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5 June 2007

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The Directors  
Zurich Australian Superannuation Pty Limited  
5 Blue Street  
NORTH SYDNEY NSW 2060

Our Ref: 2519532

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Dear Directors

**Deed of Amendment for Simplified Superannuation**

**1. Background**

- 1.1 Pursuant to your instructions we have prepared a Deed of Amendment to the Zurich Master Superannuation Fund (**Fund**) Trust Deed (**Trust Deed**) to accommodate the changes being introduced by the Simplified Superannuation regime.
- 1.2 Please see the final version of the Deed of Amendment attached for execution by Zurich Australian Superannuation Pty Limited (**Trustee**) as trustee of the Fund.

**2. Opinion**

- 2.1 In our opinion the Deed of Amendment is consistent with the requirements under the *Superannuation Industry (Supervision) Act 1993*, *Superannuation Industry (Supervision) Regulations 1994*, the *Corporations Act 2001*, the *Income Tax Assessment Act 1936* and 1997 and other relevant law governing the operation of superannuation funds under the Simplified Superannuation regime.
- 2.2 In our opinion the Deed of Amendment is also consistent with the amendment power contained in clause 3 of the Trust Deed.
- 2.3 In our opinion the execution of the Deed of Amendment is in the interests of the members of the Fund as it will enable sufficient flexibility in relation to implementation of, as well as compliance with, the Simplified

*Superannuation regime. The nature of the changes are summarised in the Schedule to this letter.*

Once the Deed of Amendment has been executed it does not need to be stamped as Deeds of Amendment to superannuation fund trust deeds in NSW are non-dutiable.

However, please provide to us an executed copy of the Deed of Amendment for our records and so that we may consolidate the existing Trust Deed to incorporate the changes.

Should you have any further queries in relation to the Deed of Amendment, please do not hesitate to contact either myself on 02 9330 8212 or Robert O'Donohue on the number below.

Yours faithfully



Scott Charaneka  
Partner  
Deacons  
Contact: Robert O'Donohue  
Direct line: +61 (0)3 8686 6072  
Email: robert.odonohue@deacons.com.au

Encl.

## Schedule: Changes made to the Trust Deed

(1) Definitions

The definition of "**Family Act**" has been amended to insert the word "Law" into "**Family Law Act**" in that definition as it was missing.

We have inserted definitions for "**Account Based Pensions**", "**No-TFN Contributions Income**", "**Release Authority**" and "**Transition to Retirement Income Streams**" consistent with the new concepts which will be introduced by the Simplified Superannuation regime.

We have amended the reference to the name of the "**Master Fund Self-Employed Persons Division**" referred to in clause 4.2(c)(2) on the basis that the Division is actually called the "**Master Fund Gainfully Employed Persons Division**".

(2) Release Authorities

We have generally provided throughout the Deed for the power of the Trustee to pay amounts in satisfaction of a Release Authority on behalf of members which needs to be specifically given to the Trustee under the Trust Deed.

(3) No-TFN Contributions Income and refusal of contributions

We have also provided for the crediting in the Taxation Reserve Account of any tax offset or rebate obtained by the Fund to facilitate a rebate being paid to the Fund where No-TFN contributions income tax has been paid but is subsequently refunded where a member provides the correct tax file number within the required time period.

We have further provided for the Trustee to refuse any contributions where a member has not quoted their Tax File Number or the Trustee becomes aware that the member has exceeded their non-concessional contributions cap (see amendment to clause 9.3 of the Trust Deed).

(4) Removal of Compulsory Cashing

We have provided for the amendment to sub-rules which presently provide for compulsory cashing of benefits where a member attains the age of 65 and does not satisfy the requisite work test (eg sub rule 1.5(a) of Schedule 1).

05/06/2007

Please note that compulsory cashing (except in the case of death) has been removed as from 10 May 2006. Accordingly, we have inserted that the Effective Date for these amendments as 10 May 2006.

(5) Account Based Pensions and Transition to Retirement Income Streams

We have otherwise provided for comprehensive rules in relation to the payment of Account Based Pensions and Transition to Retirement Income Streams in new rules 3.9 and 3.10 of schedule 3.

We have retained the existing rules in relation to the payment of allocated pensions and market linked pensions on the basis that we understand that Zurich will continue to offer these pensions to members who have commenced these pensions prior to 20 September 2007.

