided into the following two parts:
- (a) a Financial Services Guide; and
 - (b) a Product Disclosure Statement.

2. Financial Services Guide

- 2.1 This guide is to help you decide whether to use our litigation funding services.
- 2.2 The guide is given to people who ask us to fund their claims and litigation. It explains:
- (a) what money we might receive if you enter into a litigation funding agreement with us; and
 - (b) how you can complain about our service.
- 2.3 We provide litigation funding services pursuant to written litigation funding agreements. If we decide to fund your claim, we will negotiate the terms of a written agreement with you.
- 2.4 Our litigation funding agreements are "financial products" as that term is used in the Act. For the purposes of the Act, if we offer to enter into a litigation funding agreement with you and you accept our offer, we:
- (a) have "issued" a financial product to you; and
 - (b) are providing a "financial service" to you (as that term is used in the Act).
- 2.5 You are dealing with a company, IMF (Australia) Ltd, whose ABN is 45 067 298 088. Our shares are listed for quotation on the Australian Securities Exchange ("ASX") under the stock code "IMF". Our contact details are set out on the last page of this document. We also maintain a web site at www.imf.com.au.
- 2.6 Our web site contains the following information which may help you to decide whether to use our financial services:
- (a) our audited accounts;
 - (b) our Corporate Governance Manual;
 - (c) our Privacy Policy;
 - (d) public announcements made by us to the ASX; and
 - (e) general information about litigation funding.
- 2.7 Our Chairman is Robert Ferguson and our Managing Director is Hugh McLernon. Both may be contacted by telephone on +61 2 8223 3567.
- 2.8 No other companies, entities or persons (other than our officers and employees) are involved in any way in the provision of our financial services.
- 2.9 A litigation funding agreement is a contract which both you and IMF may enforce.
- 2.10 We hold Australian Financial Services Licence No. 286906 and are lawfully entitled to enter into litigation funding agreements with retail and wholesale clients pursuant to the provisions of the Act and the conditions of that licence.

- 2.11 A copy of the licence will be made available to you upon request.
- 2.12 When we enter into litigation funding agreements, we are acting on our own behalf and not on behalf of you or anyone else. We cannot and do not make any recommendations as to whether you should enter into a litigation funding agreement with us. We will not provide you with any advice on the meaning, effect or content of the litigation funding agreement. Since we are the other party to the agreement, it would not be appropriate for us to provide you with such advice. We recommend that you obtain your own independent advice on the meaning, effect and content of the litigation funding agreement before you decide whether to execute it.
- 2.13 Once the litigation funding agreement is executed, you and IMF will have similar interests because we both stand to benefit from a successful resolution of your claim.
- 2.14 Our litigation funding agreements are entered into on a "no win, no fee" basis. This means that we will not be paid any money unless and until:
- (a) you have executed a litigation funding agreement;
 - (b) your claim has been settled or concluded by a judgment in your favour; and
 - (c) you have received at least some of the settlement or judgment moneys. (You will never be asked to pay more than you have actually received.)
- 2.15 The litigation funding agreement explains how any money we will be paid is calculated.
- 2.16 Clause 5 of our Corporate Governance Manual, which can be found on our website, explains how our dispute resolution process works.
- 2.17 IMF is also a member of the Financial Ombudsman Service scheme. You can contact the Chief Ombudsman, Colin Neave AM, by ringing 1300 780 808 (within Australia) or +61 3 9613 7333 (outside Australia) or by sending a fax to +61 3 9613 7345.

3. Product Disclosure Statement

- 3.1 We have prepared this Product Disclosure Statement.
- 3.2 In general terms, we will decide whether we want to enter into a litigation funding agreement with you by assessing:
- (a) the strength of your claim;
 - (b) the type of claim;
 - (c) when your claim arose;
 - (d) the jurisdiction in which your claim will be heard;
 - (e) the amount of your claim;
 - (f) any legal or factual difficulties;
 - (g) the ability of the proposed defendant to pay you if you are successful; and
 - (h) how much documentary evidence there is to support your claim.
- 3.3 To assist us in making our initial assessment, we may require you to provide us with documents and other information. We will treat this information as confidential.
- 3.4 We do not charge anything for our initial assessment.
- 3.5 If we decide not to fund your claim, we will return your documents to you promptly.
- 3.6 If we decide to fund your claim, we will offer to enter into a litigation funding agreement with you.
- 3.7 The litigation funding agreement will cover three major areas:
- (a) investigation;

