

# Information Memorandum



## **IMF Bentham Limited**

(ABN 45 067 298 088)

## **Issue of Australian dollar Notes**

The Notes have the benefit of the security as described in this Information Memorandum

Lead Manager and Initial Subscriber

## **FIIG Securities Limited**

(ABN 68 085 661 632)

6 April 2016

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# Important Notice

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## Introduction

This Information Memorandum relates to an issue of Australian dollar notes ("**Notes**") by IMF Bentham Limited (ABN 45 067 298 088) ("**Issuer**").

The Notes will have the benefit of the security (as described in the section entitled "Security Arrangements" below).

Terms used in this Information Memorandum but not otherwise defined have the meaning given to them in the Conditions (as defined below).

References to "**Information Memorandum**" are to this Information Memorandum together with any other document incorporated by reference and to any of them individually.

Prospective investors should read this Information Memorandum carefully prior to making any decision in relation to purchasing, subscribing for or investing in the Notes.

**EACH RECIPIENT OF THIS INFORMATION MEMORANDUM AND EACH INVESTOR OR POTENTIAL INVESTOR SUBSCRIBING FOR, PURCHASING OR OTHERWISE DEALING IN ANY NOTES IS DEEMED TO HAVE REPRESENTED AND WARRANTED TO THE ISSUER, THE LEAD MANAGER AND INITIAL SUBSCRIBER, THE NOTE TRUSTEE, THE SECURITY TRUSTEE AND THE AGENTS THAT IT IS A PERSON TO WHOM IT IS LAWFUL TO MAKE ANY OFFER OF NOTES AND IT IS A PERSON TO WHOM AN OFFER OF NOTES FOR ISSUE OR SALE MAY BE MADE WITHOUT DISCLOSURE UNDER PART 6D.2 OR CHAPTER 7 OF THE CORPORATIONS ACT.**

## Issuer's responsibility

This Information Memorandum has been prepared and issued by the Issuer. The Issuer accepts responsibility for the information contained in this Information Memorandum other than information provided by the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee and the Agents (each as defined in the section entitled "Summary" below) in relation to their respective details in the sections entitled "Summary" and "Directory" below.

## Place of issuance

Subject to applicable laws and directives, the Issuer may issue the Notes in any country including Australia and countries in Europe and Asia but not in the United States of America unless an exemption from the registration requirements under the United States Securities Act of 1933 (as amended) ("**Securities Act**") is available.

## Terms and conditions of issue

The Notes will be issued in a single series under the Note Trust Deed. The series may comprise one or more tranches (each a "**Tranche**") having one or more issue dates and on conditions that are otherwise identical (other than, to the extent relevant, in respect of the issue price and date of the first payment of interest).

A pricing supplement ("**Pricing Supplement**") will be issued for each Tranche of Notes. A Pricing Supplement will contain details of the initial aggregate principal amount, issue price, issue date, maturity date, details of interest payable (if any) together with any other terms and conditions not set out in the section entitled "Conditions" below that may be applicable to that series of Notes. The terms and conditions ("**Conditions**") applicable to each series of Notes are included in this Information Memorandum and may be supplemented, amended, modified or replaced by the Pricing Supplement applicable to those Notes.

A Pricing Supplement or another supplement to this Information Memorandum may also supplement, amend, modify or replace any statement or information incorporated by reference in this Information Memorandum or a supplement to this Information Memorandum.

## Documents incorporated by reference

This Information Memorandum is to be read in conjunction with all documents which are deemed to be incorporated into it by reference as set out below. This Information Memorandum shall, unless

otherwise expressly stated, be read and construed on the basis that such documents are so incorporated and form part of this Information Memorandum. Investors should review, amongst other things, the documents which are deemed to be incorporated in this Information Memorandum by reference when deciding whether to purchase any Notes.

The following documents are incorporated in, and taken to form part of, this Information Memorandum:

- the Note Trust Deed;
- the Security Trust Deed;
- each Security;
- the Priority Deed;
- the most recent audited consolidated financial statements and unaudited semi-annual financial statements (if any) of the Group which are available on its website at [www.imf.com.au](http://www.imf.com.au);
- all amendments and supplements to this Information Memorandum prepared by the Issuer from time to time and all documents stated herein or therein to be incorporated in this Information Memorandum;
- all other documents issued by the Issuer and stated to be incorporated by reference in this Information Memorandum; and
- the Pricing Supplement and all documents stated therein to be incorporated in this Information Memorandum.

Any statement contained in this Information Memorandum or in any of the documents incorporated by reference in, and forming part of, this Information Memorandum shall be modified or superseded in this Information Memorandum to the extent that a statement contained in any document subsequently incorporated by reference into this Information Memorandum modifies or supersedes such statement (including whether expressly or by implication).

Copies of the Note Trust Deed, the Security Trust Deed, each of the Securities, the Priority Deed, each Pricing Supplement and any other documents incorporated by reference in this Information Memorandum may be obtained from the office of the Issuer, the Note Trustee, the Security Trustee or such other person specified in the Pricing Supplement.

Except as provided above, no other information, including any document incorporated by reference in any of the documents described above, is incorporated by reference into this Information Memorandum.

Any internet site addresses provided in this Information Memorandum are for reference only and the content of any such internet site is not incorporated by reference into, and does not form part of, this Information Memorandum.

### **Disclosing entity**

The Issuer is a “disclosing entity” (as defined in section 111AC of the Corporations Act) for the purposes of the Corporations Act and its securities are enhanced disclosure securities quoted on ASX and, as such, the Issuer is subject to regular reporting and disclosure obligations under the Corporations Act and the listing rules of ASX (“**ASX Listing Rules**”). Specifically, the Issuer is required to notify ASX of information about specific events and matters as they arise for the purposes of ASX making that information available to the securities markets conducted by ASX. In particular, the Issuer has an obligation under the ASX Listing Rules (subject to certain exceptions) to notify the ASX immediately of any information of which it is or becomes aware which a reasonable person would expect to have a material effect on the price or value of its securities.

This Information Memorandum should be read in conjunction with the publicly available information in relation to the Issuer which has been notified to ASX.

All announcements made by the Issuer are available from its website: [www.imf.com.au](http://www.imf.com.au) or the ASX website: [www.asx.com.au](http://www.asx.com.au).

### **No independent verification**

The only role of the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee and the Agents in the preparation of this Information Memorandum has been to confirm to the Issuer that

their respective details in the section entitled “Directory” below are accurate as at the Preparation Date (as defined below).

Apart from the foregoing, none of the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee and the Agents has independently verified the information contained in this Information Memorandum. Accordingly, no representation, warranty or undertaking, express or implied, is made, and no responsibility is accepted, by any of them, as to the accuracy or completeness of this Information Memorandum or any further information supplied by the Issuer in connection with the Notes.

The Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee and the Agents expressly do not undertake to any Noteholder to review the financial condition or affairs of the Issuer or any of its affiliates at any time or to advise any Noteholder of any information coming to their attention with respect to the Issuer and make no representations as to the ability of the Issuer to comply with its obligations under the Notes.

### **Forward looking statements**

To the extent that any forward looking statements are made in this Information Memorandum, those statements reflect the views of the Issuer as at the Preparation Date. Such statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual results, performance or achievements of the Issuer to differ materially from the results, performance or achievements expressed, implied or projected in this Information Memorandum.

None of the Issuer or any of its officers or any other party associated with the preparation of this Information Memorandum make any representation or warranty (either express or implied) as to the accuracy or likelihood of any forward looking statement or any events or results expressed or implied in any forward looking statement. None of the Issuer or any of its officers or any other party associated with the preparation of this Information Memorandum guarantee that any specific objective of the Issuer or the Group will be achieved.

### **Intending purchasers to make independent investment decision and obtain tax advice**

This Information Memorandum contains only summary information concerning the Issuer and the Notes and should be read in conjunction with all of the documents which are deemed to be incorporated by reference herein. See also the information under the paragraph entitled “Disclosing entity” of this “Important Notice” section. The information contained in this Information Memorandum is not intended to provide the basis of any credit or other evaluation in respect of the Issuer or any Notes and should not be considered or relied on as a recommendation or a statement of opinion (or a representation or report of either of those things) by any of the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or the Agents that any recipient of this Information Memorandum should subscribe for, purchase or otherwise deal in any Notes or any rights in respect of any Notes.

Each investor contemplating subscribing for, purchasing or otherwise dealing in any Notes or any rights in respect of any Notes should:

- make and rely upon (and shall be taken to have made and relied upon) its own independent investigation of the financial condition and affairs of, and its own appraisal of the creditworthiness of, the Issuer and the Notes;
- determine for themselves the relevance of the information contained in this Information Memorandum, and must base their investment decision solely upon their independent assessment and such investigations as they consider necessary; and
- consult their own tax advisers concerning the application of any tax (including stamp duty) laws applicable to their particular situation.

No advice is given in respect of the legal or taxation treatment of investors or purchasers in connection with an investment in any Notes or rights in respect of them and each investor should consult their own professional adviser.

Investing in the Notes entails a number of risks as more fully described in the section entitled “Risks” below. However, this Information Memorandum does not describe all of the risks associated with the Group’s business, those associated with an investment in any Notes or the market generally. Prospective investors should consult their own professional, financial, legal and tax advisers about

risks associated with an investment in any Notes and the suitability of investing in the Notes in light of their particular circumstances.

#### **No offer**

This Information Memorandum does not, and is not intended to, constitute an offer or invitation by or on behalf of the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or the Agents to any person to subscribe for, purchase or otherwise deal in any Notes.

#### **Selling restrictions and no disclosure**

The distribution and use of this Information Memorandum, including any Pricing Supplement, advertisement or other offering material, and the offer or sale of Notes may be restricted by law or directive in certain jurisdictions and intending purchasers and other investors should inform themselves about them and observe any such restrictions. In particular, no action has been taken by any of the Issuer, the Lead Manager and Initial Subscriber or the Note Trustee or the Security Trustee or the Agents which would permit a public offering of any Notes or distribution of this Information Memorandum in any jurisdiction where action for that purpose is required.

Neither this Information Memorandum nor any other disclosure document in relation to the Notes has been lodged with the Australian Securities and Investments Commission (“**ASIC**”). A person may not make or invite an offer of the Notes for issue or sale in Australia (including an offer or invitation which is received by a person in Australia) or distribute or publish this Information Memorandum or any other offering material or advertisement relating to the Notes in Australia unless the minimum aggregate consideration payable by each offeree is at least A\$500,000 (or its equivalent in another currency, in each case disregarding moneys lent by the offeror or its associates) or the offer or invitation otherwise does not require disclosure to investors in accordance with Part 6D.2 or Chapter 7 of the Corporations Act and such action complies with all applicable laws and directives.

This Information Memorandum is not a prospectus or other disclosure document for the purposes of the Corporations Act.

For a description of certain restrictions on offers, sales and deliveries of the Notes, and on distribution of this Information Memorandum, any Pricing Supplement or other offering material relating to the Notes, see the section entitled “Selling Restrictions” below.

A person may not (directly or indirectly) offer for subscription or purchase or issue an invitation to subscribe for or buy Notes, nor distribute or publish this Information Memorandum or any other offering material or advertisement relating to the Notes except if the offer or invitation complies with all applicable laws and directives.

#### **No authorisation**

No person has been authorised to give any information or make any representations not contained in or consistent with this Information Memorandum in connection with the Issuer or the issue or sale of the Notes and, if given or made, such information or representation must not be relied on as having been authorised by the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or the Agents.

#### **No registration in the United States**

The Notes have not been, and will not be, registered under the Securities Act. The Notes may not be offered, sold, delivered or transferred, at any time, within the United States of America, its territories or possessions or to, or for the account or benefit of, U.S. Persons (as defined in Regulation S under the Securities Act (“**Regulation S**”)) except in a transaction exempt from, or not subject to, the registration requirements of the Securities Act.

#### **Agency and distribution arrangements**

The Issuer has agreed or may agree to pay fees to the Note Trustee, the Security Trustee and the Agents for undertaking their respective roles and reimburse them for certain of their expenses properly incurred in connection with the Notes.

The Issuer may also pay a fee to the Lead Manager and Initial Subscriber in respect of the placement of the Notes, and may agree to reimburse the Lead Manager and Initial Subscriber for certain expenses properly incurred in connection with the Notes and may indemnify the Lead Manager and Initial Subscriber against certain liabilities in connection with the offer and sale of Notes.

The Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee and the Agents, and their respective related entities, directors, officers and employees may have pecuniary or other interests in the Notes and may also have interests pursuant to other arrangements and may receive fees, brokerage and commissions and may act as a principal in dealing in any Notes.

The distribution and use of this Information Memorandum, including any Pricing Supplement, advertisement or other offering material, and the offer or sale of Notes may be restricted by law in certain jurisdictions and intending purchasers and other investors should inform themselves about them and observe any such restrictions. In particular, no action has been taken by any of the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or any Agents which would permit a public offering of any Notes or distribution of this Information Memorandum or any such document in any jurisdiction where action for that purpose is required.

### **Currency**

In this Information Memorandum, references to “\$”, “A\$” or “**Australian dollars**” are to the lawful currency of the Commonwealth of Australia.

### **Currency of information**

The information contained in this Information Memorandum is prepared as of its Preparation Date. Neither the delivery of this Information Memorandum nor any offer, issue or sale made in connection with this Information Memorandum at any time implies that the information contained in it is correct, that any other information supplied in connection with the Notes is correct or that there has not been any change (adverse or otherwise) in the financial conditions or affairs of the Issuer at any time subsequent to the Preparation Date. In particular, neither the Issuer nor any other person is under any obligation to any person to update this Information Memorandum at any time after an issue of Notes.

In this Information Memorandum, “**Preparation Date**” means:

- in relation to this Information Memorandum, the date indicated on its face or, if this Information Memorandum has been amended, or supplemented, the date indicated on the face of that amendment or supplement;
- in relation to any annual reports and financial statements incorporated in this Information Memorandum, the date up to, or as at, the date on which such annual reports and financial statements relate; and
- in relation to any other item of information which is to be read in conjunction with this Information Memorandum, the date indicated on its face as being its date of release or effectiveness.

# Summary of the Notes

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*The following is a brief summary only and should be read in conjunction with the rest of this Information Memorandum and, in relation to any Notes, the Note Trust Deed, the Security Trust Deed, each Security, the Priority Deed, the applicable Conditions and any relevant Pricing Supplement. A term used below but not otherwise defined has the meaning given to it in the Conditions. A reference to a "Pricing Supplement" does not limit provisions or features which may be supplemented, amended, modified or replaced by a Pricing Supplement in relation to an issue of Notes.*

<b>Issuer:</b>	IMF Bentham Limited (ABN 45 067 298 088).  Further information (which information is not incorporated by reference in this Information Memorandum) regarding the Issuer can be obtained from the Issuer's website at <a href="http://www.imf.com.au">www.imf.com.au</a> or from the documents specifically incorporated by reference in this Information Memorandum.
<b>Lead Manager and Initial Subscriber:</b>	FIIG Securities Limited (ABN 68 085 661 632).
<b>Registrar:</b>	AET Structured Finance Services Pty Limited (ABN 12 106 424 088) or such other person appointed by the Issuer under an Agency Agreement to perform registry functions and establish and maintain a Register (as defined below) on the Issuer's behalf from time to time (" <b>Registrar</b> ").
<b>Issuing &amp; Paying Agent:</b>	AET Structured Finance Services Pty Limited (ABN 12 106 424 088) or any other person appointed by the Issuer under an Agency Agreement to act as issuing or paying agent on the Issuer's behalf from time to time (" <b>Issuing &amp; Paying Agent</b> ").
<b>Calculation Agent:</b>	AET Structured Finance Services Pty Limited (ABN 12 106 424 088) or any other person appointed by the Issuer under an Agency Agreement to act as calculation agent on the Issuer's behalf from time to time (" <b>Calculation Agent</b> ").
<b>Agents:</b>	Each of the Registrar, Issuing & Paying Agent, Calculation Agent and any other person appointed by the Issuer to perform other agency functions with respect to any Tranche or series of Notes (each an " <b>Agent</b> " and, together, the " <b>Agents</b> ").
<b>Note Trustee:</b>	Australian Executor Trustees Limited (ABN 84 007 869 794) or such other person appointed under the Note Trust Deed as trustee of the IMF Bentham OTC Note Trust from time to time (" <b>Note Trustee</b> ").
<b>Security Trustee:</b>	AET Structured Finance Services Pty Limited (ABN 12 106 424 088) or such other person appointed under the Security Trust Deed as trustee of the IMF Bentham OTC Security Trust from time to time (" <b>Security Trustee</b> ").
<b>Form of Notes:</b>	Notes will be issued in registered form and will be debt obligations of the Issuer which are constituted by, and owing under, the Note Trust Deed.  Notes take the form of entries in a register (" <b>Register</b> ") maintained by the Registrar.  Certificates in respect of any Notes will not be issued unless the Issuer determines that certificates should be available or if certificates are required by any applicable law or directive.
<b>Negative pledge:</b>	Notes will have the benefit of a negative pledge, as described in Condition 5.1 (" <b>Negative pledge</b> ").
<b>Financial covenants:</b>	Notes will have the benefit of certain financial covenants as described in Condition 5.2 (" <b>Financial covenants</b> ").



