



Hall&Wilcox
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Supplementary Deed Ironbark Global Diversified Alternatives Fund

Ironbark Asset Management (Fund Services) Limited

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Date

Parties

Ironbark Asset Management (Fund Services) Limited ABN 63 116 232 154 of Level 13, 60 Castlereagh Street, Sydney New South Wales in its capacity as the responsible entity of the Ironbark Global Diversified Alternatives Fund ARSN 089 896 837 (**Manager**)

Recitals

- A The Ironbark Global Diversified Alternatives Fund ARSN 089 896 837 (**Fund**) is constituted under a constitution dated 29 September 1999, as amended from time to time (**Constitution**). The Fund has been registered pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**).
- B Clause 22.1 of the Constitution provides that:
“Subject to the Corporations Law, the Manager may by deed amend this constitution.”
- C Section 601GC of the Corporations Act provides that:
“(1) [Constitution may be modified etc] The constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:
(a) by special resolution of the members of the scheme; or
(b) by the responsible entity if the responsible entity reasonably considers the change will not adversely affect members’ rights.
- D On or about the date of this deed, the Manager replaced Ironbark Funds Management (RE) Ltd ABN 94 106 888 662 as the responsible entity of the Fund in accordance with clause 12 of the Constitution.
- E The changes made by this Supplementary Deed have been made by the Manager pursuant to clause 22.1 of the Constitution and section 601GC(1)(b) of the Corporations Act on the basis the Responsible Entity reasonably considers the changes will not adversely affect members’ rights.
- G This Supplementary Deed will be lodged with ASIC pursuant to Section 601GC(2) of the Act. The Supplementary Deed will take effect from the time of lodgement.
- H The terms of this Supplementary Deed are as follows.

Terms of this Deed

1 Definitions and interpretation

The definitions in the Constitution apply to this Supplementary Deed unless otherwise specified or the context requires another meaning or interpretation to be applied.

2 Confirmation of the terms of the Constitution

- (a) The Manager confirms the terms of the Constitution except to the extent those terms as amended by this Supplementary Deed.
- (b) The Manager confirms that it is not, by clause 3 of this document, resettling or redeclaring the Fund, and the Constitution continues in effect as amended by clause 3.

3 Constitution amendment

3.1 Change of Manager

Pursuant to the power conferred on the Manager by clause 22 of the Constitution and section 601GC(1)(b) of the Corporations Act and all other powers enabling it to do so, the Manager varies the Constitution including, for the avoidance of doubt all modifications, replacements and variations thereof, by:

- (a) deleting references to “Ironbark Funds Management (RE) Limited” wherever it appears and replacing it with references to “Ironbark Asset Management (Fund Services) Limited”; and
- (b) deleting references to “ABN 94 106 888 662” wherever it appears and replacing it with references to “ABN 63 116 232 154”.

3.2 Manger’s declaration

For the purposes of section 601GC(1)(b) of the Corporations Act, the Manager declares that, in its reasonable opinion, the variation of the Constitution pursuant to this Supplementary Deed will not adversely affect any of the members’ rights and entitlements in the Fund.

4 Governing law and jurisdiction

The executing party submits to the non-exclusive jurisdiction of courts of the State of New South Wales including the Federal Court sitting in the State of New South Wales and any courts that may hear appeals from those courts about any proceedings in connection with this Supplementary Deed.

EXECUTED as a Deed

Signing Page

DATED: 14 NOV 2013

EXECUTED by Ironbark Asset Management (Fund Services) Limited ABN 63 116 232 154 in its capacity as responsible entity of the Ironbark Global Diversified Alternatives Fund in accordance with the *Corporations Act 2001* by being signed by the following officers:

.....
Signature of director

CHRIS LARSEN

.....
Name of director
(please print)

.....
Signature of director / company secretary

ALEX DONALD

.....
Name of director / company secretary
(please print)

Constitution

Ironbark Global Diversified Alternatives Fund

Ironbark Funds Management (RE) Ltd

(ABN 94 106 888 662 AFSL 284442)

This is a consolidated version of the Constitution of the Ironbark Global Diversified Alternatives Fund. It incorporates amendments made made by the Amending Deeds dated 16 September 2005, 8 October 2007, 15 December 2008 and 30 June 2011.