- (b) litigation management; and
 - (c) funding.
- 3.8 If we enter into a litigation funding agreement with you, we will continue to investigate your claim.
- 3.9 We will appoint the solicitors to provide the relevant legal work to you on the terms of an agreement, referred to as the Standard Lawyers Terms. This is an agreement between us and the solicitors. The solicitors may also wish to have a retainer agreement directly with you.
- 3.10 We will pay the following costs:
- (a) the reasonable legal fees of prosecuting the relevant proceedings;
 - (b) expenses reasonably incurred by the solicitors including counsel's fees and expert fees ;
 - (c) court costs;
 - (d) out of pocket expenses associated with our investigation and project management; and
 - (e) any costs of the other side that are ordered to be paid.
- 3.11 We will pay the costs charged by the solicitors, as agreed,. We will seek reimbursement from you of the costs we pay, but only from any recoveries you obtain from any settlement or judgement in the proceedings.
- 3.12 We will also provide any other non-legal assistance which you or your solicitors may reasonably request.
- 3.13 If in any litigation you are required to provide security for the other side's legal costs, we will provide that security on your behalf by:
- (a) paying money into court or providing a bank guarantee if required to do so by order of the court; or
 - (b) providing our guarantee to the defendant or to the court.
- 3.14 We will provide the solicitors with their day to day instructions. However you can override our instructions if you wish and in the event of any conflict arising between your interests and those of IMF, your interests are to prevail. In the case of funding agreements with insolvency practitioners, instructions to the solicitors are given by the insolvency practitioner, although we may assist in that respect.
- 3.15 If your claim is unsuccessful and you are ordered to pay the other side's costs, we will pay those costs on your behalf. If your claim is settled or successfully concluded by judgment in your favour, we will be entitled to:
- (a) repayment of all money we have paid on your behalf;
 - (b) a project management fee; and
 - (c) an agreed percentage of your recovery.
- 3.16 The litigation funding agreement provides for any recoveries in respect of your claim to be paid into the solicitor's trust account and to be distributed to IMF in respect of its entitlements referred to above (with the balance available to you, subject to any other obligations you may have).
- 3.17 We will not charge for any non-financial assistance we provide to you during the course of any litigation other than our project management fee.
- 3.18 Except where you are suing in the same legal proceedings with others (being multi party cases, including class actions), only you can decide whether to settle your claim. We may, however, ask you to obtain senior counsel's opinion on any settlement offer with the opinion being binding on you and us (except in the case of funding agreements with insolvency practitioners). We will pay for that opinion. In multiparty cases there are specific clauses in the funding agreement that

deal with the circumstances in which you can be bound by a global settlement. In addition, with respect to class actions, there are court rules that deal with settlement.

- 3.19 After you execute a litigation funding agreement, you will have a 21 day "cooling off" period. During that period you may tell us that you wish to terminate the litigation funding agreement. You may tell us by letter, email or fax.
- 3.20 If you decide to terminate the litigation funding agreement during that period, we will not charge you anything.
- 3.21 After the 21 day "cooling off" period has ended, you will only be able to terminate the litigation funding agreement in accordance with its terms.
- 3.22 We may terminate the litigation funding agreement at any time by giving you 7 days written notice.
- 3.23 If you enter into a litigation funding agreement and your claim goes to trial, you may be required to give evidence in court. You may also be required to provide copies of all your relevant documents to the other side. We do not pay you to give evidence, to gather and supply your documents to your solicitors or to help with the case generally.
- 3.24 If other people have the same or similar claims as you, we may decide to fund their claims too. This may mean that you and they become claimants in the same litigation or that you become a representative party or are represented by another (usually in a class action). You will not become a representative party without your written consent.
- 3.25 You may be given the opportunity to opt out of a class action in which you are either the representative or are represented, with the consequence that you are no longer included in the action. If you opt out, the litigation funding agreement provides that you will still be obliged to pay to IMF its entitlements, from any recovery you make in respect of your claims that were included in the class action. If you do not make any recovery then you will have no obligation to pay anything to IMF.

4. Risks

- 4.1 The most obvious risk is that you may commence litigation and lose. If that happens, and subject to paragraph 4.4, you will not be required to pay any money. You will, however, lose the time and effort you have put into the litigation.
- 4.2 Even if you are successful with your litigation, the other side may not be able to pay all of the judgment sum. As we only get paid from any money you actually obtain, we are always careful to investigate whether the other side will be able to pay you. Of course, we can never guarantee that they will have enough money to do so.
- 4.3 As explained in paragraph 3.22, we may terminate the litigation funding agreement. If that happens, we may lose all the money we have paid and will receive nothing for any work we have put into your claim. If we terminate the litigation funding agreement and you later receive some money in respect of your claim, you must still reimburse us from that money for the legal and other expenses we have paid on your behalf. Extremely few litigation funding agreements are terminated by us.
- 4.4 As your claim proceeds, we will pay your legal costs, court costs and other funded expenses on a monthly basis. As a company, however, we could become insolvent and be unable to meet any order that you pay the other side's legal costs. You will need to make your own assessment of our financial position. Audited accounts of the company are contained on our web site.
- 4.5 We are not aware of any taxation implications for you if you enter into a litigation funding agreement with us. You should obtain your own independent taxation advice in this regard.

5. Dispute Resolution

- 5.1 If you are unhappy with any part of our service, please see Clause 5 of the Corporate Governance Manual which can be found on our web site. That clause explains our internal complaint resolution procedure.

- 5.2 If you have a complaint, you should raise it first with the investment manager who has been responsible for your litigation funding agreement. Any complaints will then be dealt with in accordance with the procedure set out in Clause 5.
- 5.3 If we cannot resolve your complaint ourselves, you can use the external dispute resolution procedure provided by the Financial Ombudsman Service - see paragraph 2.17 above.
- 5.4 Your complaints will be dealt with by the Ombudsman at no cost to you.
- 5.5 This Product Disclosure Statement has been provided by us because we may offer to enter into a litigation funding agreement with you. Our contact details are:

IMF (Australia) Ltd
Level 5, 32 Martin Place
SYDNEY NSW 2000

Attention: Diane Jones

Tel: +61 2 8223 3567

Fax: +61 2 8223 3555

Email: djones@imf.com.au

Dated the 20th day of May 2009