<b>Status and ranking of the Notes:</b>	Notes will constitute direct and unconditional obligations of the Issuer which are secured in the manner described in the Security and will at all times rank <i>pari passu</i> and without preference or priority among themselves and with any Permitted Secured Finance Arrangements but subject to any prior ranking Permitted Security Interest and obligations mandatorily preferred by statute or applicable law.
<b>Security:</b>	The Notes will have the benefit of the Security as more fully described in the section entitled “Security Arrangements” below.
<b>Interest:</b>	<p>Each Note bears interest on its outstanding principal amount from (and including) its Interest Commencement Date to (but excluding) its Maturity Date (unless redeemed earlier) at the Interest Rate.</p> <p>Interest is payable in arrear on each Interest Payment Date or such other date on which a Note is redeemed, and adjusted, if necessary, in accordance with the Business Day Convention.</p> <p>All such information will be set out in the relevant Pricing Supplement.</p>
<b>Denomination:</b>	Notes will be issued in the single denomination of A\$1,000.
<b>Minimum parcel size on initial issue:</b>	A\$50,000.
<b>Clearing System:</b>	<p>Notes may be transacted either within or outside a clearing system.</p> <p>The Issuer intends to apply to Austraclear Ltd (ABN 94 002 060 773) (“<b>Austraclear</b>”) for approval for Notes to be traded on the clearing and settlement system operated by Austraclear (“<b>Austraclear System</b>”). Upon approval by Austraclear, the Notes will be traded through Austraclear in accordance with the rules and regulations of the Austraclear System (“<b>Austraclear Regulations</b>”). Such approval by Austraclear is not a recommendation or endorsement by Austraclear of such Notes.</p> <p>Transactions relating to interests in the Notes may also be carried out through the settlement system operated by Euroclear Bank S.A./N.V. (“<b>Euroclear</b>”) or the settlement system operated by Clearstream Banking S.A. (“<b>Clearstream</b>”).</p> <p>Interests in the Notes traded in the Austraclear System may be held for the benefit of Euroclear or Clearstream. In these circumstances, entitlements in respect of holdings of interests in Notes in Euroclear would be held in the Austraclear System by a nominee of Euroclear (currently HSBC Custody Nominees (Australia) Limited) while entitlements in respect of holdings of interests in Notes in Clearstream would be held in the Austraclear System by a nominee of J.P. Morgan Chase Bank, N.A. as custodian for Clearstream.</p> <p>The rights of a holder of interests in a Note held through Euroclear or Clearstream are subject to the respective rules and regulations for accountholders of Euroclear and Clearstream, the terms and conditions of agreements between Euroclear and Clearstream and their respective nominee and the rules and regulations of the Austraclear System. In addition, any transfer of interests in a Note, which is held through Euroclear or Clearstream will, to the extent such transfer will be recorded on the Austraclear System, be subject to the Corporations Act and the requirements for minimum consideration as set out in the Conditions.</p> <p>None of the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or any Agent will be responsible for the operation of the clearing arrangements which is a matter for the clearing institutions, their nominees, their participants and the investors.</p>

<b>Title:</b>	<p>Entry of the name of the person in the Register in respect of Notes in the registered form constitutes the obtaining or passing of title and is conclusive evidence that the person so entered is the registered holder of that Note subject to correction for fraud or error.</p> <p>Title to Notes which are held in the Austraclear System will be determined in accordance with the Austraclear Regulations.</p> <p>Notes which are held in the Austraclear System will be registered in the name of Austraclear.</p>
<b>Payments:</b>	<p>Payments to persons who hold Notes through the Austraclear System will be made in accordance with the Austraclear Regulations.</p>
<b>Payment Date:</b>	<p>A Payment Date for a Note is the Maturity Date, an Interest Payment Date or any other relevant date on which a payment in respect of that Note is due, adjusted in accordance with the applicable Business Day Convention.</p>
<b>Record Date:</b>	<p>The Record Date is the close of business (in the place where the Register is maintained) on the eighth day before the Payment Date.</p>
<b>Maturity and redemption:</b>	<p>Subject to compliance with all relevant laws and directives, each Note will be redeemed on its Maturity Date at its then outstanding principal amount, unless the Note has been previously redeemed or purchased and cancelled.</p> <p>Notes are also redeemable at their then outstanding principal amount prior to their scheduled maturity:</p> <ul style="list-style-type: none"> <li>• at the option of the Issuer if a Tax Event occurs, pursuant to a clean-up call or on certain Optional Redemption Dates; and/or</li> <li>• at the option of a Noteholder following the occurrence of a Change of Control or a Delisting Event,</li> </ul> <p>each as more fully set out in the Conditions and the relevant Pricing Supplement.</p> <p>Notes entered in the Austraclear System will be redeemed through the Austraclear System in a manner that is consistent with the Austraclear Regulations.</p>
<b>Selling restrictions:</b>	<p>The offer, sale and delivery of Notes and the distribution of this Information Memorandum and other material in relation to any Notes are subject to such restrictions as may apply in any country in which the offer and sale of the Notes is undertaken. In particular, restrictions on the offer, sale or delivery of Notes in Australia and Singapore are set out in the section entitled "Selling Restrictions" below.</p>
<b>Transfer procedure:</b>	<p>Notes may only be transferred in whole and in accordance with the Conditions.</p> <p>In particular, the Notes may only be transferred if the offer or invitation for the sale or purchase of Notes is received by a person:</p> <ol style="list-style-type: none"> <li>(a) in Australia, only if the minimum aggregate consideration payable at the time of the transfer is at least A\$500,000 (or its equivalent in an alternative currency and, in each case, disregarding moneys lent by the transferor or its associates to the transferee) or the Notes are transferred in circumstances that do not otherwise require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act and the transfer complies with all applicable laws and directives; and</li> <li>(b) if, in a jurisdiction outside Australia, the transfer complies with all other applicable laws and directives in the jurisdiction in which the transfer takes place.</li> </ol> <p>Transfers of Notes held in the Austraclear System will be made in accordance with the Austraclear Regulations.</p>

**Investors to obtain independent advice with respect to investment and other risks:**

Investing in the Notes entails a number of risks as more fully described in the section entitled “Risks” below. However, this Information Memorandum does not describe all of the risks associated with the Group’s business, those associated with an investment in any Notes or the market generally.

***As such, prospective investors or purchasers should consult their own professional, financial, legal and tax advisers about risks associated with an investment in any Notes and the suitability of investing in the Notes in light of their particular circumstances.***

**Taxes, withholdings and deductions:**

All payments in respect of the Notes must be made without any withholding or deduction in respect of taxes, unless such withholding or deduction is required by law.

In the event that any such withholding or deduction is made, the Issuer will, save in certain limited circumstances, be required to pay additional amounts to cover the amounts so deducted or withheld.

Noteholders who do not provide their Tax File Number, (if applicable) Australian Business Number or proof of an exemption may have tax withheld or deducted from payments at the highest marginal rate plus the Medicare levy. No additional amounts will be payable by the Issuer in respect of any such withholding or deduction.

A brief overview of the Australian taxation treatment of payment of interest on Notes is set out in the section entitled “Australian Taxation” below.

***Investors should obtain their own taxation and other applicable advice regarding the taxation and other fiscal status of investing in any Notes and none of the Issuer, the Lead Manager and Initial Subscriber, the Note Trustee, the Security Trustee or any Agent makes any representation regarding the taxation treatment of the Notes for any particular investor.***

**FATCA:**

The Foreign Account Tax Compliance Act provisions of the U.S. Hiring Incentives to Restore Employment Act of 2010 (“**FATCA**”) establish a new due diligence, reporting and withholding regime. FATCA aims to detect U.S. taxpayers who use accounts with “foreign financial institutions” (“**FFIs**”) to conceal income and assets from the U.S. Internal Revenue Service (“**IRS**”).

Under FATCA, a 30% withholding may be imposed (i) in respect of certain U.S. source payments, (ii) from 1 January 2019 in respect of gross proceeds from the sale of assets that give rise to U.S. source interest or dividends and (iii) from 1 January 2019, at the earliest, in respect of “foreign passthru payments” (a term which is not yet defined under FATCA), which are, in each case, paid to or in respect of entities that fail to meet certain certification or reporting requirements (“**FATCA withholding**”).

Financial institutions through which payments on the Notes are made may be required to withhold on account of FATCA. A withholding may be required if (i) an investor does not provide information sufficient for the Issuer or the relevant financial institution to determine whether the investor is subject to FATCA withholding or (ii) an FFI to or through which payments on the Notes are made is a “non-participating FFI”.

FATCA withholding is not expected to apply if the Notes are treated as debt for U.S. federal income tax purposes and the grandfathering provisions from withholding under FATCA are applicable. The grandfathering provisions require, amongst other things, that the Notes are issued on or before the date that is six months after the date on which final regulations defining the term “foreign passthru payment” are filed with the U.S. Federal Register.

Further, Australia and the United States signed an intergovernmental agreement (“**Australian IGA**”) in respect of FATCA on 28 April 2014. The Australian Government has enacted legislation amending, among other things, the Taxation Administration Act 1953 of Australia to give effect to the

Australian IGA (“**Australian Amendments**”). Under the Australian Amendments, Australian FFIs will generally be able to be treated as “deemed compliant” with FATCA. Depending on the nature of the relevant FFI, FATCA withholding may not be required from payments made with respect to the Notes other than in certain prescribed circumstances. Under the Australian Amendments, an FFI may be required to provide the Australian Taxation Office with information on financial accounts (for example, the Notes) held by U.S. persons and recalcitrant account holders and on payments made to non-participating FFIs. The Australian Taxation Office is required to provide that information to the IRS.

In the event that any amount is required to be withheld or deducted from a payment on the Notes as a result of FATCA, pursuant to the terms and conditions of the Notes, no additional amounts will be paid by the Issuer as a result of the deduction or withholding.

FATCA is particularly complex legislation. The above description is based in part on U.S. Treasury regulations published on 28 January 2013 and 6 March 2014, relevant notices of the IRS, official guidance and the Australian Amendments, all of which are subject to change. Investors should consult their own tax advisers on how these rules may apply to them under the Notes.

- Listing:** It is not intended that the Notes be listed or quoted on any stock or securities exchange.
- Rating:** Neither the Issuer nor the Notes have been, nor is it intended that they will be, rated by any credit ratings agency.
- Governing law:** The Notes and all related documentation will be governed by the laws of New South Wales, Australia.
- Use of proceeds:** The Issuer will use the proceeds from the issue of the Notes for the general corporate purposes of the Group.

# Security Arrangements

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This section contains a summary of the Security Trust Deed dated 6 April 2016 between, among others, the Issuer and AET Structured Finance Services Pty Limited (ABN 12 106 424 088) (“**Security Trustee**”) (“**Security Trust Deed**”) and the Securities (as defined in the Security Trust Deed). This summary is qualified in its entirety by reference to the provisions of the Notes, the Security Trust Deed, the Securities, the Priority Deed and the other underlying documents described below and elsewhere in this Information Memorandum.

Capitalised terms used in this section have the meaning given to them in the Security Trust Deed, unless otherwise defined.

## Overview

The security described in this section will rank equally with the security that has been granted in favour of the trustee of the IMF Bentham Bonds Trust established and governed by the terms of the trust deed dated 7 April 2014 between the Issuer and the trustee of that trust (as amended) and the holders of the IMF Bentham ASX Bonds (as defined in the Conditions).

The obligations of the Issuer under the Notes will be secured by:

- (a) a general security agreement over all of the Issuer’s present (and after-acquired) property (excluding the IMF European JV Assets (as defined in the Conditions)), and includes anything in respect of which the Issuer has at any time a sufficient right, interest or power to grant a security interest, governed by the law of New South Wales, Australia; and
- (b) a specific security agreement granted by the Issuer over the following shares and governed by the law of New South Wales, Australia.

Securities not listed on ASX	Issuing company	Identification number (Share certificate no.)	Quantity	Class
	Financial Redress Pty Ltd (ACN 083 043 010)	N/A	2,000 Shares	Ordinary Class

The Issuer owns assets included in the security which are located outside of Australia, including shares in Subsidiaries, and may hold other assets outside of Australia during the term of the Notes. The security will be registered in Australia and perfected in accordance with applicable Australian law but may not be registered or steps taken to perfect such security over assets of the Issuer in any other jurisdiction. As a result, it is possible that the security may not constitute an enforceable security interest over assets of the Issuer located outside of Australia or that any such security may be subject to prior ranking security created either by law or otherwise in those jurisdictions outside Australia where such Issuer assets are located. As a result Noteholders should not rely upon the ability to enforce the security in respect of any Issuer assets located outside of Australia and may rank as unsecured creditors in the winding-up of the Issuer with respect to such assets located outside of Australia.

The securities described in this section have been granted in favour of the Security Trustee, who holds them on trust for the Beneficiaries (as defined in the Security Trust Deed) in accordance with the terms of the Security Trust Deed. The Security Trustee, the Note Trustee, the Agent and the Noteholders and each other person which the Security Trustee acknowledges is a Beneficiary for the purposes of the Security Trust Deed will be the Beneficiaries for the purposes of the Security Trust Deed.

### ***Beneficiaries under the Security Trust Deed***

The Beneficiaries will have the benefit of the Securities granted to the Security Trustee under the Security Trust Deed. As at the date of the Information Memorandum, the Beneficiaries include the Security Trustee, the Note Trustee, the Agent and the Noteholders. New Beneficiaries may be added in the future, as provided for in clause 13 of the Security Trust Deed.

Beneficiaries may comprise “Lenders” and their “Representatives” (if any) and “Swap Counterparties”. Lenders will need to meet certain conditions, including that the Security Provider is not in breach of the Transaction Documents (which includes the Conditions of the Notes). As at the date of the Information Memorandum there are no Lenders or Swap Counterparties and the only Representative is the Note Trustee as trustee for the Noteholders.

At the time of issue of each new Tranche or Series of Notes, if a new Noteholder is entitled under the relevant Transaction Documents to become a Beneficiary in consideration for being a holder of a Note, the new Noteholder (and its representative (if any)) will automatically become a New Beneficiary without a need to execute the Accession Deed (Beneficiary).

### ***Instructions by Beneficiaries under the Security Trust Deed***

The rights under the Securities are granted in favour of the Security Trustee. The Security Trust Deed provides that, in the exercise of all such rights, the Security Trustee shall act in accordance with the instructions of any Instructing Group. This is subject to the matters set out in the sections entitled “Instructions from 90% of Beneficiaries under the Security Trust Deed” below. In the absence of such instructions, the Security Trustee need not act.

