

Deed of Company Arrangement

Brendon Gibson and Neale Jackson (Deed Administrators)

LBC Holdings UK Limited (Administrators Appointed) (the Company)

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DEED OF COMPANY ARRANGEMENT

Date: 19 December 2018

PARTIES

Brendon Gibson and Neale Jackson in their capacity as joint and several deed administrators of the Company (*Deed Administrators*)

LBC Holdings UK Limited (Administrators Appointed) (the *Company*)

BACKGROUND

- A On 23 February 2018, Brendon Gibson and Neale Jackson were appointed as joint and several administrators of the Company, pursuant to section 239I of the Companies Act.
- B At a meeting held on 18 December 2018 and convened pursuant to section 239AT of the Companies Act, the Creditors resolved that the Company execute a deed of company arrangement pursuant to section 239ABA of the Companies Act (*Watershed Meeting Resolution*).
- C The Deed Administrators have consented to be the administrators of this Deed.
- D The Company and the Deed Administrators execute this Deed in accordance with:
- D.1 the Watershed Meeting Resolution; and
- D.2 a Court order obtained by the Administrators in relation to due execution of this Deed by the Company or otherwise in accordance with clause 3.2 (*Execution by the Company*).
- E Subject to the terms of this Deed, this Deed binds all Creditors of the Company in accordance with section 239ACT of the Companies Act and also binds the Deed Administrators, the Company and the Company's officers and the Shareholder in accordance with section 239ACS of the Companies Act.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Administration Period means the period of time commencing on the Appointment Date and concluding on the Deed Commencement Date;

Administrators means jointly and severally, Brendon Gibson and Neale Jackson in their capacity as administrators of the Company and any successor to that office appointed pursuant to the Companies Act;

Administrators' Costs includes:

- (a) costs, charges, fees, government charges, Taxes and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Administrators' duties, obligations and responsibilities under the Companies Act or any other statute or at law during the Administration Period; and
- (b) all costs, claims, expenses, losses, demands, proceedings, liabilities and amounts for which the Administrators are indemnified under clause 15.2 (*Indemnity*);

ANZBGL means Australia and New Zealand Banking Group Limited;

ANZBGL Facility means:

- (a) the "Application and Indemnity for Standby Letter of Credit and Guarantee Issuance to facilitate the business transactions of CBL Corporation Limited with United Specialty Insurance Company" dated 10 November 2017; and
- (b) any guarantee, indemnity, bond, letter of credit or similar instrument issued by ANZBGL at the Company or CBL Corporation Limited's (Administrators Appointed) request, including a USD4,184,115 guarantee / standby letter of credit issued on 17 November 2010 in favour of United Specialty Insurance Company;

ANZ Bilateral Facilities means:

- (c) the bridge facility agreement originally dated 29 September 2016 (as amended and restated on 24 November 2017 and as amended and restated from time to time) entered into between the Company and ANZ NZ; and
- (d) any guarantee, indemnity, bond or letter of credit or similar instrument issued by ANZ NZ at the Company or CBL Corporation Limited's (Administrators Appointed) request, including:
 - (i) a USD1,357,539 guarantee / standby letter of credit issued on 22 March 2017 in favour of United Specialty Insurance Company;
 - (ii) a USD961,138 guarantee / standby letter of credit issued on 7 March 2017 in favour of United Specialty Insurance Company; and
 - (iii) a USD3,554,558 guarantee / standby letter of credit issued on 30 June 2017 in favour of United Specialty Insurance Company;

ANZ NZ means ANZ Bank New Zealand Limited;

Appointment Date means 23 February 2018;

Assets means all the undertakings and assets of the Company;

Business Day means any day other than a Saturday, Sunday or public holiday in Auckland;

CBL Administration Group means each of LBC Holdings New Zealand Limited (Administrators Appointed), LBC Holdings UK Limited (Administrators Appointed), LBC Holdings Europe Limited (Administrators Appointed), LBC Holdings Australasia Limited (Administrators Appointed) and LBC Treasury Company Limited (Administrators Appointed);

CBL Group means each of CBL Corporation Limited (Administrators Appointed) and its subsidiaries (whether incorporated in New Zealand or overseas);

Chairperson means any one of the Deed Administrators for the time being;

Claim means a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages that would be admissible to proof against the Company in accordance with the Companies Act, if the Company had been liquidated and the liquidation is taken to have commenced on the:

- (a) Appointment Date; or
- (b) date of the Watershed Resolution (to the extent that a debt or liability has arisen between the Appointment Date and the date of the Watershed Resolution and is not a Post Administration Creditor Obligation),

and includes any claim against the Company by a Secured Creditor;

Companies Act means the Companies Act 1993;

Consultancy Support Deed means the consultancy support deed dated 25 May 2018 between CBL Corporation Limited (Administrators Appointed), the Lenders and the Administrators;

Contingent Claim Amount has the meaning given to it in clause 9.10(b) (*Payments with respect to LC Claim to be held in a separate account*);

Contingent Claim Proportion means the proportion (determined by the Deed Administrator and agreed to by ANZ NZ (on behalf of itself and ANZBGL) that any uncalled LC Claim bears to the total Claims of all Creditors;

Court means the High Court of New Zealand;

Creditor means any person who would have been entitled to prove in a liquidation of the Company, if the Company had been liquidated and the liquidation was taken to have commenced on the Appointment Date and includes the Secured Creditors and each Creditor referred to in the Creditors Schedule but excludes any Post Administration Creditor Obligations;

Creditor Committee means the creditor committee formed in accordance with this Deed and governed by the Creditor Committee Protocols;

Creditor Committee Costs includes:

- (a) costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, incurred by the Members in

connection with the performance of the Creditor Committee duties, obligations and responsibilities under this Deed; and

- (b) all costs, claims, expenses, losses, demands, proceedings, liabilities and amounts for which the Members are indemnified under clause 12.12 (*Right of indemnity and limitation of liability*);

Creditor Committee Protocols means the protocols governing the Creditor Committee as set out in clause 12 (*Creditor Committee*);

Creditors Schedule means the list of Creditors substantially in the form attached as Schedule 1 (*Creditors Schedule*) and as updated from time to time by the Deed Administrators in accordance with clause 9 (*Proof and admission of Claims*);

Deed means this deed of company arrangement as amended from time to time;

Deed Administrators' Costs includes:

- (a) costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Deed Administrators' duties, obligations and responsibilities under the Companies Act or any other statute or at law and this Deed during the Deed Period; and
- (b) all costs, claims, expenses, losses, demands, proceedings, liabilities and amounts for which the Deed Administrators are indemnified under clause 15.2 (*Indemnity*);

Deed Commencement Date means the date that this Deed is executed by the Deed Administrators and the Company;

Deed Completion Date means the earlier of:

- (a) the date that this Deed is terminated in accordance with clause 18.2 (*Termination on satisfaction of the Deed*); or
- (b) the date that this Deed is terminated by the Court or by the Creditors in accordance with clause 18.3 (*Termination by Court or Creditors*);

Deed Period means the period commencing on the Deed Commencement Date and ending on the Deed Completion Date;

Deferred Remuneration means the amount of Administrators' Remuneration and payments of other legal and other professional and advisory costs and fees that may have been deferred for payment as determined by the Administrators;

Enforcement Process has the same meaning as in section 239C of the Companies Act;

Final Distribution Date means the date on which the Deed Administrators actually make the final payment to the Creditors in accordance with clause 10.3 (*Final Distribution Date*);

General Security Deed means the general security deed originally dated 21 March 2018 (as amended from time to time) between (among others) CBL Corporation Limited (Administrators Appointed) and ANZ NZ;

Institutional Credit Agreement means the institutional credit agreement originally dated 21 March 2018 (as amended from time to time) between (among others) CBL Corporation Limited (Administrators Appointed) and ANZ NZ;

LC Claim has the meaning given to it in clause 9.10(a) (*Payments with respect to LC Claim to be held in a separate account*)

Legal Personal Representative means a trustee or executor appointed to the Deed Administrators or Administrators upon death, incapacity, insanity or any combination of them;

Lenders means ANZ NZ, Bank of China (New Zealand) Limited and Industrial and Commercial Bank of China (New Zealand) Limited;

Member means a member of the Creditor Committee appointed in accordance with clause 12 (*Creditor Committee*);

Overdraft Funding Deed means the overdraft funding deed dated 8 August 2018 between CBL Corporation Limited (Administrators Appointed), LBC Holdings New Zealand Limited (Administrators Appointed), the Lenders and the Secured Creditor;