(6) Reversionary Pensions

We have also slightly amended the rules relating to the payment of a reversionary allocated or market linked pension to dependants to ensure that such dependants must be "*eligible*" dependants on the basis that reversionary pensions paid to adult children will be restricted to those children between the ages of 18-24 who are financially dependant on the member (unless disabled) and are no longer able to be paid to the legal personal representative of an estate of the member.



Deacons

Dated 18 July 2007

## DEED OF AMENDMENT

**ZURICH MASTER SUPERANNUATION FUND TRUST  
DEED**

**Zurich Australian Superannuation Pty Limited**  
ABN 78 000 880 553

### **Contact**

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Our ref: 2519532

**BY: ZURICH AUSTRALIAN SUPERANNUATION PTY LIMITED** ABN 78  
000 880 553 of 5 Blue Street, North Sydney New South Wales 2060  
(Trustee)

## INTRODUCTION

- A. By a trust deed dated 2 November 1972 (**Trust Deed**) an indefinitely continuing superannuation fund known as the Zurich Master Superannuation Fund (**Fund**) was established.
- B. The Trustee has agreed to act as trustee of the Fund.
- C. The Trust Deed has been amended from time to time.
- D. The Trustee has the power to vary the Trust Deed in accordance with clause 3 of the Trust Deed.
- E. *The Trustee wishes to vary the Trust Deed in the manner set out in this deed (**Deed of Amendment**) with effect from the Effective Date.*
- F. The amendments are in accordance with the requirements specified in clause 3 of the Trust Deed and the Trustee considers that the amendments do not infringe the limitations set out in that clause or adversely affect a member's right or claim to accrued benefits or the amount of those accrued benefits.

## IT IS AGREED

### 1. Interpretation

1.1 **Effective Date** means 1 July 2007, except in relation to:

- (1) those amendments stipulated under clauses 2.1(1)(a), (2), (6), (8), (9) and (10), of this Deed of Amendment in which case the Effective Date means the date of execution of this Deed; and
- (2) *those amendments stipulated under clauses 2.1 (11), (12), (13) and (14) of this Deed of Amendment in which case the Effective Date means 10 May 2006.*

### 2. Amendment

2.1 Pursuant to clause 3 of the Trust Deed, the Trustee determines that as and from the Effective Date the following variations will apply to the Trust

Deed:

- (1) That the definitions specified in clause 1.1 of Section 1 of the Trust Deed be amended as follows;
  - (a) The definition of "**Family Act**" be amended by inserting the word "**Law**" after the words "*...means the Family....*".
  - (b) The following definitions be inserted into clause 1.1 in accordance with their alphabetical order:
    - (i) "**Account Based Pension**" means a pension payable on the terms stipulated in rule 3.9 of Schedule 3 of this Deed or as otherwise payable under the terms of the Relevant Law.";
    - (ii) "**No-TFN Contributions Income**" has the same meaning as in the Relevant Law.";
    - (iii) "**Release Authority**" means a documented authority issued by the Commissioner of Taxation stating the amount of excess contributions tax that a Member of the Fund is liable to pay.";
    - (iv) "**Transition to Retirement Income Stream**" means a pension payable on the terms of rule 3.10 of Schedule 3 of this Deed or as otherwise payable under the Relevant Law."
- (2) That clause 4.2(c)(2) of the Trust Deed be amended by deleting the words "*...Self-Employed....*" and substituting in its place the words "*...Gainfully Employed....*".
- (3) That clause 5.3(a)(15) be amended by adding the word "*or*" after the end of paragraph (C) of the clause and then adding the following as sub-clause (D) of the clause:

"(D) *paying any amount in satisfaction of a Release Authority given to the Trustee for the payment of an excess contributions tax assessment.*"
- (4) That clause 7.4(a) of the Trust Deed be amended by inserting the following text after the words "*...for any Tax payable by the Fund...*" on the second last line of the clause:

"(including to pay any liability under a Release Authority on behalf of a Member) or to receive any Tax rebate, credit or off-set..."

and be further amended by inserting the following as sub-clause

(3) of the clause:

*“(3) any amount received as a Tax rebate or off-set obtained by the Fund including in relation to Tax previously paid by the Fund on No-TFN Contributions Income in respect to a Member.”*

- (5) That clause 7.5(b)(3) be amended by inserting the following text on the second last line after the words “...Fund Expenses payable by the Fund...”:

*“...(including to pay any liability under a Release Authority on behalf of a Member)...”*

- (6) That clause 8.2(b)(3) of the Trust Deed be amended by deleting the word “...participate...” on the last line of the clause and substituting in its place the words “...a Participating Employer...”.