Under the Security Trust Deed, an “Instructing Group” means instructions from Beneficiaries whose total Exposures are at least 90% of the total Exposure of all Beneficiaries or the Majority Beneficiaries (being those Beneficiaries whose total Exposures are at least 75% of the total Exposure of all Beneficiaries).

### ***Instructions from 90% of Beneficiaries under the Security Trust Deed***

Under the Security Trust Deed, there are certain circumstances in which the Security Trustee must only act on the instructions from Beneficiaries whose total Exposures are at least 90% of the total Exposure of all Beneficiaries (with the Note Trustee acting as the representative for all Noteholders). These include:

- (a) a change to certain definitions in the Security Trust Deed;
- (b) an exercise of any discretion in distribution of moneys received or recovered by the Security Trustee;
- (c) a change to the clauses which govern the ability to instruct the Security Trustee and the order of distribution of moneys received or recovered by the Security Trustee; and
- (d) the release of (either in whole or part) any Security Interest, other than to permit a transaction which complies with the Transaction Documents (as defined in the Security Trust Deed and which includes the Notes).

### ***Procedures for seeking instructions***

Under the Security Trust Deed, when seeking instructions from the Beneficiaries, the Security Trustee may specify in writing a period within which instructions are to be provided. The period will be not more than 10 Business Days or any longer period agreed by the Beneficiaries.

If a Beneficiary does not provide instructions in writing within the period specified it will be disregarded for the purpose only of determining whether instructions have been given by a specified majority of, or by all, Beneficiaries.

Under the Note Trust Deed, if the Security Trustee requests instructions from the Note Trustee for the taking of any action which requires a direction, approval, consent or determination of the Beneficiaries under the Security Trust Deed (or any class of them), the Note Trustee will:

- (a) notify each Noteholder and seek directions and instructions;
- (b) calculate the aggregate Exposure of Noteholders directing in favour or and against the approval, consent, determination or direction;
- (c) notify the Security Trustee of the aggregate Exposure of Noteholders directing in favour for and against the approval, consent, determination or direction; and
- (d) subject to the Security Trust Deed and the Note Trust Deed, take any other action required to be taken by it in accordance with the direction of the Noteholders.

### ***Distribution of recovered moneys***

Under the Security Trust Deed, the Security Trustee will apply all money received or recovered by it which is available for distribution to the Beneficiaries in the following order of priority:

- (a) **First:** to the extent it represents the proceeds of enforcement of a Secured Property, to any person with a prior ranking claim to the extent the person is entitled to those proceeds;
- (b) **Second:** to any Receiver appointed to the Secured Property for its costs and remuneration in connection with exercising, enforcing or preserving rights, powers or remedies (or considering or attempting to do so) under or in connection with the Transaction Documents;
- (c) **Third:** *pari passu* and rateably to pay each of the Note Trustee and the Security Trustee for its costs and all other amounts due to it personally in connection with performing its role as note trustee or security trustee (as the case may be) (but not on behalf of, or as trustee for, any other Beneficiary);
- (d) **Fourth:** *pari passu* and rateably to pay each Agent for any amounts due to it personally in connection with performing its role as agent;
- (e) **Fifth:** *pari passu* and rateably to pay each Beneficiary (other than the Security Trustee, a Representative or an Agent) towards satisfaction of its Secured Moneys in the proportion that its Secured Money at that time bears to the total of the Secured Money of all Beneficiaries (other than the Security Trustee, a Representative or an Agent) at that time or in any other manner agreed by the Security Trustee and those Beneficiaries;
- (f) **Sixth:** to each other person to whom the Security Trustee is obliged to pay in priority to any Security Provider; and
- (g) **Seventh:** the balance, if any, to the relevant Security Provider,

unless otherwise instructed by Beneficiaries whose total Exposures are at least 90% of the total Exposure of all Beneficiaries.

Notwithstanding the above, amounts distributed in accordance with the Security Trust Deed to the extent payable in respect of Notes will be paid to the Note Trustee (as required by clause 5.4 of the Note Trust Deed) and distributed by it in the order described in clause 2.3 of the Note Trust Deed.

***Release of security***

As described above in the section entitled “Unanimous instructions under the Security Trust Deed” and “Other instructions under the Security Trust Deed”, the Security Trustee must not release any Security Interest existing for the benefit of a Beneficiary, without the consent of that Beneficiary (other than to permit a transaction which complies with the Transaction Documents).

***Indemnity to Security Trustee***

Under the Security Trust Deed, the Security Trustee has the benefit of an indemnity (including out of the Security Trust Fund (as defined in the Security Trust Deed) and from the Issuer and each Security Provider) against any liability or loss arising from, and any costs incurred as the Security Trustee other than in the case of fraud, gross negligence or wilful misconduct.

***Limitation of liability of Security Trustee***

Under the Security Trust Deed, the Security Trustee and its directors, officers, employees, agents, attorneys, Related Entities or successors are not liable or responsible to the Beneficiaries for a broad range of matters other than in the case of fraud, gross negligence or wilful misconduct. This includes any action taken or not taken by it or them under any Transaction Document.



# Corporate Profile

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*The information in this section is a brief summary only of the Issuer and its business and does not purport to be, nor is it, complete.*

*When deciding whether to purchase any Notes, prospective investors should review, amongst other things, this Information Memorandum and all of the documents which are deemed to be incorporated in this Information Memorandum by reference, together with all announcements made by the Issuer to ASX which are available from its website: [www.imf.com.au](http://www.imf.com.au) or the ASX website: [www.asx.com.au](http://www.asx.com.au).*

*Investing in the Notes entails a number of risks as more fully described in the section entitled "Risks" below. However, this Information Memorandum does not describe all of the risks associated with the Group's business, those associated with an investment in any Notes or the market generally. Prospective investors should consult their own professional, financial, legal and tax advisers about risks associated with an investment in any Notes and the suitability of investing in the Notes in light of their particular circumstances.*

## Litigation funding overview and history

Litigation funding is the provision of funding to meet the costs of conducting litigation and in certain jurisdictions such as Australia, includes the assumption by the funder of the adverse cost risk (adverse costs are the costs payable to the other side if the litigation is unsuccessful). In the event that the case is successful, the funder receives reimbursement of the sum it has paid and a percentage of the recoveries. In some instances the funder may instead receive a multiple of the funds invested. Litigation funding may also provide partial funding, such as a proportion of costs or payment of disbursements only.

Numerous cases in Australia and elsewhere have supported the concept of litigation funding. In 2006 the High Court of Australia handed down a decision in favour of litigation funding – *Campbells Cash and Carry Pty Limited v Fostif Pty Limited* (2006) 229 CLR 386. The High Court held that, in principle, litigation funding provides access to justice, is supportive of the court's process and is consistent with public policy.

## Company overview

IMF Bentham Limited is the largest litigation funder in Australia and the first to be listed on ASX (ASX: IMF).

IMF Bentham introduced "Bentham" to its name on 28 November 2013 to reflect its growing international presence. The name "IMF Bentham" recognises the memory of Jeremy Bentham, the nineteenth century jurist and social reformer who was among the first to support the utility of litigation funding.

IMF Bentham has a market capitalisation of approximately \$215 million (as at 11 March 2016).

Examples of the types of matters which IMF Bentham funds include:

- commercial/corporate disputes including litigation arising from disputes relating to contracts, intellectual property and allegations of misleading and deceptive conduct;
- claims by insolvency practitioners including claims pursuing voidable transactions (uncommercial transactions/related party transactions), insolvent trading and actions arising from misfeasance by company officers;
- class action litigation including securities class actions and class actions arising from cartel behaviour, financial services and product liability;
- domestic and international arbitrations; and

- patent infringement claims.

### IMF Bentham services

IMF Bentham provides the following services in Australia and in other jurisdictions:

- funding for litigation/arbitration and investigations preliminary to litigation/arbitration;
- payment of adverse costs orders;
- strategic planning, monitoring and managing of litigation/arbitration;
- factual investigation preliminary to litigation; and
- assistance in facilitating settlements and maximising the value of each claim.

Although IMF Bentham's business began in Australia, IMF Bentham offers its services in other jurisdictions, including the United Kingdom, mainland Europe (through its joint venture operations), Canada, New Zealand, Hong Kong and Singapore. In August 2011, IMF Bentham established a subsidiary based in New York which provides funding for large disputes in the US. IMF now operates from 3 locations across the USA.

IMF Bentham has recently established a subsidiary in Canada which provides funding for large legal disputes in Canada and for international arbitration. The Canadian operation opened its first office in Toronto in January 2016.

IMF Bentham does not provide legal advice of any sort.

### Benefits of IMF Bentham and litigation funding

Litigation funding is a valuable resource where a person or company:

- has a good claim but insufficient money to pursue it;
- cannot provide security to meet a security for costs order;
- wishes to reduce the financial risk associated with litigation; or
- is concerned about being exposed to pay the other side's costs.

The benefits IMF Bentham strives to deliver include:

- fast decisions with simple and flexible funding terms;
- direct contact with decision makers who are experts in their field;
- our accurate appraisal of the claim;
- a proactive approach focused on achieving the best possible outcomes; and
- management of the litigation and cost control.

### Clients

IMF Bentham's clients include multinational corporations, ASX200 companies, small and medium enterprises, law firms in the US, individuals and insolvency practitioners. IMF Bentham's commercial clients span a range of sectors and industries, including financial services, superannuation funds, manufacturing, retail, mining, energy and resources, health, tourism, transport and pharmaceuticals.

IMF Bentham's clients are in both Australia and overseas.

### **IMF Bentham business model**

From any recoveries in a case IMF Bentham recoups its expenses and receives either a percentage of recoveries plus a management fee, or a multiple of the expenses.

Generally, the percentage is set on a sliding scale so that if the case settles early, the amount payable is less. The percentage payable depends on the circumstances of the case; for example the strength of the case, the cost involved in pursuing the matter to a successful conclusion and the time it will take for the matter to come to trial. The multiple of expenses usually increases over time at set intervals.

There is no amount payable to IMF Bentham if the case is not successful.

In the USA, IMF also funds law firms to undertake a portfolio of actions and instead of receiving a percentage of recoveries plus a management fee, may receive a multiple of its investment if the underlying claims are successful. In certain circumstances, IMF will also provide working capital funding to a claimant or law firm which is treated as a funded expense of the related litigation.

### **IMF Bentham's track record**

IMF Bentham was listed on the ASX in 2001. It has the longest operating history and track record of any litigation funder in Australia.

### **The following statistics summarise IMF Bentham's performance since listing as at 31 December 2015**

180 cases commenced and completed since listing with an average investment period of 2.4 years

- Generated revenue of \$1.67 billion:
  - \$1.055 billion to clients;
  - \$613 million to IMF Bentham comprising:
    - \$251 million reimbursement of costs (15%); and
    - \$362 million net revenue to IMF Bentham (excluding overheads) (22%);
- Gross Return On Investment of 144% (calculated as income to the Issuer (excluding any costs and reimbursements) divided by total expenditure);
  - lost cases cost \$38 million including adverse costs;
  - withdrawals cost \$5 million; and
  - losses and withdrawals cost 7% of IMF Bentham's revenue.

The above statistics are reviewed by IMF Bentham's auditors, Ernst & Young, every 6 months (every 30 June and 31 December).

### **IMF Bentham's investment portfolio**

IMF Bentham has continued to increase cases under management from approximately \$3 billion at 31 December 2015.

## Investment portfolio as at 31 December 2015

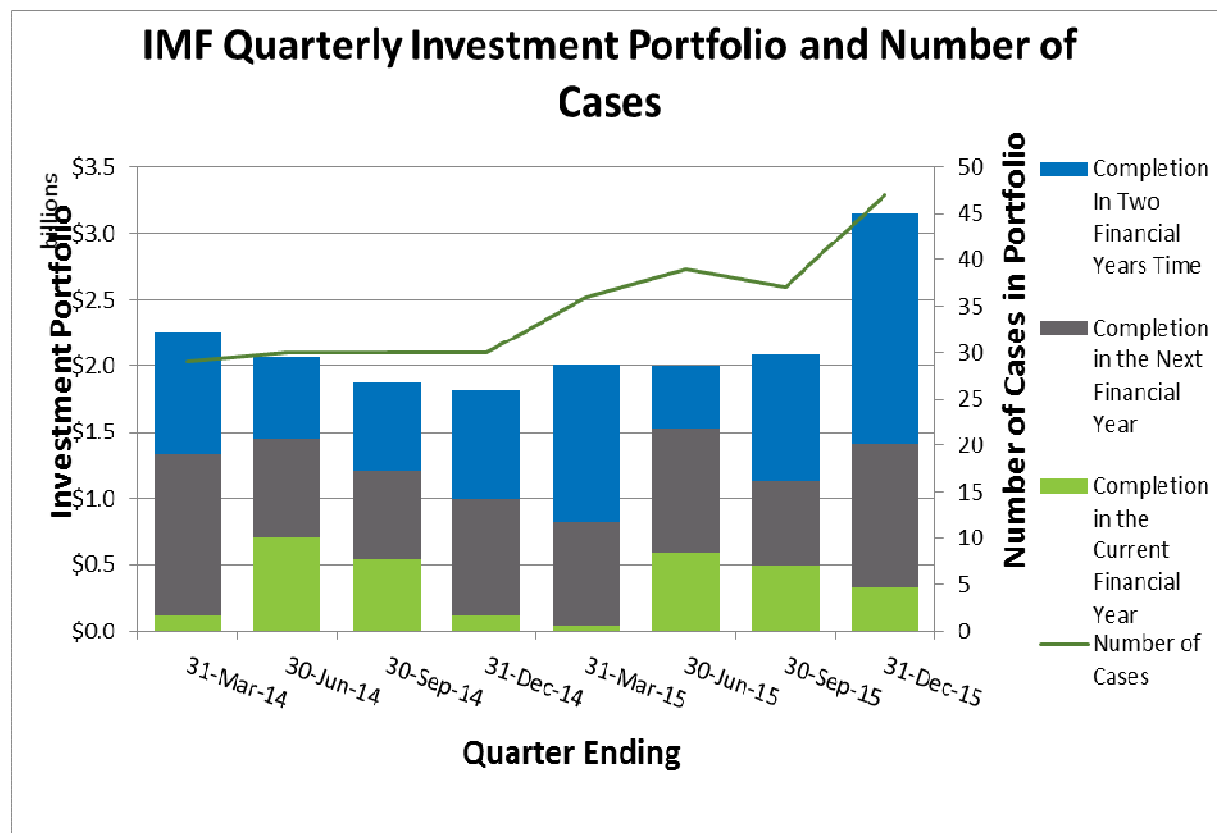
Claim value range	(a) Estimated claim value \$'000	Number of cases	Proportion of total value	(b) Possible completion FY2016 \$'000	(b) Possible completion FY2017 \$'000	(b) Possible completion FY2018 and later \$'000
Less than \$10M	90,938	7	3%	5,000	85,938	0
Between \$10M and \$50M	543,868	23	17%	86,096	207,191	250,581
Greater than \$50M	2,518,916	17	80%	237,493	784,817	1,496,606
<b>Total Portfolio</b>	<b>3,153,722</b>	<b>47</b>	<b>100%</b>	<b>328,589</b>	<b>1,077,946</b>	<b>1,747,187</b>
<b>Australian matters</b>	<b>1,852,300</b>	<b>20</b>	<b>59%</b>	<b>219,000</b>	<b>644,500</b>	<b>988,800</b>
<b>Asian matters</b>	<b>111,000</b>	<b>3</b>	<b>3%</b>	<b>0</b>	<b>25,000</b>	<b>86,000</b>
<b>USA and Canada matters</b>	<b>1,190,422</b>	<b>24</b>	<b>38%</b>	<b>109,589</b>	<b>408,446</b>	<b>672,387</b>
<b>Total Portfolio</b>	<b>3,153,722</b>	<b>47</b>	<b>100%</b>	<b>328,589</b>	<b>1,077,946</b>	<b>1,747,187</b>

### Notes:

- (a) This is the Company's current best estimate of the claims recoverable amount (or remaining recoverable amount if there has been a partial recovery), which may vary over time for a number of reasons, including in respect of non-Australian matters, fluctuations in the exchange rate between the applicable local currency and the Australian dollar, and may be different in subsequent investment portfolio updates when they are published. It considers, where appropriate, the perceived capacity of the defendant to pay the amount claimed. It is not necessarily the same as the amount being claimed by the Company's client/s in the matter. It is also not the estimated return to the Company from the matter if it is successful. No estimated claim value has been included for any contingently funded matters until all conditions are fulfilled;
- (b) The possible completion period is the Company's current best estimate of the period in which the case may be finalised. The case may finalise earlier or later than in this period. Completion means finalisation of the litigation by either settlement or judgement for or against the funded client. It may not follow that the financial result will be accounted for in the year of finalisation. Completion estimates are prepared and announced on a quarterly basis.
- (c) The above figures are as at 31 December 2015. Consult IMF's ASX announcements since 1 January 2016 for further information in respect of funded cases within the portfolio.