Post Administration Creditors means any person to whom the Company incurs or owes a Post Administration Creditor Obligation;

Post Administration Creditor Obligation means:

- (a) the Deed Administrators' Costs and Remuneration;
- (b) the Administrators' Costs and Remuneration;
- (c) the obligation to repay amounts owing under the Institutional Credit Agreement;
- (d) the Creditor Committee Costs;
- (e) the costs and expenses (including legal expenses) of each Lender in developing, proposing and preparing this Deed; and
- (f) any other claim that the Deed Administrators determine should be treated as a Post Administration Creditor Obligation;

PPSA means the Personal Property Securities Act 1999;

Register means the New Zealand register of companies as referred to in section 360(1)(a) of the Companies Act;

Registrar means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act;

Regulations means the Companies (Voluntary Administration) Regulations 2007;

Relevant Proportion means at any time, the proportion which:

- (a) the amount of a call made under a letter of credit; or
- (b) the amount of any liability which expires under a letter of credit,

(as applicable) bears to the maximum liability of all letters of credit (immediately prior to such call or expiry) at that time;

Remuneration means the remuneration payable to the Administrators and the Deed Administrators for acting as:

- (a) the administrators of the Company under Part 15A of the Companies Act; and
- (b) the Deed Administrators of the Company under this Deed;

Replacement Deed Administrators has the meaning given to it in clause 11.12 (*Replacement Deed Administrators*);

Representative means each person appointed by a Member as its individual representative on the Creditor Committee;

Secured Creditor means ANZ NZ in its capacity as lender under the Institutional Credit Agreement;

Shareholder has the meaning given to that term in section 96 of the Companies Act;

Syndicated Loan means the syndicated loan facility dated 24 November 2017 entered into between (among others) CBL Corporation Limited and the Lenders;

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

1.2 **Construction**

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

Business Days: anything required by this Deed to be done on a day which is not a Business Day may be done effectually on the next Business Day;

Clauses and Schedules: a reference to a clause or a schedule is to a clause or schedule of this Deed, and a reference in a schedule to a clause is a reference to a clause in that schedule;

Currency: a reference to any monetary amount is to New Zealand currency;

Defined Terms: words or phrases appearing in this Deed with capitalised initial letters are defined terms and have the meanings given to them in this Deed;

Documents: a reference to any document, including this Deed, includes a reference to that document as amended or replaced from time to time;

Examples and Inclusions: an example, or a reference to "including" (or similar) does not exclude any other matter or thing;

Headings: headings appear as a matter of convenience and do not affect the construction of this Deed;

Joint and Several Liability: any provision of this Deed to be performed or observed by two or more persons binds those persons jointly and severally;

Negative Obligations: a reference to a prohibition against doing any thing includes a reference to not permitting, suffering or causing that thing to be done;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this Deed;

Parties: a reference to a party to this Deed or any other document includes that party's personal representatives/successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this Deed, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules: the schedules form part of this Deed;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;

Time: a reference to time is to New Zealand time; and

Writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;

1.3 **Bar to claims**

This Deed may be pleaded and tendered by the recipient of any payment or release or covenant contained in this Deed, as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

1.4 **Exclusion of prescribed provisions**

The prescribed provisions contained in Schedule 1 of the Regulations are expressly excluded from this Deed.

1.5 **Required provisions**

To the extent that the Companies Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

1.6 Conflict

Insofar as any provision of this Deed is inconsistent with a provision of the Companies Act, this Deed shall, to the extent of such inconsistency and to the extent permitted by law, prevail.

2 OPERATION

2.1 Deed Commencement Date

This Deed will commence and take effect on the Deed Commencement Date.

2.2 Interim effect

Without prejudice to the effect of section 239ACQ of the Companies Act to the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Watershed Meeting Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.

3 EXECUTION BY ALL PARTIES

3.1 Execution

The continuing effectiveness of this Deed is subject to and conditional upon the execution of this Deed by the Company and the Deed Administrators.

3.2 Execution by the Company

(a) If this Deed has not been executed by the Company on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the date on which the Watershed Meeting Resolution is passed, then:

- (i) the Deed Administrators and the Creditors shall request that the Administrators execute this Deed on behalf of the Company and immediately apply to the Court for an order that this Deed has been validly executed; or
- (ii) the Deed Administrators shall apply to the Court for an order authorising the execution of this Deed by the Administrators on behalf of the Company; or
- (iii) the Deed Administrators shall apply to the Court for a further extension for the period for signing this Deed under section 239ACO of the Companies Act.

(b) If neither the Administrators nor the Deed Administrators are able to obtain a Court order either:

- (i) validating the execution of this Deed by the Administrators on behalf of the Company; or
- (ii) authorising the execution of this Deed by the Administrators on behalf of the Company,

then the Deed Administrators and the Creditors shall consult together and may take such collective or individual action as they consider appropriate in their absolute discretion in response.

4 INTENT OF THIS DEED

4.1 Intent of this Deed

The intent of this Deed is to provide for:

- (a) the orderly realisation and distribution of recoveries from the Assets;
- (b) a continuation of the moratorium established on the appointment of the Administrators;
- (c) the establishment of the Creditor Committee, the confirmation of the powers and processes of the Creditor Committee and the means by which reports to the Creditor Committee can be made;
- (d) a consultative and controlled process for investigating and evaluating any potential claims against third parties and to determine whether it is in the best interests of Creditors for the Company to pursue any claim or claims;
- (e) a cost effective and controlled process for determining, funding and prosecuting any claims against third parties (with support of the Creditor Committee);
- (f) a certain and controlled process for concluding the administrations of the Company;
- (g) the removal of the Company from the Companies Register or (if the Registrar rejects an application to remove a party from the Companies Register and it is decided following consultation with the Creditor Committee) the entry of each party into liquidation following the completion of the administrations; and
- (h) the granting of all necessary and incidental powers to the Deed Administrators to effect the purpose and intent of this Deed.

4.2 Distribution to Creditors

All persons bound by this Deed acknowledge that it is the intention of this Deed that:

- (a) all Post Administration Creditor Obligations shall be paid from the available realisations of the Company in accordance with this Deed;
- (b) the Creditor Claims shall be paid only in accordance with and to the extent provided for in this Deed;
- (c) on and from the Watershed Meeting Resolution the Company shall have the protection of clause 7.3 (*Moratorium*); and
- (d) following the Final Distribution Date, the Deed Administrators shall apply to the Registrar to have the Company struck off the register in accordance with clause 18.2 (*Termination following Final Distribution Date*).

5 TREATMENT OF CREDITORS

5.1 Determination of Creditors

The Deed Administrators will:

- (a) determine the amount of the Claims of the Creditors as at the Appointment Date in accordance with clause 9 (*Proof and admission of Claims*);
- (b) notify the Company and the Creditor Committee as to the Deed Administrators' determination of the amount of the Claims of the Creditors; and
- (c) complete (as at the Appointment Date) and maintain the Creditors Schedule; and
- (d) notify each individual Creditor as to the Deed Administrators' determination of the amount of its Creditor Claim.

5.2 Creditors

- (a) The Claims of the Creditors shall be compromised, amended and paid in accordance with this Deed.
- (b) Where the Claim of a Creditor (including any LC Claim) crystallises as an actual debt or claim during the Deed Period then the relevant Creditor shall promptly submit or resubmit the Claim to the Deed Administrators for admission of the Claim and that Claim shall be determined by the Deed Administrators in accordance with clause 9 (*Proof and admission of Claims*).

5.3 Post Administration Creditors

All Post Administration Creditor Obligations shall be satisfied in accordance with:

- (a) clause 6 (*Payment waterfall*); and
- (b) this clause 5 (*Treatment of Creditors*).

5.4 Creditor Committee, Administrators and Deed Administrators not personally liable

To the maximum extent permitted by law, no member of the Creditor Committee or the Administrators or the Deed Administrators have, or will be taken to have adopted, ratified or in any other manner become personally liable under any arrangement or agreement between the Company and any Post Administration Creditor or any Creditor in any circumstance, including without limitation as a result of:

- (a) entering into, or performing any obligations or exercising any rights under, this Deed;
- (b) any discussions or correspondence with:
 - (i) any Post Administration Creditor in respect of any Post Administration Creditor Obligation; or
 - (ii) any Creditor,

the use, occupation or possession of any Asset by the Company during:

- (iii) the Administration Period; or
- (iv) the Deed Period; or
- (c) any other act, matter or thing done or omitted to be done by or on behalf of the Creditor Committee, the Administrators or the Deed Administrators.