Date: 29 September 1999

Constitution

Ironbark Global Diversified Alternatives Fund

Manager: Ironbark Funds Management (RE) Ltd
(ABN 94 106 888 662 AFSL 284442)

Ironbark Funds Management (RE) Ltd
Level 13, 60 Castlereagh Street
SYDNEY NSW 2000

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Constitution of the Ironbark Global Diversified Alternatives Fund

Date: 29 September 1999

Parties: **IRONBARK FUNDS MANAGEMENT (RE) LIMITED** (ABN 94 106 888 662) of Level 13, 60 Castlereagh Street, Sydney, New South Wales ("Manager")

Recitals:

- A. This is the constitution for the Trust known as the Ironbark Global Diversified Alternatives Fund.
- B. The Trust is a managed investment scheme registered under the Corporations Law.
- C. The Manager is the responsible entity of the Trust.

Operative provisions:

This deed poll is declared by the Manager to be the constitution of the Ironbark Global Diversified Alternatives Fund.

1. Name of Trust

- 1.1 The Trust is called the Ironbark Global Diversified Alternatives Fund or such other name as the Manager determines from time to time¹.
- 1.2 If a Manager retires or is removed its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

¹ See Corporations Regulation 5C.1.02

2. Assets held on trust

The Manager must hold the Assets on trust for Members². The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporation Law so requires³.

3. Units

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Each Unit confers an equal undivided interest, subject to any rights, obligations and restrictions attaching to any particular Class.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

Fractions of Units

- 3.4 Fractions of a Unit may be issued rounded to such number of decimal places as the Manager determines. Any right or interest conferred by a fraction of a Unit must be calculated in accordance with that fraction.
- 3.5 Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the redemption of a fraction of one Unit, the fraction is to be rounded to such number of decimal places as the Manager determines.
- 3.6 Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

Consolidation and division of Units

- 3.7 Units may be consolidated or divided as determined by the Manager.

Transfer of Units

- 3.8 Subject to the Security Interest Rules, Members may transfer Units.
- 3.9 Transfers must be in a form approved by the Manager and be presented for Registration duly stamped.
- 3.10 A transfer is not effective until Registered.
- 3.11 The Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

² See section 601FC(2)

³ See section 601FC(1)(i)

Joint holders

- 3.12 The Manager is not required to record more than 2 persons on the Register as joint holders of a Unit.
- 3.13 Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

Death, legal disability of Member

- 3.14 Subject to the Security Interest Rules, if a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units registered in the Member's name.

Classes

- 3.15 Different Classes may be issued with such rights, obligations and restrictions attaching to the Units of such Classes as determined by the Manager. The rights, obligations and restrictions must not be contrary to the Corporations Law or inconsistent with this constitution.

Security Interest Rules

- 3.16 The Manager may make and publish Security Interest Rules for the recognition of encumbrances over Units and must comply with those rules.

4. Application Price for Units⁴

- 4.1 Subject to clause 20.1, a Unit must only be issued at an Application Price calculated as:
- $$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{Number of Units in issue}}$$
- 4.2 Each of the variables in clause 4.1 must be determined as at the next Valuation Time falling on a Prescribed Application Day after:
- (a) the Manager receives the application for Units; or
 - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,
- whichever happens later.
- 4.3 The Application Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1 % of the Application Price.

⁴ Required to be included by Section 601GA(1)(a)

- 4.4 For the purposes of clause 4.2 and subject to clause 9.12, the day and time of receipt of an application for Units is:
- (a) the day and time of actual receipt if the application is received before the Prescribed Time on a Business Day; or
 - (b) the commencement of business on the next following Business Day if received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

5. Application procedure

Application form

- 5.1 An applicant for units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager. In a case where the Manager does not require an application form to be completed, the Manager may determine that it is deemed to have received an application at the time and date of receipt of the application money.

Payment

- 5.2 Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:
- (a) accompany the application;
 - (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time; or
 - (c) comprise a reinvestment of distribution in accordance with clause 9.10.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.

Manager may reject

- 5.3 The Manager may reject an application in whole or in part without giving any reason for the rejection.

Application Timing

- 5.4 The Manager may treat an application received after a Business Day it specifies before the next Prescribed Application Day as an application relating to the next Prescribed Application Day or as relating to the Prescribed Application Day immediately following the next Prescribed Application Day. In the latter case, clauses 4.2 and 5.6 will be taken to refer to the later Prescribed Application Day.

Minimum amounts

- 5.5 The Manager may set a minimum application amount and a minimum holding for the Trust or in respect of particular Classes, and alter those amounts at any time.