## Investment portfolio history

The chart below sets out the value of IMF's Investment Portfolio (LHS) and the number of investments the portfolio is comprised of (RHS), at the end of each quarter.



The possible completion period is the Company's current best estimate of the period in which the case may be finalised. The case may finalise earlier or later than in this period. Completion means finalisation of the litigation by either settlement or judgement for or against the funded client. It may not follow that the financial result will be accounted for in the year of finalisation. Completion estimates are prepared and announced on a quarterly basis

## Corporate strategy

The Company's focus for the next 12 months includes:

- Further geographic expansion requiring the assessment of additional offices in the US or possibly in Asia where IMF is currently funding three cases in Hong Kong;
- The roll out of possible new products in Australia potentially covering areas such as disbursement funding and family law; and
- Continuing to accelerate the number and diversity of funded cases.

The Company has set funding targets out to FY18 as set out below:

DESCRIPTION	FY2014 Actual	FY2015 Actual	HY2016 Actual	Remaining FY2016 Projected	FY2017 Projected	FY2018 Projected
Cases funded	8	21	13	24	54	61
Funds committed (A\$)	\$42M	\$54M	\$45.5M	\$40.5M	\$107M	\$123M

The above figures are as at 31 December 2015. Consult IMF's ASX announcements since 1 January 2016 for further information in respect of funded cases within the portfolio.

## Board of Directors

IMF Bentham's Board of Directors is highlighted below.

### Michael Kay – Non-executive Director and Chairman



Michael Kay was appointed the Company's Non- Executive Chairman on 1 July 2015. Mr Kay holds a Bachelor of Laws degree from the University of Sydney. Mr Kay brings a wealth of commercial experience to IMF. Most recently he was Chief Executive Officer and Managing Director of listed salary packaging company McMillan Shakespeare Ltd, a position he held for six years. Previously Mr Kay had been CEO of national insurer AAMI after serving in a variety of senior roles with that company. Prior to joining AAMI he had spent 12 years in private legal practice. He is a former member of the Commonwealth Consumer Affairs Advisory Council, the Administrative Law Committee of the Law Council of Australia, the Victorian Government Finance Industry Council and the Committee for Melbourne. Mr Kay is currently a director of:

- RAC Insurance Pty Limited; and
- TFS Corporation Limited.

During the past three years he has not served as a director of any listed company other than TFS Corporation Limited and McMillan Shakespeare Ltd.

### Andrew Saker – Managing Director and CEO



Andrew Saker holds a Bachelor of Commerce degree in Accounting and Finance. He is a Member of the Institute of Chartered Accountants and was an Official Liquidator of the Supreme and Federal Courts until his appointment at IMF.

Andrew was a partner at a leading provider of corporate recovery, insolvency management and restructuring services throughout Australia and Asia for 16 years. During this period he managed the Indonesian and Perth operations and assisted with billion dollar cross-border restructuring assignments throughout the world including in Indonesia, the Philippines, Singapore, China, Argentina, Kazakhstan, Europe, the US and Canada. Mr Saker has managed hundreds of large claims across a range of industries including mining, telecommunications, energy, aquaculture, property, manufacturing, infrastructure, banking and finance.

During the past three years he has not served as a director of any other listed company.

### Hugh McLernon - Executive Director



Hugh McLernon is a lawyer by training. He holds a Bachelor of Laws degree from the University of Western Australia. After graduation he worked as a Crown Prosecutor for eight years and then as a barrister at the independent bar for a further nine years, before joining Clayton Utz for three years as a litigation partner.

In 1988, Mr McLernon retired from legal practice and introduced the secondary life insurance market into Australia through the Capital Life Exchange. He also pioneered the funding of large-scale litigation into Australia through McLernon Group Limited. From 1996 to 2001, Mr McLernon was the Managing Director of the Hill Group of companies which operates in the finance, mining, property, insurance and investment arenas of Australia.

Mr McLernon has been an Executive Director of IMF Bentham since December

2001 and was the inaugural Managing Director through to December 2004. He became the Managing Director again on 18 March 2009 and retired from that role on 5 January 2015.

During the past three years he has not served as a director of any other listed company.

#### Alden Halse – Non-executive Director



Alden Halse is a Chartered Accountant and was a long-term principal of national chartered accountancy firm, Ferrier Hodgson.

Over the last 30 years he has lectured and written extensively in relation to directors' duties, corporate governance issues and corporate and personal insolvency issues. Mr Halse:

- is an associate member of the Institute of Chartered Accountants and the Australian Institute of Company Directors;
- is a past president and current councillor of the Royal Automobile Club of WA (Inc);
- is a non-executive chairman of RACWA Holdings Pty Ltd; and
- is non-executive chairman of RAC Insurance Pty Limited, Western Australia's largest home and motor insurer.

Mr Halse is the Chairman of the audit and risk committee and nomination committee and a member of the remuneration committee and corporate governance committee.

During the past three years he has not served as a director of any other listed company.

#### Michael Bowen - Non-executive Director



Michael Bowen graduated from the University of Western Australia with Bachelors of Law, Jurisprudence and Commerce. He has been admitted as a barrister and solicitor of the Supreme Court of Western Australia and is an Associate and Certified Practicing Accountant of the Australian Society of Accountants. Mr Bowen:

- is a partner of the law firm DLA Piper and formerly of Hardy Bowen which merged with DLA Piper on 1 July 2015, practicing primarily corporate, commercial and securities law with an emphasis on mergers, acquisitions, capital raisings and resources; and
- supports the Managing Director on matters concerning the corporations law.

Mr Bowen is Chairman of the remuneration committee and a member of the corporate governance committee, the audit and risk committee and nomination committee.

During the past three years he has not served as a director of any other listed company.

## Wendy McCarthy AO – Non-executive Director



Wendy McCarthy AO started her career as a secondary school teacher, graduating from the University of New England with a Bachelor of Arts degree and Diploma of Education. She moved out of the classroom into public life in 1968 and since then has worked for change across the business, government and not-for-profit sectors, in education, family planning, human rights, public health, overseas aid and development, conservation, heritage, and media. She has held many significant leadership roles in key national and international bodies including eight years as Deputy Chair of the Australian Broadcasting Corporation, ten years as Chancellor of the University of Canberra, and 12 years of service to Plan Australia as Chair, with three years as Global Deputy Chair for Plan International. She has just retired after 15 years as Chair of McGrath Estate Agents and seven years as Chair of the Pacific Friends of the Global Fund to fight AIDS, Tuberculosis and Malaria.

Ms McCarthy currently chairs headspace – the National Youth Mental Health Foundation and Circus Oz, and is a non-executive director of Goodstart Early Learning. She is a Patron of the Sydney Women's Fund and Ambassador for 1 Million Women. Ms McCarthy was appointed an Officer of the Order of Australia for outstanding contributions to community affairs, women's affairs and the Bicentennial celebrations, and received a Centenary of Federation Medal for business leadership. She was also awarded an Honorary Doctorate from the University of South Australia.

Ms McCarthy is Chair of corporate governance committee and a member of the audit and risk committee, remuneration committee and nomination committee.

During the past three years she has not served as a director of any other listed company.



# Risk Factors

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By investing in the Notes you will be lending money to the Issuer and may be exposed to a number of risks which can be broadly classified as risks associated with the Notes and risks associated with the Issuer's business that may affect the Notes.

This section describes potential risks associated with the Issuer's business and risks associated with an investment in the Notes and the Issuer. It does not purport to list every risk that may be associated with an investment in the Notes now or in the future and the occurrence or consequences of some of the risks described in this section are partially or completely outside the control of the Issuer, its directors and senior management team. The selection of risks has been based on an assessment of a combination of the probability of the risk occurring and impact of the risk if it did occur. This assessment is based on the knowledge of the directors as at the date of this Information Memorandum but there is no guarantee or assurance that the importance of different risks will not change or other risks emerge.

Prospective investors should satisfy themselves that they have a sufficient understanding of these matters, including the risks described below, and have regard to their own investment objectives, financial circumstances and taxation position, before applying for any Notes.

Capitalised terms used in this section have the meaning given to them in the Conditions, unless otherwise defined.

## Risks associated with the Notes

### (a) The liquidity of the Notes may be low

The market for the Notes may not be liquid.

If liquidity is low, there is a risk that, if you wish to sell your Notes prior to the Maturity Date, you may not be able to do so at a price acceptable to you, or at all, and there is a risk that the market price will become more volatile in general.

It is not intended that the Notes will be quoted on ASX or any other public stock exchange. The Issuer does not guarantee that you will be able to sell your Notes.

### (b) Transferability of the Notes

Notes may only be transferred if the offer or invitation for the sale or purchase of those Notes is received by a person:

- in Australia, only if the minimum aggregate consideration payable at the time of the transfer is at least A\$500,000 (or its equivalent in an alternative currency and, in each case, disregarding moneys lent by the transferor or its associates to the transferee) or the Notes are transferred in circumstances that do not otherwise require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act and the transfer complies with all applicable laws and directives; and
- if, in a jurisdiction outside Australia, the transfer complies with all other applicable laws and directives in the jurisdiction in which the transfer takes place.

### (c) The Issuer may default on payment

Depending upon its performance and financial position, the Issuer may default on payment of some or all of the interest on the Notes, or repayment of some or all of the outstanding principal amounts of the Notes.

If the Issuer does not pay some or all of the interest or outstanding principal amounts on the

Notes as and when payable under the Conditions, then you may not receive some or all of the money you invested in Notes or interest that is due to be paid to you.

**(d) Noteholders are secured creditors of the Issuer but will rank behind prior ranking Permitted Security Interests and creditors preferred by law**

The Group is structured, like many other listed corporate groups, with the Issuer as the head holding company that holds (directly or indirectly) all of the Group's equity interests in its Subsidiaries and incorporated joint ventures. Accordingly, the assets of the Issuer comprise investments in cases, cash, receivables from third parties, benefit of insurance contracts, receivables from Subsidiaries and any incorporated joint venture entities and the equity interests in Subsidiaries and such joint venture interests.

The Notes are secured by a security interest over all present and future-acquired property of the Issuer (excluding the IMF European JV Assets). The Notes are also secured by specific security agreements relating to the shares in the Issuer's Australian Subsidiaries.

Noteholders do not have security over the assets of the Subsidiaries or any incorporated joint ventures themselves and are not creditors of the Subsidiaries or any joint venture companies. Subject to the negative pledge contained in the Conditions, the Subsidiaries are not restricted under the Transaction Documents from incurring indebtedness and from granting Security in relation to their own obligations or those of another member of the Group.

If the Issuer becomes unable to meet its obligations or suspends any payments it is required to make, Noteholders' claims will rank after any prior ranking Permitted Security Interest and any creditor mandatorily preferred by law in any jurisdiction and, subject to the Priority Deed, equally with holders of IMF Bentham ASX Bonds and lenders pursuant to any Permitted Secured Finance Arrangements. Subsidiaries may also have other liabilities which may be secured or unsecured and could affect the value of the Notes and the Security and the return to Noteholders in a winding up of the Issuer.

If there are insufficient assets to satisfy Noteholders' claims and lenders' claims pursuant to any Permitted Secured Finance Arrangement after satisfying any prior ranking Permitted Security Interest and creditors preferred by law, there is a risk that you may lose some or all of the money you invested in Notes and any Interest that has accrued but remains unpaid.

**(e) The Security may not be enforceable, or may not have the intended priority in respect of assets outside of Australia**

The Issuer owns assets included in the Security which are located outside of Australia, including shares in Subsidiaries, and may hold other assets outside of Australia during the term of the Notes. The Security will be registered in Australia and perfected in accordance with applicable Australian law but may not be registered or steps taken to perfect such Security over assets of the Issuer in any other jurisdiction. As a result, it is possible that the Security may not constitute an enforceable security interest over assets of the Issuer located outside of Australia or that any such Security may be subject to prior ranking Security created either by law or otherwise in those jurisdictions outside Australia where such Issuer assets are located. As a result Noteholders should not rely upon the ability to enforce the Security in respect of any Issuer assets located outside of Australia and may rank as unsecured creditors in the winding-up of the Issuer with respect to such assets located outside of Australia.

**(f) The realisation of the Security following an Event of Default may not be sufficient to repay the principal outstanding amounts on the Notes and any accrued but unpaid Interest**

Upon an enforcement of the Security following an Event of Default and subject to the enforceability and ranking of the Security in the applicable jurisdiction, Noteholders will have access to the property secured by the Security. This property consists of all of the Issuer's present and after acquired property. At present this mainly comprises the following:

- The Issuer's investments in cases. However, the realisable value from these investments at the time of an Event of Default may not reflect the long term value of such investments should they be held and conducted in accordance with the Issuer's ordinary course of business. Such investments are highly illiquid and may require substantial further funding in order to realise any value from them;
- Current Resources. However, there are no restrictions in the Transaction Documents on the Issuer's ability to deal in Current Resources in the ordinary course of business and hence there can be no assurance with regard to the Issuer's cash level from time to time or the realisable value of the other assets comprising Current Resources which, in the case of Receivables, will be subject to credit risk;
- The Issuer's insurance contracts. However, there may be no realisable value in these insurance contracts following an Event of Default and the contracts may be subject to termination rights which are triggered at the time of an Event of Default which may impact any value which is realisable from the contract which is also subject to underwriter credit risk;
- The shares the Issuer holds in its Subsidiaries, but not to the assets of the Subsidiaries. On a winding up of a Subsidiary, a Noteholder would not receive any value for the shares unless creditors of the relevant Subsidiary were satisfied in full; and
- Under the terms of the Security, subject to an Event of Default not having occurred, the Issuer may dispose of any Circulating Asset (which comprise all the Security, save for shares in Subsidiaries) in the ordinary course of business.

Based on the above, there is no assurance or guarantee that the value of the Security upon realisation would be sufficient to repay the outstanding principal amounts and any accrued but unpaid Interest on the Notes.

**(g) The Security ranks equally with the security provided under the IMF Bentham ASX Bonds and will rank equally with any further Notes or IMF Bentham ASX Bonds and lenders pursuant to any Permitted Secured Finance Arrangements**

Noteholders have the benefit of certain restrictions to the Issuer's ability to raise further secured debt.

The Issuer is prohibited from creating and issuing any further Notes or IMF Bentham ASX Bonds or granting any Security in respect of indebtedness which would rank equally with, or in priority to, the Notes, other than in specified circumstances. The Issuer is permitted to incur secured indebtedness that ranks equally with the Notes (including issuing further Notes or IMF Bentham ASX Bonds, but excludes issuing any other secured debt securities of a shorter maturity than the Notes), if as at the date of the incurrence of the relevant secured indebtedness the aggregate of the outstanding Notes, IMF Bentham ASX Bonds and any equal ranking secured indebtedness does not exceed \$150 million and the Current Resources are not less than 75% of the total Financial Indebtedness of the Group (calculated on a post-incurrence basis).