5.5 **Administrator payments**

(a) Each Creditor, the Company and each Member of the Creditor Committee, acknowledges, confirms and ratifies the validity of any payments made by, or payment obligations of, the Administrators during the period between the Appointment Date and the Watershed Meeting Resolution in respect of:

- (i) the Consultancy Support Deed;
- (ii) the Deferred Remuneration;
- (iii) the matters set out in the Overdraft Funding Deed,

notwithstanding that all or part of the obligation to pay such amounts may have arisen prior to or following the Watershed Meeting Resolution.

(b) Each Creditor, the Company and each Member of the Creditor Committee acknowledges and confirms that the Deferred Remuneration shall form part of the Remuneration to be paid to or on behalf of the Administrators out of the realisation of the Assets in accordance with clause 6.1 (*Payment waterfall*)

5.6 **Creditors' separate capacities**

All persons bound by this Deed acknowledge that a person may have separate claims against the Company. For the avoidance of doubt, a person is separately bound by this Deed in respect of each separate claim.

5.7 **No additional financial support**

For the avoidance of doubt, other than in accordance with the Institutional Credit Agreement (but subject to clause 13.5 (*Drawing under the Institutional Credit Agreement*)), on and from the Deed Commencement Date, the Lenders shall not be required to provide any additional financial support to the Company.

6 **PAYMENT WATERFALL**

6.1 **Payment waterfall**

On receipt of proceeds from the realisation of any Assets and on the Final Distribution Date, the Company shall either immediately make the following payments, or (if the Creditor Committee agrees) retain moneys for such period as the Creditor Committee agrees and apply such retained moneys on the date for payment agreed by the Creditor Committee (to the extent permitted by law and subject to any claims ranking in priority to the claims created under this Deed) in the following order of priority:

- (a) *Insolvency practitioner costs, expenses, liabilities and fees:* first, payment pari passu and rateably to:
 - (i) the Administrators of any Administrators' Costs and Remuneration of the Administrators due and owing on that date by the Company;
 - (ii) the Deed Administrators of any Deed Administrators' Costs and Remuneration of the Deed Administrators due and owing on that date by the Company under this Deed; and
- (b) *Payments under the Institutional Credit Agreement:* second, to the extent monies are available, payment to the Secured Creditor of any amounts due and owing under the Institutional Credit Agreement;
- (c) *Creditor Committee costs and expenses:* third, to the extent monies are available, payment to the Creditor Committee of any costs, expenses and indemnity amounts (including legal fees) of the Creditor Committee due and owing on that date;
- (d) *Costs for preparing this Deed:* fourth, to the extent monies are available, payment pari passu and rateably to each Lender of any costs and expenses (including legal expenses) of each Lender in developing, proposing and preparing this Deed;
- (e) *Other Post Administration Creditors:* fifth, to the extent monies are available, payment pari passu and rateably to any other Post Administration Creditors of any Post Administration Creditor Obligations due and owing on that date by the Company and not otherwise paid pursuant to limbs (a) to (d) above to the extent that, on a liquidation of the Company, such Post Administration Creditor Obligations would constitute a preferential claim under clause 1 of Schedule 7 (*Preference Claims*) of the Companies Act;
- (f) *Amounts owing to Creditors:* sixth, to the extent monies are available and to the extent that the relevant Claim has been admitted pursuant to clause 9 (*Proof and admission of Claims*), payment pari passu and rateably to:
 - (i) the Lenders of all amounts due and owing on that date under the Syndicated Loan (including, for the avoidance of doubt, all accrued interest and other costs incurred by the Lenders for which the Company is liable to reimburse the Lenders);
 - (ii) ANZ NZ of amounts owing under the ANZ Bilateral Facilities and any other separate facilities (including, for the avoidance of doubt,

all accrued interest and other costs incurred by ANZ NZ for which the Company is liable to reimburse ANZ NZ);

(iii) and any other Creditor; and

(g) *Surplus to Shareholder*: seventh, to the extent monies are available, payment or any residual amounts to the Shareholder of the Company.

6.2 Subordination

Each recipient of a payment under clauses 6.1(b) to 6.1(f) (*Payment waterfall*) will be deemed to agree that:

- (a) in accordance with section 313(3) of the Companies Act 1993, pursuant to clause 6.1 (*Payment waterfall*) he or she is accepting a lower priority in relation to the relevant debt than that which it would otherwise have under section 313 of the Companies Act 1993; and
- (b) nothing in sections 310, 310A to 310O (inclusive) or 313 of the Companies Act 1993 will prevent this Deed from having effect in accordance with its terms.

7 MORATORIUM

7.1 Binding effect

Subject to the rights of the Secured Creditor under the Institutional Credit Agreement referred to in clause 8.1 (*Rights of the Secured Creditor*), and without prejudice to the extent that it might otherwise bind any person, this Deed binds:

- (a) in accordance with section 239ACT of the Companies Act, all Creditors who have a Claim; and
- (b) in accordance with section 239ACS of the Companies Act, the Company, its officers and the Shareholder of the Company and the Deed Administrators.

7.2 No limitation

Nothing in the Deed limits the rights in law or equity of the Deed Administrators:

- (a) to make an application under section 239ABO or section 239ABS or section 239ACV of the Companies Act; or
- (b) to apply for orders or directions pursuant to the Companies Act (including, without limitation, section 239ADO or section 239ADR of the Companies Act),

provided that if the Deed Administrators have any concern about the effectiveness or validity of any provision of this Deed or any concern about any action that they are required to take under this Deed, then the Deed Administrator may:

- (c) consult with the Creditor Committee in respect of seeking a Court order or direction; or
- (d) propose an amendment to this Deed; or
- (e) seek a direction of the Court.

7.3 **Moratorium**

From the date of the Watershed Meeting Resolution until the Deed Completion Date and subject to clause 8.1 (*Rights of Secured Creditors*), no Creditor (other than a Creditor in accordance with this Deed) may in relation to that Creditor's Claim:

- (a) make or proceed with an application for an order, or take any other step, to liquidate (including the appointment of an interim liquidator), or remove from the Register, the Company;
- (b) institute, revive or continue any action, suit, arbitration, mediation or proceeding (including for the appointment of a receiver) against the Company or in relation to the property of the Company;
- (c) institute, revive or continue with any Enforcement Process against the property of the Company;
- (d) take any action whatsoever against the Company to seek to recover or enforce any part of its Claim;
- (e) exercise any right of set off or defence, cross claim or cross action or right of combination of accounts against the Company;
- (f) commence or take any further step in any arbitration against the Company or to which the Company is a party in relation to any matter arising or occurring before the Appointment Date; or
- (g) otherwise enforce any right it may have or acquire.

7.4 **This Deed**

Subject to clause 8.1 (*Rights of the Secured Creditor*), nothing in clause 7.3 (*Moratorium*) limits or restricts the rights of the Creditors or the Creditor Committee to exercise the rights and remedies set out in this Deed.

8 **SECURED CREDITOR**

8.1 **Rights of the Secured Creditor**

Nothing in this Deed will in any way restrict the right of the Secured Creditor from lawfully realising or otherwise dealing with the Institutional Credit Agreement or the General Security Deed.

8.2 **Consequence if the Secured Creditor takes enforcement action**

If the Secured Creditor takes enforcement action under or in connection with the Institutional Credit Agreement or the General Security Deed:

- (a) this Deed will remain in effect;
- (b) following any sale of the Company's assets by the Secured Creditor (or any receiver appointed by it) and application of the sale proceeds to repay amounts owing to the Secured Creditor under the Institutional Credit Agreement, the Secured Creditor must pay, or direct any receiver appointed by it to pay, to the Deed Administrator any surplus sale proceeds; and

- (c) upon receipt of such surplus sale proceeds, the Deed Administrator must apply those proceeds in accordance with the payment waterfall in clause 6.1 (*Payment waterfall*).

9 **PROOF AND ADMISSION OF CLAIMS**

9.1 **Creditors**

The Deed Administrators will prepare and maintain the Creditors Schedule in accordance with this clause.

9.2 **Provable Claims and evidence of Claims**

- (a) All Claims are admissible to proof against the Company under this clause 9 (Proof and Admission of Claims) and entitled to be admitted as a Creditor Claim.
- (b) Each person who notifies a Claim to the Deed Administrators must:
 - (i) provide the Deed Administrators with such further proof, evidence or information in support of their Claim as the Deed Administrators may reasonably require; and
 - (ii) if so required by the Deed Administrators, deliver to the Deed Administrators a statutory declaration verifying the Claim in such form as they may require.