Issue date

- 5.6 Units are taken to be issued on the next Prescribed Application Day after:
- (a) the Manager accepts the application; or
 - (b) the Manager receives the application money, or the property against which Units are to be issued is vested in the Manager,
- whichever happens later.

Uncleared funds

- 5.7 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 30 Business Days of receipt of the application.

Deduction of Tax and charges and addition of interest

- 5.8 The Manager may deduct from any application money paid any amount of Tax and bank or financial institution charges incurred in respect of that payment, and may add any accrued interest, before calculating the number of Units to be issued against that application money.

6. Redemption Price of Units⁵

Redemption Price

- 6.1 A Unit must only be redeemed at a Redemption Price calculated as:

Net Asset Value - Transaction Costs

Number of Units in issue

- 6.2 Each of the variables in clause 6.1 must be determined:
- (a) while the Trust is Liquid, as at the next Valuation Time falling on a Prescribed Redemption Day after the Manager receives the redemption request; or
 - (b) while the Trust is not Liquid, at the time the withdrawal offer closes.
- 6.3 The Redemption Price may be rounded as the Manager determines. The amount of the rounding must not be more than 1% of the Redemption Price.

⁵ Required to be included by Section 601GA(4)

- 6.4 For the purposes of clause 6.2, the day and time of receipt of a redemption request is:
- (a) the day and time of actual receipt if the request is received before the Prescribed Time on a Business Day; or
 - (b) the commencement of business on the next following Business Day if received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

6.5 The basis on which:

- (a) the amount (if any) of the Redemption Price that represents a distribution of distributable income of the Trust is to be calculated; and
- (b) particular categories or sources or both of distributable income of the Trust are to be allocated to the Redemption Price,

may be determined by the Manager from time to time. The Manager must advise the person redeeming Units within 2 months after the end of the Financial Year in which the redemption occurs of the amount of the Redemption Price that represents a distribution of distributable income. Where an amount of distributable income is included in the Redemption Price of a Unit in a Distribution Period, the Member is to be presently entitled, or regarded as presently entitled, within the meaning of section 95A of the Income Tax Assessment Act 1936, to that distributable income in respect of that Distribution Period.

7. Redemption procedures⁶

Request for redemption

- 7.1 A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid and subject to the Security Interest Rules, the Manager must give effect to that request at the time and in the manner set out in this clause 7. In the case of a redemption where the Manager, by arrangement with a Member, does not require a discrete redemption request from the Member, the Manager may determine that it is deemed to have received a redemption request in relation to the redemption at the time and date nominated by it.
- 7.2 A Member may not withdraw a redemption request unless the Manager agrees.

When Trust is Liquid⁷

- 7.3 Clauses 7.4 to 7.12 apply only while the Trust is Liquid⁸.

⁶ These procedures must be fair to all Members: Section 601GA(4)

⁷ Required to be included by Section 601GA(4)(b)

⁸ For definition of a liquid scheme see Section 601KA

- 7.4 Subject to the Security Interest Rules, the Manager must satisfy a redemption request in respect of a Unit by payment from the Assets of the Redemption Price calculated in accordance with clause 6. The payment must be made within 30 Business Days of the next Prescribed Redemption Day after receipt of the redemption request or such longer period as allowed by clause 7.6.
- 7.5 The Manager may treat a redemption request received after a Business Day it specifies before the next Prescribed Redemption Day as a request relating to the next Prescribed Redemption Day or as relating to the Prescribed Redemption Day immediately following the next Prescribed Redemption Day. In the latter case, clauses 6.2 and 7.4 will be taken to refer to the later Prescribed Redemption Day.
- 7.6 If:
- (i) the Manager has taken all reasonable steps to realise sufficient Assets to satisfy a redemption request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset; or
 - (ii) in the opinion of the Manager it is in the interests of Members to do so,
- then the period allowed for satisfaction of the request may be extended by the number of days during which such circumstances apply.
- 7.7 The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.
- 7.8 The Manager is not obliged to pay any part of the Redemption Price out of its own funds.
- 7.9 If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.
- 7.10 If the Manager increases the minimum holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount redeem that Member's holding without the need for a redemption request.

Discretionary redemption⁹

7. 11 Subject to the Security Interest Rules, if the Manager is not obliged to give effect to a redemption request, it may redeem some or all of the Units which are the subject of the request.