- (7) That clause 9.3 of the Trust Deed be amended by deleting “.” from the end of clause 9.3(c) and inserting in its place “; or” and by inserting the following as clause 9.3(d):

*“(d) the Member in respect of which the contribution has been received has not quoted their Tax file number.”*

and adding the following text after the last word of the clause:

*“...including where the Trustee becomes aware that a Member has exceeded their non-concessional contributions cap.”*

- (8) That clause 9.9 be amended by deleting the word “as” from the third line of the clause and substituting the word “at” in its place.
- (9) That clause 11.1(c) be amended by deleting the text “11.11(a)” from the first line and substituting in its place “11.1(1)(a)”.
- (10) That clause 13.6(b) be amended by deleting the text “13.5(a)” and substituting in its place “13.6(a)”.
- (11) That rules 1.5(a)(4) and (5) of Schedule 1 of the Trust Deed be amended by deleting the entirety of those rules and the following text be added to the end of the sentence “The Trustee must pay an Employee Member the Member’s Benefit if...” specified after rule 1.5(a)(3):

*“...after attaining age 65 the Member requests payment of such benefit.”*

and by deleting the colon at the end of the existing sentence.



- (12) That rule 1.5(b) be amended by deleting on the second line the text “...on a Full-Time Basis or...”.
- (13) That rules 2.5(a)(4) and (5) of Schedule 2 of the Trust Deed be deleted in their entirety and that the following text be added to the sentence “*The Trustee must pay a Personal Member the Member’s Benefit if...*” specified after rule 2.5(a)(3):
- “...after attaining age 65 the Member requests payment of such benefit.”
- and by deleting the colon at the end of the existing sentence.
- (14) That rule 2.5(b) of Schedule 2 of the Trust Deed be amended by deleting on the second line the text “....on a Full-Time Basis or...”.
- (15) That rule 3.1A of Schedule 3 of the Trust Deed be amended by:
- (a) deleting the word “two” on the first line of the rule and substituting the word “three” in its place.
- (b) deleting the full stop at the end of rule 3.1A(b) and inserting the text “; and” in its place; and inserting the following as rule 3.1A(c):
- “(c) *the Account Based Pension Subdivision.*”
- (c) deleting the last two lines of the existing rule 3.1A.
- (16) That rule 3.5 of Schedule 3 be amended by:
- (a) deleting the full stop at the end of rule 3.5(d) and substituting the following in its place “; or”.
- (b) adding the following as rule 3.5(e):
- “(e) *an Account Based Pension.*”
- (17) That rule 3.6 of Schedule 3 of the Trust Deed be amended by inserting the following as rule 3.6(e):
- “(e) *If an Account Based Pension is agreed to be paid under rule 3.5(e) the Trustee must pay the Account Based Pension on the terms specified in rule 3.9.*”
- (18) That rule 3.7(q) of Schedule 3 be amended by inserting after the words on the last line “...more of the Member’s...” the word “eligible” before the word “Dependants”.

- (20) That the following be inserted as rule 3.7(v) of Schedule 3 of the Trust Deed:

*“(v) As an alternative to paying an allocated pension on the basis of the above rules from 1 July 2007 a Member may elect to have the pension paid on the terms stipulated in rule 3.9.”*

- (21) That the following be inserted as rule 3.7(w) of Schedule 3 of the Trust Deed:

*“Where the Relevant Law requires additional or differing conditions to those stipulated in this rule 3.7 for the payment of allocated pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.”*

- (22) That rule 3.8(n) of Schedule 3 of the Trust Deed be amended by inserting after the words *“one or more of the Member’s.....”* the word *“eligible”* before the word *“Dependants”*.

- (23) That the following be inserted as rule 3.8(s) of Schedule 3 of the Trust Deed:

*“Where the Relevant Law requires additional or differing conditions to those stipulated in this rule 3.8 for the payment of term allocated pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.”*

- (24) That the following rule be inserted as rule 3.9 of Schedule 3 of the Trust Deed in relation to the provision by the Trustee of Account Based Pensions:

**“3.9. Account Based Pension**

*(a) Where an Account Based Pension is payable from the Fund the following conditions shall apply to the payment of the pension to a Member:*

- (1) The total of any pension payments in any year must be at least the amount required by the Relevant Law; and*
- (2) The pension is transferable only to another person on the death of the Member; and*