9.3 **Costs and expenses**

Any costs and expenses incurred by a person in seeking proof of a Claim will be borne by that person and will not form part of the person's Claim.

9.4 **Determination by Deed Administrators**

The Deed Administrators will determine whether all or part of an admitted Claim should be entered as a Creditor Claim.

9.5 **Provisions applicable to Claims**

Except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, sections 302 to 304, 305(1) to (10), 306 to 310 of the Companies Act apply with all necessary modifications to Claims with such modifications as may be necessary, including:

- (a) references to the "*liquidator*" to be read as references to the Deed Administrators; and
- (b) references to the "*liquidation*" to be read as references to the Administration.

9.6 **Crystallisation of Creditor Claims**

In accordance with clause 5.2(b) (*Creditors*) where a Creditor Claim (including an LC Claim) crystallises as an actual debt or claim during the Deed Period, then the relevant Creditor shall promptly submit or resubmit a Claim to the Deed Administrator for admission and determination of the Claim as a Creditor Claim by the Deed Administrator. For the avoidance of any doubt:

- (a) any such Claim shall be determined in accordance with this clause 9 (*Proof and Admission of Claims*);

- (b) any such Claim shall be entered on the Creditors Schedule; and
- (c) the relevant Creditor shall be entitled to payments in respect of such Claim as a Creditor under this Deed in accordance with clause 9.9 (*Payments after crystallisation of Claim, Court order or correction of errors*);

9.7 Amendment of Claims

The Deed Administrators shall enter a Claim by a Creditor on the Creditors Schedule in accordance with their determination or, as appropriate, amend the Creditors Schedule in accordance with any such order of a Court as the case requires. If the Creditors Schedule is amended at any time, any affected Creditor will be a Creditor to the extent of its amended Claim.

9.8 Correction of errors

If the Deed Administrators consider that a Claim or any part of it has been incorrectly entered on the Creditors Schedule, then they must notify the relevant Creditor and the Claim will thereupon be removed in whole or in part from the Creditors Schedule as may be determined by the Deed Administrators. The Deed Administrators shall not have any personal liability to any person in respect of any incorrect entry on the Creditors Schedule.

9.9 Payments after crystallisation of Claim, Court order or correction of errors

If, at the time of any entry on, or amendment to, the Creditors Schedule, any payments have been made to Creditors, the following provisions will apply:

- (a) if the effect of that entry or amendment is to extinguish the amount of a person's Claim, that person must at once repay to the Company on demand, by way of restitution, the total amount paid in respect of that Claim;
- (b) if the effect of that entry or amendment is to reduce the amount of a person's Claim, that person must at once repay to the Company on demand, by way of restitution, the amount paid that exceeds the amount the person would have been entitled to receive if that person's Claim had been originally admitted for the reduced amount;
- (c) if the effect of that entry or amendment is to cause a person to become a Creditor, the person is entitled to be paid out of any subsequent money available for payment pursuant to clause 6.1 (*Payment waterfall*), before the available money is applied to pay other Creditors, the payment that the person would have been entitled to receive if the person's Claim had been originally admitted in accordance with this clause 9 (*Proof and Admission of Claims*); and
- (d) if the effect of that entry or amendment is to increase a person's Claim, the person is entitled to be paid out of any subsequent money available for payment pursuant to clause 6.1 (*Payment waterfall*), before the available money is applied to pay other Creditors, any additional payment the person would have been entitled to receive if all of the person's Claim had been originally admitted in accordance with this clause 9 (*Proof and Admission of Claims*).

In respect of paragraphs (c) and (d), the person is not entitled to disturb any payments to Creditors made before the relevant entry or amendment to the Creditors Schedule is made by the Deed Administrators.

9.10 Payments with respect to LC Claim to be held in a separate account

- (a) It is recognised that the Claim of ANZ NZ and the Claim of ANZBGL include contingent amounts with respect to letters of credit which form part of the ANZ Bilateral Facilities or the ANZBGL Facilities (as applicable) (the *LC Claim*).
- (b) When a distribution is to be made under clause 6 (*Payment waterfall*) the Deed Administrators shall determine the Contingent Claim Proportion and shall notify the Creditors of the amount of any distribution that shall be attributed to the Contingent Claim Proportion (the *Contingent Claim Amount*) and withhold an amount equal to the Contingent Claim Amount from the distribution to ANZ NZ and ANZBGL under clause 6.1(f).
- (c) The Deed Administrators shall pay the Contingent Claim Amount into a separate interest bearing bank account (opened with ANZ NZ in the name of the Deed Administrator) (the *Contingent Claim Account*) (for the avoidance of doubt there will be one Contingent Claim Account across the CBL Administration Group) and such amount(s) will be retained in such account until such time as:
 - (i) any letter of credit underlying an LC Claim is called (whether for the full face value or only a proportion of the face value), in which case the Deed Administrators shall release from the Contingent Claim Account an amount equal to the Relevant Proportion of funds in the Contingent Claim Account to ANZ NZ for the benefit of ANZ and/or ANZBGL (as applicable); or
 - (ii) any letters of credit underlying an LC Claim expire, in which case the Deed Administrators shall release from the Contingent Claim Account an amount equal to the Relevant Proportion of funds in the Contingent Claim Amount for distribution pursuant to clause 6 (*Payment waterfall*); or
 - (iii) the Deed Administrators notify ANZ NZ that the "Final Distribution Date" (as defined in the relevant deed of company arrangement) of the last member of the CBL Administration Group to be struck of the Companies Register in accordance with its deed of company arrangement, has been determined, in which case all monies standing to the credit of the Contingent Claim Account shall be paid to the Deed Administrators and shall be available for distribution pursuant to clause 6 (*Payment waterfall*).
- (d) For the avoidance of doubt, this clause 9.10 does not apply to any distribution to ANZ NZ in its capacity as Secured Creditor.

9.11 Time of the essence

Time will be of the essence in respect of each and every obligation of a Creditor or a person notifying a Claim pursuant to this clause 9 (*Proof and Admission of Claims*).

9.12 Deed Administrator to request updated Claim prior to a distribution

The parties acknowledge that the amounts to be distributed under clause 6.1(f) (*Payment waterfall*) are to take into account accrued interest and other costs incurred by the relevant Creditor for which the Company is liable to reimburse the relevant Creditor. The Deed Administrator shall, prior to any distribution being made under clause 6.1 (*Payment waterfall*) request that each Creditor submit an updated Claim which includes such accrued interest and other costs and shall update the Creditors Schedule and ensure that the distribution is made in accordance with the amounts set out in the updated Creditors Schedule.

10 NO FURTHER ACTION AGAINST THE COMPANY

10.1 No further action against the Company

On and from the Final Distribution Date, no Creditor shall conduct any of the actions described in clause 7.3 (*Moratorium*) in relation to its Claim against the Company. However, prior to the Final Distribution Date, notwithstanding that a Creditor has been paid any amount of its Claim pursuant to this Deed, it shall still be entitled to claim the full amount of its Claim under any deed of company arrangement entered into by any other member of the CBL Group or in any other insolvency process in New Zealand or any other jurisdiction.

10.2 Determining the Final Distribution Date

The Final Distribution Date shall not occur until the Deed Administrators have given notice to the Company and the Creditor Committee that the following conditions have either been satisfied (in all material respects) or the Deed Administrators and the Creditor Committee have agreed need not be satisfied for the purposes of determining the Final Distribution Date:

- (a) all recoveries from the Assets have been realised by the Company;
- (b) all claims have been evaluated and all proceedings in relation to any claims have been finally determined;
- (c) all Post Administration Creditors have been or will be paid on or before the Final Distribution Date;
- (d) the final amount available for distribution to the Creditors has been determined and is available for distribution to the Creditors as cleared funds and no further distributions are reasonably anticipated; and
- (e) the Creditor Committee is satisfied that the Registrar will agree to strike the Company off the Register.

The Deed Administrators shall give the notice contemplated under this clause promptly upon being satisfied that the conditions have been satisfied.

10.3 Final Distribution Date

No later than 5 Business Days after the Deed Administrators have given notice to the Company and the Creditor Committee in accordance with clause 10.2 (*Determining the Final Distribution Date*), the Company shall ensure that the Final Distribution Date occurs and that all payments required to be made on that date in accordance with clause 6 (*Payment waterfall*) have been made.

10.4 No claim or challenge to de-registration or application for re-registration of the Company

- (a) No Creditor or Post Administration Creditor shall claim, have any standing, or otherwise challenge the process to be conducted by the Deed Administrators in accordance with this Deed with respect to the de-registration of the Company.
- (b) Following de-registration of the Company, no Creditor or Post Administration Creditor shall apply for the Company to be restored to the Register pursuant to section 328 or 329 of the Companies Act.