⁹ Subject to section 601FC(1)(d)

- 7.12 Subject to the Security Interest Rules, the Manager may redeem some or all of a Member's Units at any time without having received a redemption request from the relevant Member in relation to those Units.

When Trust is not Liquid¹⁰

- 7.13 While the Trust is not Liquid¹¹, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Law regulating offers of that kind¹². If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 7.14 The Manager is not at any time obliged to make a withdrawal offer.
- 7.15 If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Clauses applicable whether or not the Trust is Liquid

- 7.16 Clauses 7.17 and 7.18 apply whether or not the Trust is Liquid.

Sums owed to Manager

- 7.17 The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member.

Transfer of Assets

- 7.18 Subject to the Security Interest Rules, the Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within 30 Business Days before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

8. Valuation of Assets

Periodic valuations

- 8.1 The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Law¹³.

¹⁰ Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

¹¹ For definition of a liquid scheme see Section 601KA

¹² Refer sections 601KB to 601KE

¹³ See section 601FC(1)(j) for Manager's obligations concerning valuation

- 8.2 The Manager may determine Net Asset Value at any time, including more than once on each day.
- 8.3 The Manager may determine valuation methods and policies for each category of Asset and change them from time to time.

9. Income and distributions to Members

Distributable income

- 9.1 (a) The Manager must determine the distributable income of the Trust for each Distribution Period.
- (b) If no determination is made or to the extent to which no determination is made under clause 9.1(a), then the distributable income of that Distribution Period is equal to the Operating Income for that Distribution Period.
- (c) In determining the distributable income the Responsible Entity does not have to take into account accounting standards or generally accepted accounting principles and practices which apply to trusts.
- 9.2 The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

Entitlement

- 9.3 Members on the Register at midnight on each Distribution Calculation Date are presently entitled to the distributable income of the Trust in respect of the Distribution Period ending on that day to the extent it has not been previously distributed (for example, as part of the Redemption Price). This amount is to be transferred to a distribution account and ceases to be an Asset of the Trust as at midnight on the Distribution Calculation Date.
- 9.4 Subject to the Security Interest Rules, each Member is entitled to distributable income transferred to the distribution account pro rata according to the number of Units they hold as at midnight on the Distribution Calculation Date.
- 9.5 Subject to the Security Interest Rules, payments must be made out of the distribution account to Members within 2 months after the Distribution Calculation Date.

Deferral

- 9.6 If the Manager determines that it is not practical to distribute income received in a Distribution Period, it may be treated as having been received in the next Distribution Period.

Separate accounts

- 9.7 The Manager may keep separate accounts of different categories or sources of income or capital, or deductions or credits for tax purposes, and may allocate income, capital, deductions or credits from a particular category or source to particular Members.

Minimum distribution

- 9.8 The Manager may transfer capital to the distribution account to enable distribution to Members of the minimum amount necessary to avoid the Manager as trustee of the Trust becoming assessable to pay tax under the Income Tax Assessment Act 1997.

Other distributions

- 9.9 Subject to the Security Interest Rules, the Manager may at any time distribute any amount of capital or income to particular Members. The distribution may be in cash or by way of additional Units.

Reinvestment

- 9.10 The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.
- 9.11 If the Manager decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- 9.12 If reinvestment applies, the Manager is deemed to have received an application to reinvest distributions immediately before the first Valuation Time falling on the next Business Day in the next Distribution Period and in this case, clauses 4.2 and 5.6 will be taken to refer to that Business Day.

Position of transfer of Units

- 9.13 Income in the distribution account when a transfer or transmission of Units is Registered remains credited to the transferor.

10. Payments

- 10.1 Money payable by the Manager to a Member or a person at the direction of a Member may be paid in any manner the Manager decides.
- 10.2 Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member or a person at the direction of the Member, the money is to be reinvested in Units on behalf of the Member at the Application Price prevailing at the next Valuation Time falling on a Prescribed Application Day after the cheque is cancelled.
- 10.3 Where the Manager attempts to make a payment by electronic transfer of funds to a Member or a person at the direction of a Member, and the transfer is unsuccessful on 3 occasions, the money may be reinvested in Units on behalf of the Member at the Application Price prevailing at the next Valuation Time falling on a Prescribed Application Day after failure of the third attempt.