The issue of further Notes or the incurrence of any indebtedness pursuant to Permitted Secured Finance Arrangements would increase the risk of there being insufficient assets to satisfy in full Noteholders' claims and lenders' claims pursuant to any Permitted Secured Finance Arrangement after satisfying any prior ranking Permitted Security Interests and creditors preferred by law and hence there is a risk that you may lose some or all of the money you invested in Notes and any Interest that has accrued but remains unpaid.

**(h) Noteholders may only request that their Notes be redeemed early in limited circumstances**

Noteholders may only request redemption of their Notes prior to the Maturity Date where there

is a Change of Control Event or a Delisting Event. Alternatively, to realise your investment, Noteholders may be able to sell their Notes on Austraclear at the prevailing market price but, depending on market conditions at the time, it is possible that Notes may be trading at a market price below their outstanding principal amount and/or the market for Notes may not be liquid.

**(i) Issuer may redeem Notes early in limited circumstances**

The Issuer has the right to redeem Notes if a Tax Event occurs, pursuant to a clean-up call or on certain Optional Redemption Dates.

Depending on market conditions at the time, you may not be able to reinvest the amount you receive on redemption at a similar rate of return to the rate of return you expected on your Notes if you had held them until the Maturity Date.

**(j) Taxation considerations**

A summary of potential Australian taxation implications for Noteholders is included in the section entitled "Australian Taxation" below. This is a general summary and is not intended to provide specific advice in relation to the circumstances of any particular investor. Accordingly, Noteholders should seek independent advice in relation to their own individual taxation circumstances.

**Risks associated with IMF Bentham Group's business that may affect Notes**

**(a) Reliance on key personnel**

The Issuer depends substantially on its executive directors and senior management and key personnel to oversee the day-to-day operations and the strategic management of the Issuer. There can be no assurance given that there will be no detrimental impact on the Issuer if multiple directors or employees cease their employment.

**(b) Risks specific to IMF Bentham Cases**

***Poor case selection***

The central task in the Issuer's business is to choose successful cases. If poor case selection occurs then this will cause loss to the Issuer through payment of the client's legal expenses and payment of the successful defendant's costs (in jurisdictions where this is relevant).

***Remaining in unsuccessful cases***

It is sometimes the position that cases turn out to be less prospective as the litigation proceeds after the initial assessment. While the Issuer has a unilateral right of termination under its funding agreements, if the Issuer fails to terminate such funding then loss will occur to the Issuer.

***Time and expense***

If the Issuer fails to control expenditure on individual cases beyond the proposed budget or such cases take materially longer than originally indicated, then loss may be caused to the Issuer

***Inability of defendants to pay judgements***

Part of the case selection process involves an assessment by the Issuer of the ability of the defendant to pay a judgment if the case is successful. If the Issuer fails to properly carry out its assessment of the defendant's ability to pay, or that ability deteriorates after funding is in place, then this will cause loss to the Issuer even if the case is successful.

### ***Lost cases***

If selected cases are unsuccessful, either at first instance or subsequent to a defendant's successful appeal upon final judgment, this will result in a write off of the intangible asset represented by such case (comprising the amount funded to the client and the amount of the associated capitalised overheads required to be allocated to the case in accordance with Accepted Accounting Practices). In addition, the Issuer may be liable to the successful defendants in respect of their legal costs incurred pursuant to indemnifications provided for adverse costs. These negative financial impacts can be amplified in situations where the Issuer funds multiple similar claims by a client or group of clients and a loss in one case results in the remaining cases being lost or otherwise discontinued. By way of example, in the *Bank Fees* group of cases funded by the Issuer, each of the proceedings is stayed pending the outcome of the case against ANZ Banking Corporation which was the subject of a recent High Court appeal by the Issuer's clients. If the High Court dismisses the appeal, there is a risk that some or all of the remaining *Bank Fees* proceedings may, if not settled in the interim, be discontinued with the Issuer crystallising further associated write downs and adverse costs liabilities.

### ***Changes in the law***

It is possible that statute law or the interpretation of the common law may change in a way which is adverse to the interests of the Issuer. There are now numerous court decisions in Australia and elsewhere (both single Judge and Courts of Appeal) supporting the business model of the Issuer, but it is possible that higher courts may disagree with existing authorities and such decisions may impact adversely on the Issuer's business model.

### ***Offshore investment***

The Issuer has invested in litigation funding agreements in countries other than Australia. The Company has agreed to fund cases in the US, the UK, Canada, Hong Kong and may agree to fund other cases in these and other jurisdictions such as Singapore, New Zealand and the Netherlands in the future. The management of such cases can be more difficult than the management of Australian cases and the law different to Australian law and any mismanagement may cause loss to the Issuer.

#### **(c) Economic risks**

General economic conditions, movements in interest and inflation rates and currency exchange rates may have an adverse effect on the Issuer's activities, as well as on its ability to fund those activities. If the Issuer's offshore operations become significantly larger, these economic risks, and in particular risks associated with currency exchange rates, may increase.

#### **(d) Exchange rate risk**

The Issuer provides litigation funding services to clients in a number of countries other than Australia and earns revenues in currencies other than Australian dollars. In the ordinary course of business, the Group earns revenue in the currency of the country in which the costs are incurred.

Changes in the value of Australian dollars relative to other currencies in which the Group earns revenues and incurs costs will impact the translation of non-Australian dollars denominated earnings and may impact the Australian dollar value of assets and liabilities denominated in foreign currency recorded on the Issuer's balance sheet.

#### **(e) Government regulation**

The Commonwealth and State governments have not announced any present intention to further regulate the litigation funding industry but no assurance can be given that regulation in Australia and overseas will not change in the future and adversely affect the Issuer's business and financial performance.

**(f) Judicial decisions**

To date, the courts have generally found in favour of litigation funding arrangements in Australia but the courts, in Australia or overseas, will continue to oversee the development of the litigation funding industry and adverse decisions may impact on the business of the Issuer.

**(g) Multiple Defendants**

In some cases there may be multiple defendants, or defendants may add third parties to the funded litigation, potentially increasing adverse costs if the litigation is unsuccessful.

**(h) Technology**

The Issuer is dependent on technological services for its case management system. These systems may fail or may not operate properly. The Issuer may fail to keep its technology up to date with the resultant loss of business opportunities.

**(i) Competition**

The Issuer currently has a handful of competitors in the Australian litigation funding market, including overseas based competitors. There are also at least two other litigation funders vying for a multinational litigation funding business. As time passes and litigation funding becomes more widespread, further competition will develop, and such competition may impact on the performance of the Issuer.

**(j) Growth**

The Issuer is currently pursuing a strategy of international expansion, having recently opened an office in Toronto. There are always risks attendant upon growth strategies. There is a risk, for instance, that the Issuer may mismanage its growth strategy.

**(k) Joint Ventures**

Joint venture arrangements ("**Joint Venture Arrangements**") form part of the Issuer's growth strategies. There can be no assurance that these Joint Venture Arrangements will be successful.

Subject to the relevant Joint Venture Arrangements, the Issuer may be unable to control the actions of its joint venture partners and therefore cannot guarantee that the Joint Venture Arrangements will be operated or managed in accordance with the Issuer's preferred direction or strategy. The Joint Venture Arrangements may contain deadlock provisions which result in the joint venture counterparty being able to acquire the Issuer's interest in the joint venture at a pre-determined value or based upon a formula which may or may not be equal to market value and/or entirely subject to deferred consideration.

The Issuer's joint venture partners may breach the terms of the applicable Joint Venture Arrangement which may have a material adverse impact on the value of the joint venture. Any remedies in the event of breach may be subject to the terms of the Joint Venture Arrangement, the creditworthiness of the joint venture partner and any guarantors and the applicable law of the Joint Venture Arrangement and the ability to enforce any legal remedy in the applicable jurisdiction of the joint venture partner or guarantor. As a result, any remedy may be insufficient to mitigate any loss suffered by the Issuer and the Issuer is unlikely to recover any potential future earnings due to the speculative nature of any such claim for damages.

Further, the Security granted over the Issuer's rights and interests in any such Joint Venture Arrangements may be subject to cross default provisions in respect of the Notes and hence any default under the Notes may trigger rights of the joint venture partner to acquire the Issuer's rights and interests in the joint venture at a discount to the market value of such interests. In the event this occurred, this would increase the risk that the realised value of the

Security may be insufficient to repay the outstanding principal amount and any accrued but unpaid Interest on the Notes.

In addition, the Issuer may not be able to fulfil its obligations under the applicable Joint Venture Arrangements which may result in a joint venture party being able to compulsorily purchase the Issuer's interests in the applicable joint venture at a discount to market value. Any such occurrence would reduce the value of the Security.

Importantly, depending upon the structure of any incorporated Joint Venture Arrangements and the Issuer's control rights, if any, the joint venture entities may not constitute Subsidiaries and as a result any Current Resources or Financial Indebtedness of such entities will not be included in the calculation of the Group's Current Resources and Financial Indebtedness when determining the ability of the Issuer to issue a Distribution, further Notes or undertake a Permitted Secured Finance Arrangement. However, the Current Resources and/or Financial Indebtedness of the Issuer which relate to the investments in any Joint Venture Arrangement will be included in the calculation.

The proportion of the Issuer's business operated via joint ventures may materially increase during the term of the Notes and if this were to occur, the significance of the risks highlighted above would increase proportionally.

**(I) Information available to Noteholders if Issuer does not continue to be listed on ASX**

There is no guarantee that the Issuer will continue to be listed on ASX at all times during the life of the Notes. If the Issuer ceases to be listed on ASX, it will cease to be subject to the continuous disclosure obligations for listed entities under the Corporations Act and the ASX Listing Rules, which will result in a decrease in the level of publicly available information available to Noteholders in relation to the Issuer, its business and operations.

# Conditions

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*The following are the Conditions which, as supplemented, amended, modified or replaced in relation to any Tranche of Notes by the relevant Pricing Supplement, will apply to that Tranche of Notes. References to a "Pricing Supplement" in these Conditions do not limit the provisions which may be supplemented, amended, modified or replaced by the Pricing Supplement.*

*The Notes are constituted by the Note Trust Deed. Each Noteholder, and any person claiming through or under any Noteholder, is entitled to the benefit of, is bound by and is deemed to have notice of, all of the provisions of the Note Trust Deed, the Security Trust Deed, the Securities, the Priority Deed, these Conditions and the relevant Pricing Supplement. Each such person is also deemed to have notice of the Information Memorandum. Copies of each such document are available for inspection at the Specified Office of the Issuer and the Note Trustee.*

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## **1 Interpretation**

### **1.1 Terms defined in Pricing Supplement**

Terms which are used in the Pricing Supplement have the meaning given in these Conditions.

### **1.2 Definitions**

In these Conditions, the following meanings apply unless the contrary intention appears:

**Accepted Accounting Practices** means:

- (a) in relation to any Financial Statements in respect of a member of the Group that is not incorporated in Australia, the accounting practices and standards generally accepted in the jurisdiction of incorporation of that member of the Group from time to time; and
- (b) for all other purposes, the accounting standards and principles issued by the Australian Accounting Standards Board from time to time;

**Additional Amount** means an additional amount payable by the Issuer under Condition 11.2 ("Withholding tax");

**Agency Agreement** means:

- (a) the agreement entitled Agency and Registry Services Agreement between the Issuer, the Registrar, the Issuing & Paying Agent and the Calculation Agent dated 6 April 2016;
- (b) any other agreement between the Issuer and a Registrar in relation to the establishment and maintenance of a Register (and/or the performance of any payment or other duties) for any issue of Notes; and/or
- (c) any other agency agreement entered into between the Issuer and an agent in connection with any issue of Notes;

**Agent** means each of the Registrar, the Issuing and Paying Agent, the Calculation Agent and any other agent appointed under an Agency Agreement, or any of them as the context requires;

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context permits, the Australian Securities Exchange operated by ASX Limited;

**Austraclear** means Austraclear Ltd (ABN 94 002 060 773);



**Austraclear Regulations** means the regulations known as “Austraclear Regulations” together with any instructions or directions established by Austraclear to govern the use of the Austraclear System and binding on the participants in that system;

**Austraclear System** means the clearing and settlement system operated by Austraclear in Australia for holding securities and electronic recording and settling of transactions in those securities between participants of that system;

**Australian Tax Act** means the Income Tax Assessment Act 1936 of Australia or the Income Tax Assessment Act 1997 of Australia, as applicable;

**BBSW Rate** means, for an Interest Period, the rate for prime bank eligible securities having a tenor closest to the Interest Period which is designated as the “AVG MID” on the Reuters Screen BBSW Page at approximately 10:10am on the first day of that Interest Period. However, if such rate does not appear on the Reuters Screen BBSW Page by 10:30am on that day, or if it does appear but the Calculation Agent determines that there is an obvious error in that rate, **BBSW Rate** means the rate determined by the Calculation Agent having regard to comparable indices then available. The rate calculated or determined by the Calculation Agent will be expressed as a percentage rate per annum and will be rounded up, if necessary, to the next higher one ten-thousandth of a percentage point (0.0001 per cent.);

**Business Day** means a day (not being a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney and, if a Note held in the Austraclear System is to be issued or payment made in respect of a Note held in the Austraclear System on that day, a day on which the Austraclear System is operating;

**Business Day Convention** means a convention for adjusting any date if it would otherwise fall on a day that is not a Business Day and the following conventions, where specified in the Pricing Supplement in relation to any date applicable to any Note, and **Following Business Day Convention** means that the date is postponed to the first following date that is a Business Day;

**Calculation Agent** means AET Structured Finance Services Pty Limited (ABN 12 106 424 088);

**Cash** means cash at bank and cash deposited in a money market or term deposit account of an entity;

**Change of Control** means:

- (a) a court approval of a merger by way of scheme of arrangement of the Issuer (but shall not include a merger by way of scheme of arrangement for the purposes of a corporate restructure (including change of domicile, consolidation, sub-division, reduction or return of the issued capital of the Issuer)); or
- (b) a takeover bid (as defined in the Corporations Act):
  - (i) is announced;
  - (ii) has become unconditional irrespective of whether or not the takeover bid extends to shares in the Issuer issued and allotted after the date of the takeover bid; and
  - (iii) the person making the takeover bid has a relevant interest (as defined in the Corporations Act) in 50% or more of the Shares;

**Change of Control Redemption Period** means the period beginning on the date the Issuer provides the notification described in Condition 9.2 (“Early redemption at the option of Noteholders (change of control)”) and ending on the date which is 20 Business Days from that date;

**Circulating Asset** means any Secured Property other than:

- (a) any equity interests in members of the Group held by the Issuer;
- (b) freehold or leasehold property and any interest in land or real property, save for ordinary course of business commercial leases of office premises of a duration of less than 21 years;

**Code** means the United States of America Internal Revenue Code of 1986;

**Conditions** means, in relation to the Notes, these terms and conditions as amended, supplemented, modified or replaced by the Pricing Supplement applicable to such Note and references to a particular numbered Condition shall be construed accordingly;

**Controller** has the meaning given to that term in the Corporations Act;

**Corporations Act** means the Corporations Act 2001 of Australia;

**Current Resources** of the Issuer or the Group means, as applicable, at any relevant time, the aggregate amount in Australian dollars of:

- (a) Cash and short-term deposits with an original maturity of three months or less, that are readily convertible to known amounts of Cash and which are subject to an insignificant risk of changes in value;
- (b) deposits with an original maturity date of greater than three months to the extent that they are readily convertible to Cash;
- (c) financial instruments held by way of treasury investment in accordance with the treasury policy of the Issuer or applicable member of the Group; and
- (d) Receivables.

Any Cash denominated in a currency other than Australian Dollars shall be converted into an Australian dollar amount for the purposes of this calculation only using the exchange rate published by the Reserve Bank of Australia on its website on the relevant calculation date.