10.5 Absolute bar

Subject to section 239ADT of the Companies Act and without prejudice to clause 1.3 (*Bar to claims*), this Deed may be pleaded by the Company or the Deed Administrators against any person having a claim against the Company as an absolute bar and defence to any legal proceedings brought and made at any time against the Company in contravention of clause 10.1 (No further action against the Company).

11 DEED ADMINISTRATORS' APPOINTMENT

11.1 Appointment

The Deed Administrators are appointed joint and several administrators of the Deed.

11.2 Acceptance of appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed;
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Companies Act; and
- (c) confirm that under section 239ACD(2) of the Companies Act they are not disqualified from accepting the appointment as administrators of the Deed.

11.3 Deed Administrators' role

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will:

- (a) act as agents for and on behalf of the Company; and
- (b) act as an independent and separate third party exercising and performing the particular rights, functions and obligations specifically set out in this Deed.

11.4 This Deed

The Deed Administrators are hereby authorised and instructed to enter into this Deed in their capacity as Deed Administrators.

11.5 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

11.6 Extent of responsibilities

The Deed Administrators shall have no duties or responsibilities except those expressly set forth in this Deed and in Part 15A of the Companies Act.

11.7 Discretion to act

Notwithstanding anything to the contrary in this Deed, the Deed Administrators are not obliged to do or omit to do anything if, in their sole opinion, such thing would or might constitute a breach of any law or regulation or a breach of any duty or render it liable to any person.

11.8 Instructions

- (a) The Deed Administrators shall have no obligation to seek or act on the instructions of any Creditor or the Creditor Committee unless, and to the extent, expressly specified in this Deed.
- (b) Where the Deed Administrators are, under the terms of this Deed, required to act on the instructions of the Creditor Committee, the Deed Administrators may, in the absence of any such instructions, refrain from acting until instructions are received.

11.9 No monitoring

The Deed Administrators are not required to enquire or investigate as to the compliance by any party of its obligations under this Deed.

11.10 Reliance on documents and experts

The Deed Administrators shall be entitled to rely on:

- (a) communications, documents or agreements believed by the Deed Administrators to be genuine and correct; and
- (b) advice and statements of lawyers and other experts selected by it,

and shall be protected in so relying.

11.11 Deed Administrators' resignation

- (a) The Deed Administrators may resign at any time by giving not less than 28 days' prior written notice to the Company and to the Creditor Committee in which event the Deed Administrators must:
 - (i) convene a meeting of Creditors in accordance with clause 11 (*Deed Administrators' Appointment*) of this Deed for the purpose of nominating replacement deed administrators;
 - (ii) assign to such replacement deed administrators the Deed Administrators' rights, title and benefit under this Deed; and
 - (iii) do all things reasonably necessary to effect the assignment referred to in clause (ii) above including making available to the replacement deed administrator all documents and records relating to the business operations of the Company in their possession or control.

11.12 Replacement Deed Administrators

If the Deed Administrators retire or are removed from office in accordance with this Deed or the Companies Act then any replacement deed administrator (the

Replacement Deed Administrator) agrees that if the Creditor Committee resolve unanimously that they have lost trust and confidence in the ability of the Replacement Deed Administrators to perform their obligations under this Deed then the Replacement Deed Administrators shall be deemed to have resigned on the date falling 28 days after the date of the Creditor Committee resolution referred to above and then the steps outlined in clauses 11.11(a)(i) to (a)(iii) above shall apply to that resignation.

12 CREDITOR COMMITTEE

12.1 Establishment of the Creditor Committee

The Creditor Committee shall be established on the Deed Commencement Date.

12.2 Functions of Creditor Committee

- (a) The functions of the Creditor Committee are to perform the functions, make the decisions and exercise the rights and powers provided for the Creditor Committee in this Deed. This shall include (among other things and without limitation):
- (i) confirming any potential advisers to the Deed Administrators;
 - (ii) evaluating any potential claims against third parties;
 - (iii) determining appropriate funding and process for prosecuting any claims against third parties;
 - (iv) determining the appropriate course and conduct if a Court order cannot be obtained pursuant to clause 3.2 (*Execution by the Company*);
 - (v) determining the appropriate cause and conduct if the Registrar rejects an application to have a party struck off the Companies Register; and
 - (vi) determining whether they have lost trust and confidence in the ability of the Replacement Deed Administrators to perform their obligations under this Deed for the purposes of clause 11.12 (*Replacement Deed Administrators*).
- (b) The Creditor Committee shall be entitled to take such actions and do such things as are necessary or desirable to carry out its functions.
- (c) The Creditor Committee will be established on the Deed Commencement Date.

12.3 Composition of Creditor Committee

- (a) The Creditor Committee shall comprise of three Members, being:
- (i) ANZ NZ;
 - (ii) Industrial and Commercial Bank (New Zealand) Limited; and
 - (iii) Bank of China (New Zealand) Limited.

- (b) Each Member shall appoint its Representative to represent it on the Creditor Committee.
- (c) Each Member will use reasonable endeavours to ensure that any Representative appointed by it is suitably experienced and qualified having regard to the functions of the Creditor Committee.
- (d) A Member may from time to time appoint any person to be an alternate Representative who may attend meetings and fully participate as a member of the Creditor Committee in the absence of the usual Representative. To appoint an alternate Representative, the Member must give written notice to the Chairperson identifying the alternate Representative, confirming the alternate Representative meets the criteria set out in clause 12.3(c) (*Composition of Creditor Committee*) and setting out any conditions or details of his or her appointment.
- (e) A Member who appoints an alternate Representative may at any time revoke that appointment by giving written notice to the alternate Representative and the Chairperson.
- (f) A Representative may resign by giving written notice to the Member that appointed the Representative and the Chairperson.
- (g) A Member may terminate the appointment of its Representative at any time by giving written notice to that Representative and the Chairperson.

12.4 **Chairperson of the Creditor Committee**

- (a) Subject to clause (c) below, the Chairperson shall be one of the Deed Administrators at that time. Each of the Deed Administrators is able to act as Chairperson.
- (b) The Deed Administrators and any subsequent Chairperson may resign the role of Chairperson by giving written notice to each Member and the Company.
- (c) If the Deed Administrators resign the role of Chairperson under clause (b) above, a replacement Chairperson (who need not be a Deed Administrator) shall be determined by the Members within 10 Business Days of the date of the Chairperson's resignation under clause (b) above.
- (d) The replacement Chairperson shall give written notice of his or her appointment as Chairperson to each Member, the Deed Administrators and the Company within 5 Business Days of his or her appointment.
- (e) For the avoidance of doubt, the Chairperson is not a Member, and has no vote at meetings of the Creditor Committee.

12.5 **Meetings of Creditor Committee**

- (a) The Creditor Committee will meet monthly (as scheduled by the Chairperson) or as otherwise determined by the Creditor Committee. Meetings will be held by the Creditor Committee either assembling together at the date, time and place appointed for the meeting and/or meeting by means of audio or audio and visual communication by which all such Representatives can simultaneously hear each other throughout the meeting.

- (b) Any regular meeting is to be convened by service of not less than 5 Business Days written notice from the Chairperson to the Members. Any other meeting may be convened by not less than two Business Days written notice from the Chairperson to the Members or from any Member to the other Members and the Chairperson. Such notice periods may be waived or abridged by all of the Members.
- (c) The quorum for any Creditor Committee meeting will be all Members. No business will be transacted at a Creditor Committee meeting unless a quorum is present.
- (d) The Creditor Committee is to conduct its business by:
 - (i) taking a reasonable and pragmatic approach to fact finding and decision making;
 - (ii) endeavouring to resolve issues as quickly and as informally as is reasonably possible; and
 - (iii) endeavouring to reach consensus on issues.
- (e) Decisions of the Creditor Committee will be made by a unanimous vote of all Members.
- (f) The Chairperson may call for any matter before a meeting of the Creditor Committee which the Chairperson considers has been agreed by the Creditor Committee to be recorded in writing as a resolution of the Creditor Committee and to be signed by all the Members.
- (g) The Chairperson and/or any Representative (subject to the agreement of the other Representatives and in respect of a particular agenda item only) may invite one or more outside representatives to all or any part of any Creditor Committee meeting. Such outside representatives may include:
 - (i) any Deed Administrator who is not acting as Chairperson;
 - (ii) a professional representative of any Member (such as a lawyer or auditor); and
 - (iii) any other person the Chairperson considers appropriate to invite in the circumstances of the relevant meeting.