- 10.4 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.
- 10.5 A payment to anyone of joint Members will discharge the Manager in respect of the payment.
- 10.6 The Manager may, in its absolute discretion, reject or comply with a direction from a Member to make a payment in respect of the Member to a person other than the Member. A payment to a person at the direction of a Member will discharge the Manager in respect of the payment.
- 10.7 The Manager may deduct from any amount to be paid in respect of a Member, or received from a Member, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.
- 10.8 The Manager may deduct from any amount to be paid in respect of a Member any amount of Tax incurred in respect of that payment.

11. Powers of the Manager

General powers

- 11.1 Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

Contracting powers¹⁴

- 11.2 Without limiting clause 11.1, the Manager in its capacity as trustee of the Trust has power to borrow (whether or not on security) and to incur all types of obligations and liabilities.

Investment powers

- 11.3 Without limiting clause 11.1, the Manager may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion¹⁵.

Power of delegation¹⁶

- 11.4 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

¹⁴ Required to be included by Section 601GA(3)

¹⁵ Subject to Section 601FC(4)

¹⁶ See also Section 601FB

11.5 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

11.6 The agent or delegate may be an associate of the Manager¹⁷.

Exercise discretion

11.7 The Manager is completely unrestricted in the exercise of its powers and discretions. For example:

- (a) the Manager may in its absolute discretion decide how and when to exercise its powers and discretions; and
- (b) the Manager may exercise a power or discretion even though it has another interest in the result of the exercise or owes other duties in respect of it.

12. Retirement of Manager

Voluntary retirement

12.1 The Manager may retire as the responsible entity of the Trust as permitted by law¹⁸.

Compulsory retirement

12.2 The Manager must retire as the responsible entity of the Trust when required by law¹⁹.

New responsible entity

12.3 Any proposed replacement manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

Release

12.4 When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed²⁰.

13. Notices to Members

13.1 Subject to the Corporations Law, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

¹⁷ Subject to Part 5C.7

¹⁸ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

¹⁹ See Section 601FM and 601FA.

²⁰ See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

- 13.2 A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member²¹.
- 13.3 In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- 13.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the law²², the Manager may determine²³ the time at which other forms of communication will be taken to be received.

14. Notices to the Manager

- 14.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 14.2 The notice is effective only at the time of receipt.
- 14.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Manager dispenses with this requirement²⁴.

15. Meetings of Members

Corporations Law

- 15.1 The Manager may at any time convene a meeting of Members, or Members of a Class, and must do so if required by the Corporations Law²⁵.

Manager may determine

- 15.2 Subject to this clause 15 and the Corporations Law²⁶, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

²¹ See Clause 16.3(c)

²² See Section 601 FC(1)(d)

²³ See Section 252G(4)

²⁴ See Clause 16.3(c)

²⁵ Refer Part 2G.4

²⁶ Refer Part 2G.4

Quorum

15.3 The quorum for a meeting of Members is 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

No quorum

15.4 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Chairman

15.5 Subject to the Corporations Law²⁷ the Manager may appoint a person to chair a meeting of Members.

15.6 The decision of the chairman on any matter relating to the conduct of the meeting is final.

Adjournment

15.7 The chairman has power to adjourn a meeting for any reason to such place and time as the chairman thinks fit.

Resolutions binding

15.8 A Resolution binds all Members, whether or not they were present at the meeting. A Resolution by Members of a Class binds all Members of that Class only, whether or not they were present at the meeting.

15.9 No objection may be made to any vote cast unless the objection is made at the meeting.

16. Rights and liabilities of Manager

Holding Units

16.1 The Manager and its associates may hold Units in the Trust in any capacity²⁸.

Other capacities

16.2 Subject to the Corporations Law²⁹, nothing in this constitution restricts the Manager (or its associates) from:

²⁷ Refer Part 2G.4 and Section 601FC(1)

²⁸ See Section 601FG, Section 253E and Part 5C.7

²⁹ Refer Part 5C.7

- (a) dealing with itself (as trustee of the Trust or in another capacity), an associate or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

Manager may rely

16.3 The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

17. Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 17.1 If the Manager acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 17.2 The liability of the Manager to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

Indemnity in favour of Manager

- 17.3 The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³⁰.
- 17.4 To the extent permitted by the Corporations Law³¹, the indemnity under clause 17.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 17.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Trust.