**Day Count Fraction** means, in respect of the calculation of interest on a Note for any period of time ("**Calculation Period**"), the day count fraction specified in the Pricing Supplement and if "**RBA Bond Basis**" is so specified, means one divided by the number of Interest Payment Dates in a year (or where the Calculation Period does not constitute an Interest Period, the actual number of days in the Calculation Period divided by 365 (or, if any portion of the Calculation Period falls in a leap year, the sum of:

- (a) the actual number of days in that portion of the Calculation Period falling in a leap year divided by 366; and
- (b) the actual number of days in that portion of the Calculation Period falling in a non-leap year divided by 365));

**Denomination** means A\$1,000, being the notional face value of a Note on its Issue Date;

**Delisting Event** means that, prior to their scheduled maturity date, trading in the IMF Bentham ASX Bonds is suspended for more than 15 consecutive Business Days;

**Delisting Redemption Period** means the period beginning on the date the Issuer provides the notification described in Condition 9.3 ("Early redemption at the option of Noteholders (delisting)") and ending on the date which is 20 Business Days from that date;

**Distribution** means a distribution to shareholders in any form whatsoever, including without limitation, by way of dividend (whether in cash or in specie), share buy-back, reduction of capital, bonus securities issue or otherwise;

**Event of Default** means the happening of any event set out in Condition 13.1 (“Events of Default”);

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement under the implementation of paragraphs (a) or (b) above, with the United States of America Internal Revenue Service, the United States of America government or any governmental or taxation authority in any other jurisdiction;

**Finance Lease** means any lease or hire-purchase agreement the obligations under which are required under Accepted Accounting Practices to be classified and accounted for as capitalised finance lease obligations, but excluding any lease or hire-purchase agreement to the extent that the obligations under the lease or hire-purchase agreement (other than contingent obligations) are legally defeased;

**Financial Indebtedness** of a person means, without double counting, any liability, obligation or indebtedness (whether present, actual or contingent) of that person for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accepted Accounting Practices, be treated as a Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

**Financial Statements** means:

- (a) an income statement;
- (b) a balance sheet;
- (c) a cash flow statement; and
- (d) (if for a financial year and required by law or directive) a statement of changes in equity for the year,

together with any notes to those documents and any accompanying reports (including any directors' and auditors reports), statements, declarations and other documents or information intended to be read with any of them, in each case as required under the Corporations Act and applicable laws and directives;

**Group** means the Issuer and each of its Subsidiaries from time to time;

**IMF Bentham ASX Bonds** means the A\$50,000,000 debt securities issued by the Issuer on 24 April 2014, listed on ASX and with a scheduled maturity date of 30 June 2019;

**IMF European JV Assets** means any of the Issuer's present or future:

- (a) shares, partnership interests, securities, or instruments convertible into shares or partnership interests, and any options to subscribe for any such shares or partnership interests or convertible securities or instruments in the European incorporated joint venture entity; or
- (b) rights, benefits or interests in any agreements, deeds or arrangements entered into by the Issuer in connection with the European incorporated joint venture entity or its subsidiaries or business or operations;

**Information Memorandum** means the information memorandum, disclosure document or other offering document referred to in a Pricing Supplement in each case prepared by, or on behalf of, and approved by, the Issuer in connection with the issue of Notes and all documents incorporated by reference in it;

an **Insolvency Event** occurs in relation to a person if:

- (a) a controller (as defined in section 9 of the Corporations Act), receiver, receiver and manager, administrator or similar officer is appointed in respect of that person or any asset of that person;
- (b) a liquidator, provisional liquidator or administrator is appointed in respect of that person;
- (c) except for the purpose of a solvent reconstruction or amalgamation, any application (which is not vexatious or not withdrawn or dismissed within 28 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up, dissolving or deregistering that person; or
  - (iii) proposing or implementing a company voluntary arrangement or a scheme of arrangement, other than with the prior approval by a Special Resolution of the Noteholders under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

- (d) any application (which is not vexatious not withdrawn or dismissed within 28 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
- (i) a moratorium of any debts of that person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with that person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of that person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act, that person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act) except where the statutory demand is being disputed in good faith;
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any material asset or material part of the assets of that person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to that person under any law; or
- (h) that person is, or admits in writing that it is, or is declared to be, or is presumed or taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts as they fall due;

**Interest Commencement Date** means, for a Note, the Issue Date of the Note or any other date so specified in, or determined in accordance with, the Pricing Supplement;

**Interest Payment Date** means each date so specified in the Pricing Supplement;

**Interest Period** means each period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next Interest Payment Date. However:

- (a) the first Interest Period commences on (and includes) the Interest Commencement Date; and
- (b) the final Interest Period ends on (but excludes) the Maturity Date or, if redeemed earlier in accordance with these Conditions, on that date;

**Interest Rate** means, in respect of a Note, the interest rate (expressed as a percentage per annum) payable in respect of that Note specified in the Pricing Supplement or calculated or determined in accordance with these Conditions and the Pricing Supplement;

**Issue Date** means the date on which a Note is, or is to be issued, as specified in, or determined in accordance with, the Pricing Supplement;

**Issuer** means IMF Bentham Limited (ABN 45 067 298 088);

**Issuing & Paying Agent** means AET Structured Finance Services Pty Limited (ABN 12 106 424 088);

**JV Arrangements** means the European joint venture arrangements and Asia- Pacific co-funding arrangements as announced by the Issuer to ASX on 26 March 2014 together with any

other incorporated or unincorporated joint venture arrangement or co-funding arrangement entered into by a member of the Group and notified to the Note Trustee in writing;

**Maturity Date** means the date so specified in, or determined in accordance with, the Pricing Supplement as the date on which the Note is to be redeemed (and adjusted, if necessary, in accordance with the applicable “Business Day Convention” so specified in the Pricing Supplement);

**Meeting Provisions** means the provisions relating to meetings of Noteholders in the Note Trust Deed;

**Note** means a medium term debt obligation issued or to be issued by the Issuer which is constituted by, and owing under the Note Trust Deed, the details of which are recorded in, and evidenced by, entry in the Register. References to any particular type of “**Note**” or “**Notes**” should be read and construed accordingly. All references to Notes must, unless the context otherwise requires, be read and construed as references to the Notes of a particular series;

**Note Trust Deed** means the document entitled “Note Trust Deed” dated 6 April 2016 and executed by, amongst others, the Issuer and the Note Trustee;

**Note Trustee** means Australian Executor Trustees Limited (ABN 84 007 869 794) in its capacity as trustee of the IMF Bentham OTC Note Trust constituted by the Note Trust Deed or such other person appointed under the Note Trust Deed as trustee of the IMF Bentham OTC Note Trust;

**Noteholder** means, in respect of a Note, the person whose name is entered in the Register as the holder of that Note;

**Offshore Associate** means an “**associate**” (within the meaning of section 128F(9) of the Australian Tax Act) of the Issuer that is either:

- (a) a non-resident of Australia that, if it acquires the Notes or an interest in the Notes, would not acquire the Notes or an interest in the Notes in carrying on a business at or through a permanent establishment of the associate in Australia; or
- (b) a resident of Australia that, if it acquires the Notes or an interest in the Notes, would acquire the Notes or an interest in the Notes in carrying on a business in a country outside Australia at or through a permanent establishment of the associate in that country;

**Offshore Subsidiary** means a Subsidiary of the Issuer that is not incorporated in Australia and not carrying on business in Australia;

**Optional Redemption Date** means the date so specified in the Pricing Supplement;

**Payment Date** means, as applicable, the Maturity Date, an Interest Payment Date or other relevant date on which a payment in respect of a Note is due;

**Permitted Secured Finance Arrangement** means:

- (a) any Financial Indebtedness of the Issuer or a Subsidiary, save for any secured debt securities (other than the IMF Bentham ASX Bonds) of a term expiring prior to the Maturity Date, following the incurrence of which:
  - (i) the Current Resources of the Issuer are equal to or greater than 75 per cent. of the total Financial Indebtedness of the Group; and
  - (ii) the total amount of Secured Debt of the Group does not exceed A\$150,000,000 (excluding any accrued but unpaid interest on such Financial

Indebtedness which is in accordance with the terms of the applicable governing documents); and

- (b) if the Security Interest in respect of that Financial Indebtedness is granted by the Issuer:
  - (i) the Issuer, the Note Trustee and any such lender or provider of Financial Indebtedness has, prior to completion of the creation of such security, entered into a priority deed;
  - (ii) any such lender or provider of Financial Indebtedness has, prior to completion of the creation of such security, become a Beneficiary (as defined in the Security Trust Deed);
  - (iii) the priority of such Financial Indebtedness must be regulated by the Priority Deed; or
  - (iv) the Security Interest ranks behind the Security granted for the benefit of the Noteholders,

and to the extent any such Financial Indebtedness is denominated in a currency other than Australian dollars, such amount shall be converted into Australian dollars for the purposes of this definition only, using the exchange rate published by the Reserve Bank of Australia on its website on the date 15 Business Days prior to the proposed drawdown or issue of the Financial Indebtedness;

**a Permitted Security Interest** means:

- (a) any Security Interest granted in favour of the Security Trustee or the trustee of the IMF Bentham Bonds Trust (as the case may be) in respect of the Issuer's obligations in respect of the Notes or the IMF Bentham ASX Bonds;
- (b) any Security Interest granted in connection with the Issuer's Working Capital Facilities provided that, at all times the aggregate amount secured under those Working Capital Facilities does not exceed A\$10,000,000;
- (c) any Security Interest granted in connection with a Permitted Secured Finance Arrangement;
- (d) any Security Interest over or affecting any asset acquired by a member of the Group after the Issue Date if:
  - (i) the Security Interest was not created in contemplation of the acquisition of that asset by a member of the Group;
  - (ii) the principal amount secured has not been increased in contemplation of, or since, the acquisition of that asset by a member of the Group; and
  - (iii) the Security Interest is removed or discharged within six months of the date of acquisition of such asset;
- (e) any Security Interest granted in connection with the interest of a member of the Group in a JV Arrangement that secures the performance of an obligation (including, without limitation, an obligation to pay or repay money) of that member of the Group as a joint venturer or a co-funder (as the case may be) in favour of one or more other parties to the JV Arrangement under or in respect of such arrangement, provided however, that the Security Interest does not extend to any other assets owned by any other member of the Group and that the recourse of the holder of the Security Interest is limited solely to the property the subject of the Security Interest and any proceeds from the enforcement of the Security Interest;

- (f) a Security Interest arising by operation of law and in the ordinary course of trading so long as the Financial Indebtedness secured by that Security Interest is paid when due or contested in good faith and appropriately provisioned;
- (g) any netting and set-off arrangements arising in the ordinary course of the Group's banking arrangements for the purpose of netting debit and credit balances;
- (h) any Security Interest approved by the Noteholders by a Special Resolution of the Noteholders pursuant to the Meeting Provisions;
- (i) any title retention arrangement entered into by the Issuer in the ordinary course of trading on the supplier's usual terms of sale (or on terms more favourable to the Issuer) so long as the debt it secures is paid when due or contested in good faith and sufficient reserves of liquid assets have been set aside to pay the debt if the contest is unsuccessful;
- (j) any Security Interest over goods (and related insurance contracts) under, and relating to, documentary credit transactions arising or created in the ordinary course of business;
- (k) deposits or pledges to secure contracts in the ordinary course of business, other than by way of security for Financial Indebtedness; and
- (l) any Security Interest provided for by one of the following transactions if the transaction does not secure payment or performance of an obligation:
  - (i) a transfer of an account or chattel paper;
  - (ii) a commercial consignment; or
  - (iii) a PPS Lease,
 (as each term is defined in the PPSA);

**PPSA** means the Personal Properties Securities Act 2009 of Australia;

**Pricing Supplement** means, in respect of a Tranche, the pricing supplement prepared and issued specifying the relevant issue details of such Notes and which has been confirmed by the Issuer;

**Priority Deed** means the document entitled "Priority Deed" dated 6 April 2016 and executed by the Issuer, Australian Executor Trustees Limited (ABN 84 007 869 794) in its capacity as trustee of IMF Bentham Bonds Trust, the Security Trustee and the Note Trustee;

**Receivables** means trade and other receivables as stated in the latest annual or half yearly accounts of the Issuer as applicable, less any amounts of such trade and other receivables collected or impaired by the Issuer or applicable members of the Group (as applicable) since the date of such accounts;

**Record Date** means the close of business in the place where the Register is maintained on the eighth day before the Payment Date;

**Register** means the register of holders of Notes established and maintained by or on behalf of the Issuer under an Agency Agreement;

**Registrar** means AET Structured Finance Services Pty Limited (ABN 12 106 424 088);

**Retained Earnings** has the meaning given for the purposes Accepted Accounting Practices;

**Secured Debt** means any Financial Indebtedness of the Group secured by a Security Interest;



**Secured Property** means all assets that are subject to the Security;

**Security** has the meaning given to that term in the Security Trust Deed;

**Security Interest** includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind (including under sections 12(1) and (2) and (3) of the PPSA) or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. It includes retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security but it excludes a charge or lien arising in favour of a government agency by operation of statute unless there is default in payment of moneys secured by that charge or lien;

**Security Trust Deed** means the document entitled “Security Trust Deed” dated 6 April 2016 and executed by, amongst others, the Issuer and the Security Trustee;

**Security Trustee** means AET Structured Finance Services Pty Limited (ABN 12 106 424 088) or any person who becomes the “Security Trustee” under the Security Trust Deed;

**Share** means a fully paid ordinary share in the capital of the Issuer;

**Special Resolution** has the meaning given in the Note Trust Deed;

**Specified Office** means, for a person, that person’s office specified in the Information Memorandum or Pricing Supplement or any other address notified to Noteholders from time to time;

**Subsidiary** has the meaning given to it in Part 1.2 Division 6 of the Corporations Act;

**Tax Authority** means any government, state, municipal, local, federal or other fiscal, revenue, customs or excise authority, body or official, having power to tax to which the Issuer becomes subject in respect of payments made by it of principal or interest in respect of the Notes;

**Tax Event** means:

- (a) if as a result of any change in, or amendment to, applicable laws, or any change in their application or official or judicial interpretation, which change becomes effective after the Issue Date, payment of interest on a Note is not, or may not, be allowed as a deduction for the purposes of the Issuer’s Australian income tax liability calculation; or
- (b) the Issuer would be required, under Condition 11.2 (“Withholding tax”), to pay Additional Amounts on the next Interest Payment Date;

**Taxes** means taxes, withholdings, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Tax Authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of a Noteholder;

**Test Date** means each date on which:

- (a) any Security Interest has been granted by the Issuer or any other member of the Group in accordance with Condition 5.1 (“Negative pledge”);
- (b) on or after the Issue Date, Financial Indebtedness has been incurred by the Issuer or any other member of the Group in accordance with Condition 5.2 (“Financial covenants”);
- (c) any Distribution has been made by the Issuer or any other member of the Group in accordance with Condition 5.2 (“Financial covenants”) (other than under Condition 5.2(b)(i));

- (d) there is any disposal of a material part of the assets of the Issuer or any other member of the Group in accordance with Condition 5.2 (“Financial covenants”); and
- (e) the Issuer releases the Financial Statements;

**Total Assets** means, at each 30 June and 31 December, the value of the total assets of the consolidated Group as reported in the annual or semi-annual Financial Statements of the Group prepared as at that date;

**Total Equity** means, at any time, the total assets of the Issuer at that time less the total liabilities of the Issuer at that time (calculated in accordance with Accepted Accounting Practices);

**Tranche** means an issue of Notes specified as such in the Pricing Supplement issued on the same Issue Date and on the same terms; and

**Working Capital Facilities** means any bank facilities obtained from time to time by the Issuer that entitle a bank providing a bank guarantee or other bank facility to the Issuer to a lien over cash deposited by the Issuer with the bank up to maximum aggregate of A\$10,000,000 at any one time. To the extent any such bank facility is denominated in a currency other than Australian dollars, such amount shall be converted into Australian dollars for the purposes of this definition only, using the exchange rate published on the date 15 Business Days prior to the proposed drawdown under such facility.