For the avoidance of doubt, such outside representatives will not have any voting rights.
- (h) While any two members of the CBL Administration Group remain subject to a deed of company arrangement, joint meetings of the Creditor Committees may be held.

12.6 Other Creditor Committee matters

- (a) In performing any of the functions, making any of the decisions and exercising any of the rights and powers of the Creditor Committee, each Member may rely on information provided by the Company and the Deed

Administrator and any of their respective advisers, and any adviser appointed by the Creditor Committee.

- (b) The Deed Administrator and the Company must report to the Creditor Committee about matters relating to the Company as and when the Creditor Committee reasonably requires.
- (c) Any instructions to be given by the Creditor Committee to the Deed Administrators, or any other person, under this Deed may only be given in writing (including by email) by all Members (acting by their Representatives) of the Creditor Committee.
- (d) The Deed Administrators shall be entitled to rely on any instructions or other communications received from the Members under clause (c) above which are believed by the Deed Administrators to be genuine and correct, and the Deed Administrators shall be protected in so relying.

12.7 **Vacancy in office of member**

- (a) If:
 - (i) a Member advises the Chairperson that it no longer wishes to be a Member;
 - (ii) a Member no longer has any commercial or public interest in the activities of the Company (as determined by all Members);
 - (iii) a Member becomes insolvent, compromises or arranges with its or their creditors; or
 - (iv) a Member's Representative is absent from 3 consecutive meetings of the Creditor Committee without the leave of the Chairperson,the office of that Member will become vacant on the date determined by the Chairperson and that Member will cease to be a Member from that date.
- (b) There shall not be any replacement if there is a vacancy in the Creditor Committee in accordance with clause (a) above.
- (c) The continuing Members may act even though a vacancy exists in the Creditor Committee.

12.8 **Minutes of meetings**

- (a) The Chairperson shall ensure that minutes are kept of the proceedings and resolutions of each meeting of the Creditor Committee.
- (b) The minutes of a meeting of the Creditor Committee are prima facie evidence of the matters contained in them if they purport to be signed by:
 - (i) the Chairperson of the meeting at which the resolutions were passed or the proceedings taken; or
 - (ii) the Chairperson of the next meeting of the Creditor Committee.

- (c) Unless the contrary is proved, a meeting of the Creditor Committee is taken to have been duly convened and held, and all proceedings taken and resolutions passed at the meeting are taken to have been duly taken and passed.

12.9 Power to call Creditor meeting and vote

The Creditor Committee may, but is not obliged to, at any time call a vote of the Creditors (by meeting or postal vote).

12.10 Costs and expenses

The Company shall, on demand, pay or reimburse the Creditor Committee, the Members and the Representatives for its or their out of pocket costs and expenses on the basis set out in clause 6 (*Payment waterfall*).

12.11 Confidentiality

- (a) Subject to clause (b) below, each Member and each Representative must keep confidential any information it has obtained in performing any of its duties and in the exercise of any powers, authorities or discretions vested in the Creditor Committee.
- (b) Notwithstanding, clause (a) above, nothing prevents disclosure by a Representative of any information it has obtained in performing any of its duties and in the exercise of any powers, authorities or discretions vested in the Creditor Committee:
 - (i) to its Member, including any director, employee, contractor or professional representative (such as a lawyer or auditor) of its Member, but only on a need-to-know basis and only to enable those persons to carry out their duties;
 - (ii) to the Chairperson or the Deed Administrators; and/or
 - (iii) to any other person, if the Member or Representative has also received the information in another way (unless the Member or Representative has reasons to believe that the information was disclosed to it in breach of a duty of confidentiality).

12.12 Right of indemnity and limitation of liability

- (a) Each Member and each Representative shall, to the fullest extent permissible at law, be indemnified out of the property of the Company in respect of any cost, expense, loss or liability incurred by that Member, or that Representative, in performing any of the functions, making any of the decisions or exercising any of the rights and powers of the Creditor Committee and against all actions, proceedings, claims, demands, costs, expenses, losses or liabilities in respect of any matter or thing done or omitted in any way related to this Deed.
- (b) No Member, or any Representative, shall except where caused by its or their own fraud, gross negligence or wilful misconduct, incur any personal liability in respect of any action taken or things suffered in performing any of the functions, making any of the decisions or exercising any of the rights and powers of the Creditor Committee.

- (c) Except where caused by its own fraud, gross negligence or wilful misconduct, a liability incurred by a Member, or a Representative, acting in its capacity as a Member, or a Representative (as applicable), is limited to and can be enforced against that Member, or that Representative, only to the extent to which it can be satisfied out of property of the Company out of which that Member, or that Representative is actually indemnified for the liability. This limitation of each Member's, or each Representative's, liability applies despite any other provision of this Deed and extends to all liabilities and obligations of each Member, or each Representative acting in its capacity as a Member, or a Representative, in any way connected with any representation, warranty, conduct, omission, agreement, undertaking or transaction related to this Deed.
- (d) No Member, or Representative, in performing any of the functions, making any of the decisions or exercising any of the rights and powers of the Creditor Committee owes any duty to any other person (including, without limitation to any Creditor).

13 POWERS OF THE DEED ADMINISTRATORS

13.1 General powers

Subject to clause 11.5 (*Joint and several*) of this Deed and subject to the limitations contemplated under clauses 13.2(h) and (i) (*Additional powers*), the Deed Administrators are entitled to exercise all the rights, powers, privileges, authorities and discretions which are conferred by law on a director of a company, provided that the Deed Administrators will not be responsible for any statutory obligations that may continue to be imposed on the Company during the Deed Period.

13.2 Additional powers

Without limiting the powers in clause 13.1 (*General powers*) of this Deed, the Deed Administrators have the following powers:

- (a) to enter upon or take possession of the property of the Company;
- (b) to lease or let on hire property of the Company;
- (c) to insure property of the Company;
- (d) to insure the Deed Administrators for actions taken during the Deed Period;
- (e) to repair or renew property of the Company;
- (f) to call in, collect or convert into money the property of the Company;
- (g) to administer the Assets available for the payment of Claims in accordance with the provisions of this Deed;
- (h) to borrow in the name of the Company (provided that, other than pursuant to clause 13.5 (*Drawing under the Institutional Credit Agreement*) borrowing requires the consent of the Creditor Committee (such consent not to be unreasonably withheld));

- (i) to bring, prosecute and defend in the name and on behalf of the Company or in the name of the Deed Administrators any actions, suits or proceedings against third parties (with the consent of the Creditor Committee such consent not to be unreasonably withheld);
- (j) to refer to arbitration any question affecting the Company;
- (k) to resolve any dispute of any nature commercially;
- (l) to make payments to the Secured Creditor;
- (m) to convene and hold meetings of the Creditors of the Company for any purposes the Deed Administrators think fit;
- (n) to appoint agents to do any business or to attend to any matter or affairs of the Company that the Deed Administrators are unable to do, or that it is unreasonable to expect the Deed Administrators to do, in person, or to assist the Deed Administrators in their duties on such terms and subject to such conditions as the Deed Administrators think fit, and at their discretion to dismiss any such persons so appointed;
- (o) to engage or discharge employees on behalf of the Company;
- (p) to appoint a solicitor, accountant or other professionally qualified person to assist the Deed Administrators;
- (q) to permit any person authorised by the Deed Administrators to operate any account in the name of the Company;
- (r) to do all acts and execute in the name and on behalf of the Company all deeds, receipts and other documents;
- (s) to prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under the Insolvency Act 2006;
- (t) subject to the Companies Act, to prove in the liquidation of any contributory or debtor of the Company or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Companies Act;
- (u) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (v) to take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the Company;
- (w) to defend any application for the liquidation of the Company;
- (x) to control the Company's business, property and affairs and to enable the Company to comply with the terms of this Deed;

- (y) to perform any function and exercise any power that the Company could perform or exercise if the Company was not subject to this Deed;
- (z) to compromise any claims brought by or against the Company on such terms as the Deed Administrators and the Creditor Committee agree and to take security for the discharge of any debt forming part of the property of the Company;
- (aa) to file any Tax return and pay any Taxes due;
- (bb) to convene meetings of the Creditor Committee in accordance with the Creditor Committee Protocols;
- (cc) to obtain any information from any employee, servant or agent of or adviser to the Company as they may require to perform their duties under this Deed;
- (dd) to inspect all books and records of the Company as they may require to perform their duties under this Deed;
- (ee) to consult with the Creditor Committee in relation to any application to the Court to administer or seek directions on any matters relating to this Deed or the operation of this Deed in respect of deed administration of any member of the Company;
- (ff) to apply to Court to determine or seek directions on any matters relating to this Deed or the operation of this Deed in respect of deed administration of any member of the Company;
- (gg) to evaluate (in consultation with the Creditor Committee) any potential claims against third parties and to determine whether it is in the best interests of Creditor to pursue them and the means by which to fund them;
- (hh) to request that the Company is struck off the Register in accordance with section 318 of the Companies Act (including if applicable to provide the Registrar with the prescribed form required by section 318(1)(d) of the Companies Act or any other information that the Registrar requires subject to such approvals as are necessary to do so);
- (ii) to do anything that is incidental to exercising a power set out in this Deed;
and
- (jj) to do anything else that is necessary or convenient for the purpose of administering this Deed.