18. Liability of Members

Liability limited

- 18.1 Subject to clauses 18.3 and 18.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- 18.2 A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.
- 18.3 The Manager is entitled to be indemnified by a Member to the extent that the Manager incurs any liability for Tax as a result of the Member's action or inaction.
- 18.4 Joint Members are jointly and severally liable in respect of all payments including payments of Tax to which clause 18.3 applies.

Recourse

- 18.5 In the absence of separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

Restrictions on Members

- 18.6 A Member:
- (a) must not interfere with any rights or powers of the Manager under this constitution;
 - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (c) may not require an Asset to be transferred to the Member.

³⁰ See Section 601GA(2)

³¹ See Sections 601FB(2) and 601GA(2)

19. Remuneration and expenses of Manager

Application Fee

19.1 The Manager is entitled in respect of each application for Units in the Trust which it accepts to a fee of 3% of the application money. The application fee must be deducted from the application money, or the value of any other property against which Units are to be issued, before calculating the number of Units to be issued.

Management Fee

19.2 The Manager is entitled to a management fee of 2% per annum of Net Asset Value calculated, accruing and payable at such times as determined by the Manager, from the date the Trust commences to the date of final distribution in accordance with clause 21.3.

Performance Fee

19.3 In respect of each Prescribed Period, the Manager is entitled to a performance fee of 20% of any percentage increase in Net Asset Value (adjusted for capital flows and before fees and expenses) over the Prescribed Period in excess of the Hurdle Rate calculated, accruing and payable at such times as determined by the Manager from the date the Trust commences to the date of final distribution in accordance with clause 21.3.

Waiver of Fees

19.4 The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

Expenses

19.5 All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust³² are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Law. This includes the following expenses, or expenses connected with the following:

- (a) this constitution and the formation of the Trust;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or other promotion of the Trust;
- (c) the preparation of, and compliance with, the Security Interest Rules;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets;

³² Refer Section 601GA(2)(b)

- (e) any proposed acquisition, disposal or other dealing with an investment;
- (f) the administration or management of the Trust or its Assets and Liabilities;
- (g) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (h) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (i) financial institution fees;
- (j) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (k) the engagement of a contractor, agent or delegate to supply services to or on behalf of the Manager, such as Asset valuation, Unit pricing or investment management services;
- (l) preparation and audit of the taxation returns and accounts of the Trust;
- (m) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 19.4(n) must be repaid;
- (o) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to or insurance premiums³³ in respect of compliance committee members;
- (p) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Law;
- (q) the preparation, implementation, amendment and audit of the compliance plan;
and

³³ See Section 601JG

(r) complying with any law, and any request or requirement of the ASIC.

In this clause 19.4, "expenses" includes internal expenses of the Manager incurred in connection with the matters referred to in clause 19.4(a) to (r) inclusive (including costs of appointing and maintaining staff in connection with those matters) and amounts paid by the Manager to related bodies corporate for services provided to the Manager in connection with the Trust where the expenses referable to the task performed or service provided by the related body corporate would have been reimbursable under this clause 19.4 had they been incurred by the Manager.

GST

19.6 The application fee, management fee and performance fee payable to the Manager under this clause 19 do not include any amount referable to GST. If the Manager becomes liable to pay GST in respect of any matter arising under this constitution including the performance of any of its obligations, then, in addition to any other amount to which the Manager is entitled, the Manager is also entitled to recover from the Assets an amount equal to the amount of the GST liability.

20. Duration of the Trust

Commencement

20.1 The Trust commences when the Manager's nominee subscribes \$100 for Units in the Trust. The Manager's nominee must be issued with 100 Units in return for that payment.

Termination

20.2 The Trust terminates on the earliest of:

- (a) the 80th anniversary of the day before the Trust commenced;
- (b) the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
- (c) the date on which the Trust terminates in accordance with another provision of this constitution or by law³⁴.

³⁴ See Part 5C.9 on winding up

21. Procedure on termination

Realisation of Assets

21.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

Audit of winding up

21.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

21.3 Subject to the Security Interest Rules, the net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed pro rata to Members according to the number of Units they hold. The Manager may distribute proceeds of realisation in instalments.

21.4 Subject to the Corporations Law, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 21.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

22. Amendments to this Constitution

Manager may amend

22.1 Subject to the Corporations Law³⁵, the Manager may by deed amend this constitution.

Statutory requirements

22.2 If the Corporations Law or any relief from the provisions of the Corporations Law granted by the ASIC requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 22.1 does not apply to provisions deemed by this clause 22.2 to be incorporated in the constitution.