### 1.3 References to certain general terms

Unless the contrary intention appears, a reference to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) a document (including these Conditions) includes any amendment, variation or replacement of it;
- (d) anything (including any amount) is a reference to the whole and each part of it;
- (e) a “law” includes common law, principles of equity, any decree and any statute or other law made by a parliament (and a statute or other law made by parliament includes any regulation or other instrument under it, and any consolidation, amendment, re-enactment or replacement of it);
- (f) a “directive” includes a treaty, official directive, request, regulation, guideline or policy (whether or not in any case having the force of law) with which responsible participants in the relevant market generally comply;
- (g) “Australian dollars”, “\$” or “A\$” is a reference to the lawful currency of Australia;
- (h) a time of day is a reference to Sydney time;
- (i) a “person” includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (j) a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and

- (k) the words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

#### **1.4 Number**

The singular includes the plural and vice versa.

#### **1.5 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Conditions.

#### **1.6 Calculation of period of time**

If a notice must be given within a certain period of days or a certain number of days' notice must be given or any other matter must take place within a certain number of days, the day on which the notice is given or action taken, and the day on which the meeting is to be held or other action taken, are not to be counted in calculating that period and references to a “day” are to a calendar day.

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## **2 Introduction**

### **2.1 Pricing Supplement**

- (a) The Issuer will issue the Notes on the terms set out in these Conditions as supplemented, amended, modified or replaced by the Pricing Supplement applicable to those Notes. If there is any inconsistency between these Conditions and such Pricing Supplement, the Pricing Supplement prevails.
- (b) The Notes are issued in a single series. The series may comprise one or more Tranches having one or more Issue Dates and on conditions otherwise identical (other than in respect of the issue price and date of the first payment of interest). A Tranche is the subject of a Pricing Supplement which supplements, amends, modifies or replaces these Conditions.
- (c) Copies of the Pricing Supplement and Conditions applicable to any Tranche of Notes are available for inspection or on request by a Noteholder or prospective Noteholder during normal business hours at the Specified Office of the Issuer, the Note Trustee or the Registrar or are otherwise available on reasonable request from the Issuer or the Registrar.

### **2.2 Currency and denomination**

The Notes are issued in Australian dollars in a single denomination of A\$1,000.

### **2.3 Issue restrictions and tenor**

The Notes may only be offered (directly or indirectly) for issue, or applications invited for the issue of Notes, if:

- (a) where the offer or invitation is made in, or into Australia:
- (i) the aggregate consideration payable by each offeree is at least A\$500,000 (or its equivalent in an alternative currency and, in each case, disregarding moneys lent by the offeror or its associates to the offeree or its associates) or if the offer or invitation (including any resulting issue) otherwise does not require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act;

- (ii) the offer or invitation (including any resulting issue) does not constitute an offer to a “retail client” as defined for the purposes of section 761G of the Corporations Act; and
  - (iii) such action does not require any document to be lodged with ASIC; and
- (b) at all times, the offer or invitation (including any resulting issue) complies with all other applicable laws and directives in the jurisdiction in which the offer, invitation or issue takes place.

## **2.4 Clearing systems**

Notes may, but need not, be held in the Austraclear System, in which case the rights of a person holding an interest in the Notes lodged in the Austraclear System are subject to the rules and regulations of the Austraclear System. The Issuer is not responsible for anything the Austraclear System does or omits to do.

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## **3 Form**

### **3.1 Constitution under the Note Trust Deed**

- (a) The Notes are debt obligations of the Issuer constituted by, and owing under, the Note Trust Deed.
- (b) Noteholders are entitled to the benefit of, are bound by, and are deemed to have notice of all the provisions of the Note Trust Deed, the Security Trust Deed, these Conditions and the Pricing Supplement.

### **3.2 Form**

The Notes are issued in registered form by entry in the Register.

### **3.3 No certificates**

No certificates will be issued to Noteholders unless the Issuer determines that certificates should be available or if certificates are required by any applicable law or directive.

### **3.4 Effect of entries in Register**

Each entry in the Register in respect of a Note constitutes:

- (a) an unconditional and irrevocable undertaking by the Issuer to the Note Trustee and the Noteholder to:
  - (i) pay principal, any interest and any other amount in accordance with these Conditions and the Note Trust Deed; and
  - (ii) comply with all other Conditions of the Note, the Note Trust Deed and the Security Trust Deed; and
- (b) an entitlement to the other benefits given to the Noteholder in respect of the Note under these Conditions, the Note Trust Deed and the Security Trust Deed.

### **3.5 Register conclusive as to ownership**

Entries in the Register in relation to a Note constitute conclusive evidence that the person so entered is the absolute owner of the Note subject to correction for fraud or error.

### **3.6 Non-recognition of interests**

Except as ordered by a court of competent jurisdiction or required by law or directive, the Issuer, the Note Trustee, the Security Trustee and the Registrar must treat the person whose name is entered in the Register as the holder of a Note as the absolute owner of that Note. This Condition applies whether or not a Note is overdue and despite any notice of ownership, trust or interest in the Note.

### **3.7 Joint Noteholders**

Where two or more persons are entered in the Register as the joint holder of a Note then they are taken to hold the Note as joint tenants with rights of survivorship, but the Registrar is not bound to register more than four persons as joint holders of a Note.

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## **4 Status**

### **4.1 Status of Notes**

The Notes constitute direct and unconditional obligations of the Issuer.

### **4.2 Ranking of Notes**

The Notes rank *pari passu* and without preference or priority among themselves and with any Permitted Secured Finance Arrangements but subject to any prior ranking Permitted Security Interest and obligations mandatorily preferred by statute or applicable law.

### **4.3 Security**

Amounts due under the Notes and the Note Trust Deed are secured by the Security. The Security Trustee holds the Security on trust for the Beneficiaries (as defined in the Security Trust Deed, and which includes the Note Trustee and the Noteholders).

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## **5 Negative pledge and financial and other covenants**

### **5.1 Negative pledge**

The Issuer will not (and will ensure that any member of the Group will not) create or permit to subsist any Security Interest upon the whole or any part of its (or those of any member of the Group's) present or future assets or revenues other than:

- (a) a Permitted Security Interest; or
- (b) with the approval of the Noteholders by Special Resolution pursuant to the Meeting Provisions.

### **5.2 Financial covenants**

- (a) The Issuer will not:
  - (i) enter into any Security Interest in respect of any Financial Indebtedness of any Offshore Subsidiary; or
  - (ii) give a guarantee of such Financial Indebtedness,

unless, such Security Interest or guarantee is subordinated to, and ranks in priority for payment behind, the rights of the Noteholders in such manner as is satisfactory to the Note Trustee.

- (b) The Issuer will not (and the Issuer will ensure that any member of the Group will not) make a Distribution, including under Chapter 2J of the Corporations Act (or an equivalent provision under any legislation in another jurisdiction applicable to that to that member of the Group), except:
- (i) where the recipient of the proceeds of such Distribution is the Issuer or another member of the Group; or
  - (ii) where, following such Distribution:
    - (A) the Current Resources of the Issuer are (or would be) greater than 75 per cent. of the total Financial Indebtedness of the Group; and
    - (B) Retained Earnings of the Issuer are greater than A\$52,000,000,

and provided that, in any case, a Distribution is no greater than an amount lawfully permitted under applicable law.

For the purposes of this paragraph (b), a Distribution in the form of a dividend shall relate to the financial year in which such dividend is declared, regardless of the financial year in which such dividend is paid.

So long as an Event of Default is subsisting, the Issuer will not declare, make or pay any Distribution or pay any interest or other amounts in respect of any security issued or other Financial Indebtedness which ranks behind the Notes in priority for payment of principal or interest.

The Issuer will ensure that it will not dispose of (or agree to dispose of) any of the Secured Property or the IMF European JV Assets (either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntary) except disposals:

- (aa) of a Circulating Asset in the ordinary course of the business of the Issuer; or
- (ab) of any interest whatsoever in the JV Arrangements in accordance with any default or deadlock provisions contained in the governing documents in respect of such JV Arrangements, as in force from time to time and, for the avoidance of doubt, this paragraph (ab) shall apply notwithstanding any enforcement of the rights under the Security by the Security Trustee or any administrator or receiver appointed on behalf of the Note Trustee; or
- (ac) with the consent of the Security Trustee (such consent not to be unreasonably withheld).

### **5.3 Other covenants**

- (a) The Issuer will (and the Issuer will ensure that each member of the Group will) do everything necessary to maintain its corporate existence.

The Issuer will:

- (i) obtain and comply (and the Issuer will ensure that each member of the Group obtains and complies) with all applicable or necessary licences and approvals necessary to conduct its business activities; and
- (ii) comply (and the Issuer will ensure that each member of the Group complies) with all applicable laws binding on it where a failure to comply would have a

material adverse effect on the ability of the Issuer to comply with its obligations under the Notes.

- (b) The Issuer will ensure that all of its Current Resources constitute Secured Property other than:
    - (i) the IMF European JV Assets;
    - (ii) an amount of cash not exceeding, at any time, A\$5,000,000 and which cash must be used to fund the working capital requirements of the Issuer's Subsidiaries; and
    - (iii) such cash amounts paid:
      - (A) by the Issuer to a Subsidiary strictly to enable that Subsidiary to satisfy its obligations in connection with any action funded by that Subsidiary in the ordinary course of its litigation funding business; or
      - (B) to a Subsidiary by a third party to be paid by that Subsidiary (and which must be promptly paid) to the Issuer,
- in each case in the ordinary course of the Issuer's (or Subsidiary's) business.
- (c) The Issuer will ensure that its Total Equity is, at all times, not less than A\$50,000,000.
  - (d) The Issuer will ensure that the Group must not change its current business activities or operations (which shall not preclude new operations in countries other than those in which the Group operates as at the Issue Date).
  - (e) The Issuer will ensure that, as at the Issue Date and immediately following the issue of the Notes:
    - (i) the Current Resources of the Issuer are (or would be) greater than 75 per cent. of the total Financial Indebtedness of the Group; and
    - (ii) the total amount of Secured Debt of the Group does not exceed A\$150,000,000 (excluding any accrued but unpaid interest on such Financial Indebtedness which is in accordance with the terms of the applicable governing documents).

#### **5.4 Delivery of compliance certificates**

The Issuer will provide to the Note Trustee:

- (a) not later than 45 days after each applicable Test Date a certificate signed by either two directors or a director and the chief executive officer or a director and the chief financial officer or a director and the company secretary of the Issuer which certifies whether, in the opinion of the relevant signatories and after having made all reasonable enquiries, the Issuer and the Group have complied, and are in compliance, with each of the covenants set out in Conditions 5.1 ("Negative pledge"), 5.2 ("Financial covenants") and 5.3 ("Other covenants"). In the event the Issuer is not in compliance with any such covenant, such certificate will give reasonable detail of such non-compliance (including any relevant figures and calculations) and the steps being taken to remedy the same; and
- (b) 5 Business Days prior to an Interest Payment Date, a certificate signed by either two directors or a director and the chief executive officer or a director and the chief financial officer or a director and the company secretary of the Issuer which certifies that, in the opinion of the relevant signatories and after having made all reasonable enquiries, the Issuer's Total Equity will be, on the next Interest Payment Date, and

was, during the whole of the preceding Interest Period, equal to or more than A\$100,000,000.

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## **6 Title and transfer of Notes**

### **6.1 Title**

Title to Notes passes when details of the transfer are entered in the Register.

### **6.2 Transfer**

Notes may only be transferred in accordance with these Conditions and the Note Trust Deed.

### **6.3 Transfers in whole**

Notes may only be transferred in whole and not in part.

### **6.4 Estates**

A person becoming entitled to a Note as a consequence of the death or bankruptcy of a Noteholder or of a vesting order or a person administering the estate of a Noteholder may, upon producing such evidence as to that entitlement or status as the Registrar considers sufficient, transfer the Note or, if so entitled, become registered as the holder of the Note.

### **6.5 Unincorporated associations**

A transfer of a Note to an unincorporated association is not permitted.

### **6.6 Transfer of unidentified Notes**

Where the transferor executes a transfer of less than all Notes registered in its name, and the specific Notes to be transferred are not identified, the Registrar may register the transfer in respect of such of the Notes registered in the name of the transferor as the Registrar thinks fit, provided the aggregate principal amount of all the Notes registered as having been transferred equals the aggregate principal amount of all the Notes expressed to be transferred in the transfer.

### **6.7 Compliance with law**

Notes may only be transferred if the offer or invitation for the sale or purchase of the Notes is received by a person:

- (a) in Australia, only if the minimum aggregate consideration payable at the time of the transfer is at least A\$500,000 (or its equivalent in an alternative currency and, in each case, disregarding moneys lent by the transferor or its associates to the transferee) or the Notes are transferred in circumstances that do not otherwise require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act and the transfer complies with all applicable laws and directives; and
- (b) if, in a jurisdiction outside Australia, the transfer complies with all other applicable laws and directives in the jurisdiction in which the transfer takes place.

### **6.8 Restrictions on transfer**

- (a) Transfers of Notes which are not lodged in the Austraclear System cannot be made between a Record Date and the relevant following Payment Date if a redemption of such Note is to occur during, or at the end of, that period in accordance with these Conditions.



- (b) Transfers of Notes will not be registered later than the close of business in the place where the Register is maintained on the eighth day prior to the Maturity Date of the Notes.

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## **7 Fixed Rate Notes**

### **7.1 Interest on Notes**

Each Note bears interest on its outstanding principal amount from (and including) its Interest Commencement Date to (but excluding) its Maturity Date or, if redeemed earlier, the Optional Redemption Date, at the Interest Rate. Interest is payable in arrear on each Interest Payment Date or such other date on which a Note is redeemed.

### **7.2 Calculation of interest payable**

The amount of interest payable in respect of a Note for any period shall be calculated by the Calculation Agent by multiplying the Interest Rate, the outstanding principal amount of the Note and the applicable Day Count Fraction.

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## **8 General provisions applicable to interest**

### **8.1 Default interest**

If an amount is not paid under these Conditions when due, then interest accrues on the unpaid amount (both before and after any demand or judgment) at the last applicable Interest Rate plus 2 per cent. until the date on which payment is made to the Noteholder.

### **8.2 Calculation of other amounts**

If the Pricing Supplement specifies that any other amount is to be calculated by the Calculation Agent, the Calculation Agent must, as soon as practicable after the time at which that amount is to be determined, calculate the amount in the manner specified in the Pricing Supplement.

### **8.3 Notification of Interest Rate, interest payable and other items**

- (a) The Calculation Agent must notify the Issuer, the Registrar, the Noteholders, the Note Trustee and each other Agent of each Interest Rate, the amount of interest payable and each other amount, item or date calculated or determined by it together with the Interest Payment Date.
- (b) The Calculation Agent must give notice under this Condition as soon as practicable after making its determination.
- (c) The Calculation Agent may amend its determination of any amount, item or date (or make appropriate alternative arrangements by way of adjustment) as a result of the extension or reduction of the Interest Period or calculation period without prior notice but must promptly notify the Issuer, the Registrar, the Noteholders, the Note Trustee and each other Agent of any such amendment.

### **8.4 Determination final**

The determination by the Calculation Agent of all amounts, rates and dates falling to be determined by it under these Conditions is, in the absence of fraud or manifest error, final and binding on the Issuer, the Registrar, each Noteholder, the Note Trustee, the Security Trustee and each other Agent.

## 8.5 Rounding

For the purposes of any calculations required under these Conditions (unless otherwise specified in these Conditions or the Pricing Supplement):

- (a) all percentages resulting from the calculations must be rounded to the nearest one hundred-thousandth of a percentage point (with 0.000005 per cent. being rounded up to 0.00001 per cent.);
- (b) all figures must be rounded to five decimal places (with halves being rounded up); and
- (c) all amounts that are due and payable must be rounded (with halves being rounded up) to one cent.

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## 9 Redemption

### 9.1 Redemption on maturity

The Issuer agrees to redeem each Note on its Maturity Date at its outstanding principal amount unless:

- (a) the Note has been previously redeemed; or
- (b) the Note has been purchased and cancelled.