13.3 **Solicitors and consultants**

- (a) The Deed Administrators may engage solicitors and consultants, and the Company will pay (as Deed Administrators' Costs) all costs of any solicitors and consultants engaged by the Deed Administrators in accordance with clause 6 (*Payment waterfall*).
- (b) The Deed Administrators may delegate their powers under this clause 13 (*Powers of the Deed Administrators*) including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators.

13.4 No personal liability

- (a) The Administrators and the Deed Administrators shall have no personal liability for any acts, matters or omissions relating to things done or not done in that capacity, including (without limitation and to the maximum extent permitted by law) any liability relating to any amounts payable by the Administrators or the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of the Company.
- (b) The Administrators and the Deed Administrators shall not be responsible for or have any personal liability for any failure by the Company (or by any other party to this Deed) to observe or perform that party's obligations under this Deed.
- (c) Neither the Administrators nor the Deed Administrators will be personally liable for:
- (i) any loss or claim arising out of or in connection with this Deed or the administration or deed administration of the Company (whether in contract, tort or otherwise);
 - (ii) any debt, liability or other obligation which they may properly incur on behalf of the Company in the administration and implementation of this Deed;
 - (iii) (without prejudice to clause 13.4(a) above) any liabilities, claims, debts, costs or expenses (of any kind whatsoever) of any member of the Company incurred or arising in any way whatsoever on or after the Deed Commencement Date;
 - (iv) any loss or damage caused by any act, default or omission by them or on their behalf in the performance of their duties or the exercise of their functions and powers under this Deed.
- (d) If a court of competent jurisdiction holds the Administrators or the Deed Administrators or their agents or employees personally liable in respect of any matters arising under or incidental to the administration or deed administration of any member of the Company or arising out of or this Deed then:
- (i) such liability will be limited to \$5,000; and
 - (ii) no party will have recourse to any of the Administrators' or Deed Administrators' personal assets (other than the right to be indemnified pursuant to this Deed and the Companies Act) or to the personal assets of their agents or employees, nor will they petition or otherwise seek adjudication for bankruptcy of any of the Administrators or Deed Administrators or of their agents or employees, in respect of any liability, claim or judgment thereon.
- (e) This clause 13.4 (*No personal liability*) is not severable from this Deed and under no circumstances will any person bound by this Deed (in any respect) or any person claiming through any of them, claim or support any claim that this clause 13.4 (*No personal liability*) is unenforceable or should be excluded or severed from this Deed in any way.

13.5 Drawing under the Institutional Credit Agreement

For the avoidance of doubt the Deed Administrators will continue to be entitled to draw on the Institutional Credit Agreement during the Deed Period to pay Deed Administrators' Costs and its Remuneration, provided that:

- (a) the Secured Creditor confirms that the Institutional Credit Agreement is available for drawing;
- (b) the Secured Creditor provides its confirmation that is comfortable as to the priority of any repayments of drawings made under the Institutional Credit Agreement during the Deed Period;
- (c) the Lenders have provided their consent to any increase in the facility limit under the Institutional Credit Agreement; and
- (d) the only parties which can draw under the Institutional Credit Agreement are the CBL Administration Companies and CBL Corporation Limited (but only for such time as it remains in administration).

13.6 Litigation funding

For the avoidance of any doubt, under no circumstances shall the Deed Administrators enter into any litigation funding agreement or arrangement (howsoever described) without the prior written consent of the Creditor Committee.

14 REPORTING

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators may, in their absolute discretion, report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of the Creditors.

15 DEED ADMINISTRATORS' REMUNERATION AND INDEMNITY

15.1 Remuneration

The Deed Administrators are entitled to their Remuneration and the Deed Administrators' Costs on the basis of the time spent by the Deed Administrators, their partners and staff in the performance of services in connection with or in relation to the deed administration of the Company under Part 15A of the Companies Act and this Deed and such time will be charged at the Deed Administrators' standard rates, from time to time, for work of that nature.

15.2 Indemnity

The Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified by the Company for:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration or deed administration of the Company or their role as Administrators or Deed Administrators;
- (b) any amount which the Administrators or Deed Administrators are, or would be but for the transactions contemplated by this Deed be, entitled to be

indemnified out of the assets of the Company for, in accordance with the Companies Act at law or in equity;

- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 239ADL of the Companies Act applies;
- (d) any amount for which the Deed Administrators or the Administrators are entitled to exercise a lien at law or in equity on the property of the Company;
- (e) the Deed Administrators' Costs and Remuneration and the Administrators' Costs and Remuneration; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of this Deed (including without limitation, arising from acting on the instructions of the Creditor Committee, where required).

15.3 Continuing indemnity

The indemnity in clause 15.2 (*Indemnity*) is a continuing indemnity and will endure for the benefit of the Deed Administrators, the Administrators and their Legal Personal Representatives until specifically released in writing by the Deed Administrators, the Administrators and (where applicable) their Legal Personal Representatives despite the removal of the Deed Administrators or the Administrators and the appointment of new Deed Administrators or Administrators or the termination of this Deed for any reason other than in accordance with clause 18.2 (*Termination following the Final Distribution Date*).

15.4 Indemnity not to be affected or prejudiced

The indemnity under clauses 15.2 (*Indemnity*) and 15.3 (*Continuing indemnity*) will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Deed Administrators or the Administrators and extends to cover any actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators or the Administrators or defect in the approval or execution of this Deed or otherwise; or
- (b) affect or prejudice all or any rights that the Deed Administrators or the Administrators may have against the Company or any other person to be indemnified against the Costs, and liabilities incurred by the Deed Administrators or the Administrators in the performance of, or incidental to, any of the powers or authorities conferred on the Deed Administrators or the Administrators by this Deed or otherwise.

15.5 Deed Administrators' lien and buffer

Until termination of this Deed, the Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled, with respect to amounts in

respect of which they are entitled to an indemnity from the members of the Company under clause 15.2 (*Indemnity*) to:

- (a) exercise a non-possessory lien over the Assets of the Company; and
- (b) retain an amount of \$500,000 from the first realisation of assets of any member of the CBL Administration Group which is to be:
 - (i) held in a separate bank account;
 - (ii) able to be used to meet the costs and expenses of the Deed Administrators or the Administrators in their capacities as deed administrators and administrators of any member of the CBL Administration Group; and
 - (iii) on the "Final Distribution Date" (as defined in the relevant deed of company arrangement) of the last member of the CBL Administration Group to be struck of the Companies Register in accordance with its deed of company arrangement, the Deed Administrators shall ensure that such amount is distributed in accordance with the payment waterfall contained in that deed of company arrangement.

15.6 **Priority**

The Deed Administrators' or the Administrators' right of indemnity under clause 15.2 (*Indemnity*) and their right to retain amounts under clause 15.5 (*Deed Administrators' lien and buffer*) have priority over the Claims of all Creditors and the Claims of Post Administration Creditors.

16 **APPLICATION OF THE COMPANIES ACT AND REGULATIONS TO CREDITORS' MEETINGS**

18.1 The Deed Administrators may convene a meeting of Creditors at any time in accordance with section 239ADF of the Companies Act, and must convene such a meeting when required to do so under section 239ADF(2) of the Companies Act.

18.2 Subject to section 239AK of the Companies Act, Schedule 5 of the Companies Act applies with such modifications as are necessary, to meetings of Creditors held under this Deed as if the references to *the liquidator, or chairperson* as the case may be, were references to the Deed Administrators.

17 **CHALLENGE OF THE DEED**

If any person (other than the Deed Administrators):

- (a) applies to Court:
 - (i) for any order in relation to the validity of any part of this Deed; or
 - (ii) for an order seeking the termination or variation of this Deed; or
- (b) seeks to convene a Creditors' meeting for the purposes of terminating or varying this Deed,

then the Deed Administrators and the Creditor Committee shall consult together and may take such collective or individual action as they consider appropriate in their absolute discretion in response.