- (3) *The capital value of the pension and the income from it cannot be used as security for a borrowing; and*
- (4) *Upon the death of the Member the pension must not continue to be paid as a pension to:*
  - (A) *An adult Child at least 25 years of age (unless they have a disability); or*
  - (B) *A Child between the ages of 18 and 24 who was not financially dependent on the Member; or*
  - (C) *The legal personal representative of the estate of the Member; and*
- (5) *The pension cannot be commuted in whole or in part except in the following circumstances:*
  - (A) *Where the Member has died; or*
  - (B) *Where the sole purpose of the commutation is to:*
    - (i) *pay a superannuation contributions surcharge; or*
    - (ii) *give effect to an entitlement of a non-member spouse under a family law payment split; or*
    - (iii) *meet the rights of a person to return a financial product under the Relevant Law; or*
  - (C) *Where there is a partial commutation the account balance of the pension after the commutation is equal to or greater than the minimum balance required by the Relevant Law after the commutation; or*
  - (D) *The minimum amount required to be paid under the Relevant Law has been paid in the financial year in which the commutation takes place; and*
- (6) *No minimum payment of the pension shall be*

*required in a financial year where that pension commences after 1 June in that financial year unless the Relevant Law otherwise requires; and*

(7) *No payment by way of contribution or by way of a transfer or rollover shall be added to the pension account.*

(b) *Where the Relevant Law requires additional or differing conditions to those stipulated in rule 3.9(a) for the payment of Account Based Pensions these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law.”.*

(25) That the following be inserted as Rule 3.10 of Schedule 3 of the Trust Deed to provide for Transition to Retirement Income Streams:

**“3.10 Transition to Retirement Income Stream at Preservation Age**

(a) *Where a Member attains his or her preservation age but does not retire from gainful employment the Trustee may offer an Account Based Pension on the terms specified in these rules except that the Account Based Pension cannot be commuted to a superannuation lump sum unless:*

(1) *the purpose of the commutation is:*

(A) *to cash an unrestricted non-preserved benefit; or*

(B) *to pay a superannuation contributions surcharge; or*

(C) *to give effect to an entitlement of a non-member spouse under a family law payment split; or*

(2) *before the commutation the Member has satisfied a condition of release in respect of which the cashing restriction for Preserved Benefits and restricted non-preserved benefits is nil.*

(b) *The total pension payments made in a financial year to a Member for a Transition to Retirement Income Stream may be no more than 10% of either:*

- (1) *the pension account balance on 1 July in the financial year in which the payment is made; or*
  - (2) *if the relevant financial year is the year in which the pension commences the pension account balance on the commencement day; or*
  - (3) *such other amount as required under the Relevant Law.*
- (c) *Where the Relevant Law requires additional or differing conditions to those stipulated in rule 3.10(a) and (b) for the payment of a non-commutable form of an Account Based Pension these rules will be deemed to incorporate those additional or differing conditions but only for such period that those additional or differing conditions are required by the Relevant Law."*

### **3. Confirmation**

- 3.1 The Trust Deed as amended by this Deed of Amendment is confirmed and ratified in all other respects.
- 3.2 The Trustee confirms that the amendments:
- (1) do not adversely affect a member's right or claim to accrued benefits or the amount of those accrued benefits; and
  - (2) are not intended to declare or create any new trust in relation to the Fund, or to cause the transfer, vesting or accrual of property to or in any person.
- 3.3 This Deed of Amendment will not affect the rights of Specified Members (as defined under the Trust Deed) in respect to benefits except in the circumstances permitted by the Original Deed (as defined in the Trust Deed) as it existed immediately prior to 30 June 2001.

### **4. Governing Law**

- 4.1 The Trust Deed as amended by this Deed of Amendment shall be governed by and construed by reference to the law of NSW.

### **5. Severability**

- 5.1 If anything in this Deed of Amendment is unenforceable, illegal or void

then it is severed and the rest of this Deed of Amendment remains in force.

**EXECUTED** as a deed.

Executed by **Zurich Australian Superannuation Pty Limited** ABN 78 000 880 553 in accordance with section 127 of the *Corporations Act 2001*:

  
\_\_\_\_\_  
Director/company secretary  
**Peter W Burton**

Name of director/company secretary  
(BLOCK LETTERS)

  
\_\_\_\_\_  
Director  
**CHRISTOPHER L POWELL**

Name of director  
(BLOCK LETTERS)