³⁵ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

23. Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Law³⁶.

24. Complaints

If a Member submits to the Manager a complaint alleging that it has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must acknowledge in writing receipt of the complaint as soon as practicable and in any event within 30 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 90 days after receipt by the Manager of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

25. Interpretation

Definitions

25.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

³⁶ See section 601JF

Application Price: the Unit price calculated in accordance with clause 4.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

Assets: all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

Auditor: the auditor for the time being of the Trust.

Business Day:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; and
- (b) any other day specified by the Manager to be a business day for the purposes of this definition.

Class: a class of Units.

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Trust.

Distribution Calculation Date: the last day of each Financial Year and such other days as the Manager designates.

Distribution Period:

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Hurdle Rate: the percentage increase in Net Asset Value (adjusted for capital flows and before fees and expenses) over a Prescribed Period as the Manager determines from time to time.

Liabilities: all present liabilities of the Trust including any provision which the Manager decides should be taken into account in determining the liabilities of the Trust but excluding any liability to Members as members which represent Units on issue and liabilities that are derivative instruments used for hedging.

Liquid: has the same meaning as in the Corporations Law³⁷.

Manager: the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Law.

Member: the person Registered as the holder of a Unit (including persons jointly Registered).

Net Asset Value: the value of the Assets calculated in accordance with clause 8 (but not including assets that are derivative instruments used for hedging) less the Liabilities.

Operating Income: the gross income (including realised gains but excluding any unrealised gains) of the Trust from its operations including interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (a) Interest and other borrowing costs;
- (b) fees paid to the Manager
- (c) any other amount that the Manager considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust; and
- (d) realised (but not unrealised) losses of disposal of investments.

Prescribed Application Day: The last Business Day of each month or such other Business Day as the Manager determines.

Prescribed Redemption Day: the last Business Day of March, June, September and December of each year, or such other Business Day as the Manager determines.

Prescribed Period: one month or such other period as the Manager determines.

Prescribed Time: 4.00pm or such other time as the Manager determines.

Redemption Price: the Unit price calculated in accordance with clause 6.

Register: the register of Members kept by the Manager under the Corporations Law.

Registered: recorded in the Register.

Registration: recording in the Register.

Resolution:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy; or

³⁷ Refer Part 5C.6

- (ii) If a poll is duly demanded, by the required majority of the number of Units held by Members present and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members:
 - (i) in the case of a resolution by Members of a Class, holding the required majority of the Units in that Class; or
 - (ii) in any other case, holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority³⁸.

Security Interest Rules: the rules made and published by the Manager for the recognition of encumbrances over Units, as amended by the Manager from time to time.

Tax: all kinds of taxes, duties, imposts, deductions, levies and charges imposed by a government, together with interest and penalties.

Transaction Costs:

- (a) when calculating the Application Price or a Unit, the Manager's estimate of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Manager's estimate of the total cost of selling the Assets;

provided that subject to the Corporations Law³⁹ the Manager may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust: the trust constituted under or governed by this constitution.

Unit: an undivided share in the beneficial interest in the Trust as provided in this constitution.

Valuation Time: a time at which a calculation of the Net Asset Value is completed by the Manager.

Interpretation

25.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Law are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "including", "includes", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not;

³⁸ Circumstances where an extraordinary resolution is required include a vote on amendments to this constitution if necessary (see section 601GA(1)(a)), winding up by Members, and choosing a new responsible entity.

³⁹ See section 601FC(1)(d)

- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

Other documents

- 25.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.
- 25.4 The security Interest Rules do not form part of this constitution.

Constitution legally binding⁴⁰

- 25.5 The constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Governing law

- 25.6 This constitution is governed by the law of New South Wales.

Other obligations excluded

- 25.7 Except as required by the Corporations Law all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

⁴⁰ Refer Section 601GB

Finding list

This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Law for constitutions of registered managed investment schemes.

Corporations Law	Constitution
601GA	
(1)(a)	4.1 - 4.4
(1)(b)	11.1 - 11.3
(1)(c)	24
(1)(d)	21
(2)	17.3 - 17.5, 19.1- 19.6
(3)	11.2
(4)(a)	7.1, 7.4, 7.13
(4)(b)	7.3 - 7.12, 7.16 - 7.18, 6.1 - 6.4
(4)(c)	7.13 - 7.15
601GB	25.5