18 **TERMINATION OF THE DEED**

18.1 **Termination on satisfaction of the Deed**

(a) The Deed will terminate in accordance with clause 18.2 (*Termination following the Final Distribution Date*) if following the Final Distribution Date the Deed Administrators and the Creditor Committee confirm that:

- (i) Creditors have received the final distribution and that no further distributions are reasonably anticipated; and
- (ii) the Registrar has confirmed to the satisfaction of the Deed Administrators and the Creditor Committee that the Company will be struck off the Companies Register following receipt of all relevant and necessary documents and information.

(b) If the Deed Administrator believes on reasonable grounds that the Final Distribution Date has occurred but the Creditor Committee does not agree, then the Deed Administrator may make an application to the Court for an order terminating the Deed under section 239ADD of the Companies Act.

18.2 **Termination following the Final Distribution Date**

Upon receipt of the confirmation referred to above, the Deed Administrators or one of them must immediately certify, in writing, that the terms of this Deed have been fulfilled and as soon as practicable, must lodge with the Companies Office a notice substantially in the following form:

"We, Brendon Gibson and Neale Jackson of Level 15, 45 Queen Street, Auckland 1010 as administrators of the deed of company arrangement executed on [date], CERTIFY that the deed has been performed and completed in all material respects in respect of the material obligations of LBC Holdings UK Limited."

and the execution of the notice terminates, in respect to the Company, this Deed.

18.3 **Termination by Court or Creditors**

This Deed automatically terminates upon the happening of any one of the following events:

- (a) the Court makes an order terminating this Deed under section 239ADD of the Companies Act; or
- (b) the Court makes an order terminating or varying the Deed (in any respect, other than where approved by the Creditor Committee) under section 239ADO or section 239ACX;
- (c) other than a variation to this Deed approved by the Company and the Creditor Committee, the Creditors of the Company pass a resolution terminating or varying this Deed at a meeting convened under section 239ADF of the Companies Act.

18.4 Consequences of termination by Court

Subject to clause 18.5 (*Survival of clauses*) upon termination of the Deed under clause 18.3 (*Termination by Court or Creditors*):

- (a) this Deed is voided;
- (b) subject to clause (c) below, each Creditor (including the Secured Creditor) is restored to its pre-Deed position; and
- (c) each Creditor, the Deed Administrator, and the members of the Creditor Committee shall be entitled to retain any moneys received from the Company pursuant to this Deed prior to the date of termination by the Court.

18.5 Survival of clauses

Despite any other provision of this Deed and to the fullest extent permitted by law, the following clauses survive the termination of this Deed:

- (a) clause 1.3 (*Bar to claims*), clause 5.4 (*Creditor Committee, Administrators and Deed Administrators not personally liable*), clause 5.5 (*Administrator payments*), clause 7.3 (*Moratorium*); and
- (b) clause 10 (*No further action against the Company*), clause 13.4 (*No personal liability*) and clause 15.5 (*Deed Administrators' lien and buffer*);

18.6 Effect of termination

The termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

19 CONTRACT AND COMMERCIAL LAW ACT 2017

For the purposes of the Contract and Commercial Law Act 2017, the Deed Administrators and the Company acknowledge and declare that its obligations under this Deed constitute promises which are intended to confer benefits enforceable by the Administrators pursuant to Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

20 GENERAL

20.1 Variation

This Deed may be varied only by a variation approved by the Creditors of the Company at a meeting convened under section 239ADF of the Companies Act.

20.2 Assignment

Rights arising out of or under this Deed are not assignable by any party.

20.3 Further assurances

Each party must upon request by another party (acting reasonably) do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it. The costs of the Deed Administrators and the Creditor Committee in doing so shall be paid in accordance with clause 6 (*Payment waterfall*).

20.4 Governing law

This Deed is governed by the laws of New Zealand.

20.5 Waiver

No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 20.5 (*Waiver*) are set out below.

conduct includes delay in the exercise of a right.

right any right arising under or in connection with this Deed and includes the right to rely on this clause.

waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

20.6 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.

21 COMMUNICATIONS

21.1 Addresses

Each communication under this Deed shall be made by fax, email or otherwise in writing. Each communication or document to be delivered to any party under this Deed shall be sent to it at the fax number, email address or address, and marked for the attention, if any, from time to time designated by it to the Deed Administrators (or, in the case of the Deed Administrators, by them to each other party) for the purpose of this Deed. The initial address, email address, fax number, and contact person so designated by each party is:

The Company

Address: C/- KordaMentha
PO Box 982
Shortland Street
Auckland 1140

Fax No: (09) 377 7794
Attention: Brendon Gibson/Neale Jackson
E-mail: KMNZ@kordamentha.com

The Deed Administrators

Address: C/- KordaMentha
Level 16
Tower Building
45 Queen Street
Auckland

Fax No: (09) 307 7794
Attention: Brendon Gibson/Neale Jackson
E-mail: KMNZ@kordamentha.com

The Creditors

The initial address, fax number and contact person of each Creditor is set out by its name in Schedule 1 (*Creditors Schedule*).

The Creditor Committee

Address: C/- KordaMentha
Level 16
Tower Building
45 Queen Street
Auckland

Fax No: (09) 307 7794
Attention: Brendon Gibson/Neale Jackson
E-mail: KMNZ@kordamentha.com

21.2 Deemed Delivery

Any communication to any person shall be deemed to be received by that person:

- (a) *Fax*: if sent by fax before 5pm (local time in the place to which it is sent) on a Business Day, when sent or, if sent after 5pm, at 9am (local time in the place to which it is sent) on the next Business Day, provided that the person sending the fax shall have received a transmission report confirming transmission of that fax;
- (b) *Delivery*: in the case of delivery in person or by post when delivered, when left at the address required by clause 21.1 (*Addresses*) or within two Business Days after being put in the post (by airmail to another country) postage prepaid and addressed to it at that address; or
- (c) *Email*: in the case of an email, at the time the recipient receives the email, but if sent after 5pm, at 9am (local time in the place to which it is sent) on the next Business Day.

21.3 Electronic Communication

(a) Any communication to be made between the Deed Administrators and any other party under or in connection with this Deed may be made by electronic mail or other electronic means. The Deed Administrators and the other parties:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication; and
 - (ii) agree that, they will notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Deed Administrators and a party will be effective only when actually received in readable form and in the case of any electronic communication made by a party to the Deed Administrators only if it is addressed in such a manner as the Deed Administrators shall specify for this purpose.

SCHEDULE 1
CREDITORS SCHEDULE

Creditor	Claim Amount (NZ\$)	Notice Details
ANZ Bank New Zealand Limited	Total Claim Amount: \$72,608,005.62 Contingent LC Claim Amount: \$8,016,973.79	Address: Level 10, ANZ Centre, 23-29 Albert Street, Auckland Attention: Mark Pearson, Stuart Farquharson E-mail: Mark.Pearson@anz.com , Stuart.Farquharson@anz.com
Australia and New Zealand Banking Group Limited	Total Claim Amount: \$5,711,322.69 Contingent LC Claim Amount: \$5,711,322.69	Address: Level 5, 100 Queen Street, Melbourne, Victoria, 3000, Australia Attention: Paul Watkin E-mail: Paul.Watkin@anz.com
Industrial and Commercial Bank of China (New Zealand) Limited	\$33,168,978.64	Address: Level 11, 188 Quay Street, Auckland, 1010 Attention: Jack Lu E-mail: jack.lu@nz.icbc.com.cn
Bank of China (New Zealand) Limited	\$33,168,978.64	Address: Level 17, 205 Queen Street, Auckland, 1010 Attention: Daniel Kang E-mail: kanghui@bankofchina.com
Total	\$144,657,285.59	

EXECUTED as a Deed

Signed by **Brendon Gibson** as Deed Administrator:



in the presence of:



Name: *Alistair McDermott*

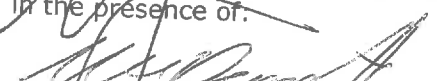
Occupation: *Accountant*

Address: *45 Queen St*

Signed by **Neale Jackson** as Deed Administrator:



in the presence of:



Name: *Alistair McDermott*

Occupation: *Accountant*

Address: *45 Queen St*

LBC Holdings UK Limited
(Administrators Appointed) by:



Administrator

in the presence of:



Name: *Alistair McDermott*

Occupation: *Accountant*

Address: *45 Queen St*