### 9.2 Early redemption at the option of Noteholders (change of control)

Upon the occurrence of a Change of Control, each Noteholder will have the right to require the Issuer to redeem all or any part of such Notes at their outstanding principal amount (together with any accrued interest, if any, to, but excluding, the date of redemption) (the “**Change of Control Redemption Price**”). Within 30 days after a Change of Control, the Issuer shall deliver a notice to the Registrar and the Note Trustee requesting that the Note Trustee promptly notifies Noteholders stating that:

- (a) a Change of Control has occurred and that such Noteholder has the right to require the Issuer to redeem such Notes at the Change of Control Redemption Price;
- (b) the redemption date (which shall be the 20th Business Day after the expiry of the Change of Control Redemption Period);
- (c) the procedures determined by the Issuer, consistent with the Conditions, that a Noteholder must follow in order to have its Notes redeemed and including a form of redemption exercise notice (“Exercise Notice”); and
- (d) the last day of the Change of Control Redemption Period.

In order to have any of their Notes redeemed under this Condition 9.2, a Noteholder must deliver to the Issuer a duly completed and signed Exercise Notice at any time during the Change of Control Redemption Period.

If an Exercise Notice is delivered by a Noteholder in accordance with this Condition 9.2, the Issuer must redeem all of the Notes the subject of the Exercise Notice on the relevant redemption date at the Change of Control Redemption Price.

### 9.3 Early redemption at the option of Noteholders (delisting)

Upon the occurrence of a Delisting Event, each Noteholder will have the right to require the Issuer to redeem all or some Notes at their outstanding principal amount (together with any accrued interest, if any, to, but excluding, the date of redemption) (the “**Delisting Redemption**”).

**Price**”). Within 2 Business Days after the occurrence of a Delisting Event, the Issuer shall deliver a notice to the Registrar and the Note Trustee requesting that the Note Trustee promptly notifies Noteholders stating that:

- (a) a Delisting Event has occurred and that such Noteholder has the right to require the Issuer to redeem such Notes at the Delisting Redemption Price;
- (b) the redemption date (which shall be the 20<sup>th</sup> Business Day after the expiry of the Delisting Redemption Period);
- (c) the procedures determined by the Issuer, consistent with Conditions, that a Noteholder must follow in order to have its Notes redeemed and including a form of delisting redemption exercise notice (“Exercise Notice”); and
- (d) the last day of the Delisting Redemption Period.

In order to have any of their Notes redeemed under this Condition 9.3, a Noteholder must deliver to the Issuer a duly completed and signed Exercise Notice at any time during the Delisting Redemption Period.

If an Exercise Notice is delivered by a Noteholder in accordance with this Condition 9.3, the Issuer must redeem all of the Notes the subject of the Exercise Notice on the relevant delisting redemption date at the Delisting Redemption Price.

#### **9.4 Early redemption at the option of the Issuer (Issuer call)**

The Issuer may redeem all or some of the Notes before their Maturity Date on the Optional Redemption Date by payment of 101 per cent. of the outstanding principal amount of each Note being redeemed together with any accrued interest, if any, to, but excluding, the date of redemption.

However, the Issuer may only do so if the Issuer has given at least 30 days (and not more than 60 days) notice to the Registrar, the Note Trustee, the Noteholders and each other Agent.

#### **9.5 Early redemption at the option of the Issuer (tax)**

The Issuer may redeem all (but not some) of the Notes at their outstanding principal amount (together with any accrued interest, if any, to (but excluding) the date of redemption if a Tax Event occurs.

However, the Issuer may only do so if:

- (a) the Issuer has given at least 10 days’ (and no more than 45 days’) notice to the Registrar, the Note Trustee, the Noteholders and each other Agent;
- (b) before the Issuer gives the notice under paragraph (a), the Note Trustee has received:
  - (i) a certificate signed by two directors of the Issuer; and
  - (ii) an opinion of independent legal advisers of recognised standing in the jurisdiction of incorporation of the Issuer, that a Tax Event has occurred; and
- (c) the proposed redemption date is an Interest Payment Date.

#### **9.6 Early redemption at the option of the Issuer (clean-up call)**

The Issuer may redeem all (but not some) of the Notes before their Maturity Date at their outstanding principal amount (together with any accrued interest, if any, to (but excluding) the date of redemption if more than 90 per cent. of the aggregate amount of Notes that were initially issued on the Issue Date have been redeemed prior to their Maturity Date.

However, the Issuer may only do so if:

- (a) the Issuer has given at least 10 days' (and no more than 45 days') notice to the Registrar, the Note Trustee, the Noteholders and each other Agent; and
- (b) the proposed redemption date is an Interest Payment Date.

### **9.7 Partial redemptions**

If only some of the Notes are to be redeemed under Conditions 9.2 ("Early redemption at the option of Noteholders (change of control)"), 9.3 ("Early redemption at the option of Noteholders (delisting)") or 9.4 ("Early redemption at the option of the Issuer (Issuer call)"), the Notes to be redeemed will be specified in the notice and selected:

- (a) pro-rata across all Noteholders or in a fair and reasonable manner; and
- (b) in compliance with any applicable law or directive.

### **9.8 Effect of notice of redemption**

Any notice of redemption given under this Condition 9 ("Redemption") is irrevocable.

### **9.9 Late payment**

If an amount payable is not paid under this Condition 9 ("Redemption") when due, then interest continues to accrue on the unpaid amount (both before and after any demand or judgment) at the last applicable Interest Rate plus 2%) until the date on which payment is made to the Noteholder.

### **9.10 Purchase**

The Issuer and any of its Related Bodies Corporate may at any time purchase (including on issue) Notes in the open market or otherwise and at any price. Notes purchased under this Condition 9.10 may be held or resold at the discretion of the purchaser or, if the Notes are to be cancelled, at the discretion of the Issuer, subject to compliance with any applicable law or directive.

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## **10 Payments**

### **10.1 Payments to Noteholders**

- (a) Payments of principal will be made to each person registered in the Register at 10.00 am on the applicable Payment Date as the holder of a Note.
- (b) Payment of interest shall be made to each person registered in the Register at close of business on the applicable Record Date as the holder of a Note.

### **10.2 Payments to accounts**

Payments in respect of a Note will be made:

- (a) if the Note is held in the Austraclear System, by crediting on the Payment Date, the amount due to:
  - (i) the account of Austraclear (as the Noteholder) previously notified to the Issuer and the Registrar; or
  - (ii) if requested by Austraclear, the accounts of the persons in Australia in whose Security Record (as defined in the Austraclear Regulations) a Note is

recorded as previously notified by Austraclear to the Issuer and the Registrar in accordance with the Austraclear Regulations; and

- (b) if the Notes are not held in the Austraclear System, by crediting on the Payment Date, the amount then due under each Note to an account in Australia previously notified by the Noteholder to the Issuer and the Registrar.

### **10.3 Other payments**

If a Noteholder has not notified the Registrar of an account to which payments to it must be made by close of business on the Record Date, payments in respect of the Note will be made in such manner as the Issuer and Trustee agree.

### **10.4 Payments subject to law**

All payments are subject to applicable law but without prejudice to the provisions of Condition 11 ("Taxation").

### **10.5 Payments on Business Days**

If a payment:

- (a) is due on a Note on a day which is not a Business Day then the due date for payment will be adjusted in accordance with the applicable Business Day Convention; or
- (b) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the first following day on which banks are open for general banking business in that place,

and in either case, a Noteholder is not entitled to any additional payment in respect of that delay.

### **10.6 Unsuccessful attempts to pay**

Subject to applicable law, where the Issuer:

- (a) decides that an amount is to be paid to a Noteholder by a method of direct credit and the Noteholder has not given a direction as to where amounts are to be paid by that method;
- (b) attempts to pay an amount to a Noteholder by direct credit, electronic transfer of funds or any other means and the transfer is unsuccessful; or
- (c) has made reasonable efforts to locate a Noteholder but is unable to do so,

then, in each case and subject to Condition 12 ("Time limit for claims"), the amount is to be held by the Issuer for the Noteholder in a non-interest bearing deposit with a bank selected by the Issuer until the Noteholder or any legal personal representative of the Noteholder claims the amount or the amount is paid by the Issuer according to the legislation relating to unclaimed moneys.

### **10.7 Payment to joint Noteholders**

A payment to any one of joint Noteholders will discharge the Issuer's liability in respect of the payment.

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## **11 Taxation**

### **11.1 No set-off, counterclaim or deductions**

All payments in respect of the Notes must be made in full without set-off or counterclaim, and without any withholding or deduction in respect of Taxes, unless such withholding or deduction is required by law.

### **11.2 Withholding tax**

If a law requires the Issuer (or an Agent) to withhold or deduct an amount in respect of Taxes from a payment in respect of a Note such that the Noteholder would not actually receive on the due date the full amount provided for under the Notes, then:

- (a) the Issuer (or an Agent) agrees to withhold or deduct the amount for the Taxes; and
- (b) an additional amount is payable by the Issuer so that, after making the withholding or deduction and further withholdings or deductions applicable to any additional amounts payable under this Condition, the Noteholder is entitled to receive (At the time the payment is due) total amounts equal to what it would have received if no withholdings or deductions had been required to be made from a payment in respect of a Note.

### **11.3 Gross-up exceptions**

No Additional Amounts are payable under Condition 11.2 ("Withholding tax") in respect of any Note:

- (a) to, or to a third party on behalf of, a Noteholder, if that person has not supplied an appropriate Australian tax file number (if applicable), or an Australian Business Number or details of an applicable exemption from these requirements;
- (b) to, or to a third party on behalf of, a Noteholder who is liable to such taxes, duties, assessments or governmental charges in respect of such Note by reason of having some connection with Australia other than the mere holding of the Note;
- (c) to, or to a third party on behalf of, a Noteholder who is liable to the Taxes in respect of a Note by reason of the Noteholder being an Offshore Associate of the Issuer not acting in the capacity of a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme within the meaning of the Corporations Act;
- (d) in respect of any estate, inheritance, gift, sales, transfer, personal property, or any similar tax, assessment or governmental charge;
- (e) in circumstances where such a withholding or deduction would not be required if the Noteholder, or any person acting on the Noteholder's behalf, had satisfied any statutory requirements or obtained and/or presented any form or certificate or had made a declaration of non-residence or similar claim for exemption to any Tax Authority upon the presentation or making of which the Noteholder would have been able to avoid or partially avoid (as the case may be) such withholding or deduction;
- (f) where such withholding or deduction is required to be made pursuant to a notice or direction issued by the Commissioner of Taxation under section 255 of the Australian Tax Act or section 260-5 of Schedule 1 to the Taxation Administration Act 1953 of Australia or any similar law;
- (g) in such other circumstances as may be specified in the Pricing Supplement; or
- (h) in respect of any combination of any or all of paragraphs (a) to (g) above.

Notwithstanding any other provision of these Conditions, if the Issuer, any Agent, or any other person through whom payments on the Notes are made, is required to withhold or deduct amounts under or in connection with, or in order to ensure compliance with FATCA, the Issuer or that other person shall be permitted to make such withholding or deduction, and Noteholders and beneficial owners of Notes will not be entitled to receive any gross up, Additional Amount or other amount for such withholding or deduction.

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## 12 Time limit for claims

A claim against the Issuer for a payment under a Note is void unless made within 10 years (in the case of principal) or 5 years (in the case of interest and other amounts) from the date on which payment first became due.

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## 13 Events of Default

### 13.1 Events of Default

Each of the following is an Event of Default in respect of the Notes:

- (a) **(non-payment)** the Issuer fails to pay, within 10 Business Days after the due date, any amount in respect of the Notes when due;
- (b) **(other non-compliance)** the Issuer:
  - (i) fails to comply with any of its obligations in connection with a Note (other than in relation to the payment of money referred to in Condition 13.1(a) or Condition 13.1(b) above); and
  - (ii) if the non-compliance is capable of remedy, it is not remedied within 30 days after notice of such default shall have been given to the Issuer by the Note Trustee or any Noteholder;
- (c) **(cross default)** any Financial Indebtedness of the Issuer for amounts totalling, in aggregate, more than A\$10,000,000 (or its equivalent in any other currency):
  - (i) is not satisfied on the later of its due date or the end of any applicable grace period; or
  - (ii) has become (or becomes capable of being declared) due and payable before its scheduled maturity by reasons of a default, event of default or potential event of default (howsoever described) and any applicable grace period has expired,  
  
and such Financial Indebtedness is not satisfied in full by the Issuer within 15 Business Days of the Issuer becoming required to pay such amount;
- (d) **(cross default)** any Secured Debt is not satisfied on the later of its due date or the end of any applicable grace period;
- (e) **(enforcement against assets)** any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Issuer;
- (f) **(insolvency)** an Insolvency Event occurs in relation to the Issuer;
- (g) **(no arrangement with creditors)** the Issuer makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against the Issuer (which is not set aside or withdrawn within 10 days after the date that the application for such proceeding to be instituted) seeking to adjudicate it insolvent, or seeking liquidation, winding up, reorganisation, arrangement, adjustment, protection, relief, or

composition of it or its debts under any law relating to bankruptcy, insolvency or reorganisation or relief of debtors, seeking the entry of any order for relief or the appointment of a receiver, trustee, administrator or other similar official over the Issuer, its activities or any substantial part of its property;

- (h) **(obligations unenforceable)** any Note, the Note Trust Deed, any Security or the Security Trust Deed is or becomes (or is claimed to be by the Issuer or anyone on its behalf) wholly or any part of a material provision of it void, voidable or unenforceable or any Note, the Note Trust Deed, any Security or the Security Trust Deed ceases to wholly or in relation to any part of a material provision of it have full force and effect or the whole or any part of a material provision of it is declared by any court of competent jurisdiction to be void or unenforceable;
- (i) **(obligations unlawful)** it is, or becomes, unlawful for the Issuer to perform any of its payment obligations under any Note, the Note Trust Deed, any Security or the Security Trust Deed and such obligation is not rendered lawful within 30 days;
- (j) **(no litigation)** a judgement or award in an amount exceeding the lower of A\$10,000,000 or 10% of Current Resources (or the equivalent in any other currency) is obtained against the Issuer or any of its assets and is not set aside or satisfied within 30 days unless:
  - (i) the Issuer is diligently and in good faith pursuing an appeal; or
  - (ii) the judgement or award was obtained against the Issuer pursuant to an action commenced by the Issuer in the ordinary course of its litigation funding business; and
- (k) **(cessation of business)** the Issuer ceases to carry on business generally and no other body corporate assumes the business of that person.

### 13.2 Consequences of an Event of Default

- (a) If an Event of Default occurs and continues unremedied in relation to the Notes, then a Noteholder or the Note Trustee (if requested in writing by a Noteholder) may declare by notice to the Issuer (with a copy to the Registrar and the Note Trustee (if notice is given by a Noteholder)) that each Note held by it is (or, if the Note Trustee has given the declaration, all Notes are) to be redeemed by the Issuer paying to the Noteholder the applicable redemption amount for the Note (together with any accrued interest) in which case those amounts become immediately due and payable.
- (b) If an Event of Default occurs, then interest continues to accrue on any unpaid amounts (both before and after any demand or judgment) at the sum of the Interest Rate plus a default rate of 3.00 per cent. per annum from the date of the relevant default until the date on which payment is made to the Noteholder.

### 13.3 Notification

If an Event of Default occurs (or, in the case of Condition 13.1(a) or Condition 13.1(b) ("Events of Default"), an Event of Default would occur with the lapse of time if notice were to be given to the Issuer), the Issuer must promptly (and in any event within 5 days) after becoming aware of it notify the Note Trustee, the Security Trustee, the Registrar and the Noteholders of the occurrence of the Event of Default (specifying details of it).

### 13.4 Enforcement

- (a) Subject to Condition 13.4(c), at any time after the occurrence of an Event of Default, the Note Trustee may, either at its discretion or pursuant to a direction of Noteholders in accordance with paragraph (c)(i) below and, in either case, without further notice, institute such proceedings and/or take such other action as it may think fit against or



in relation to the Issuer to enforce the Issuer's obligations under the Notes. The Issuer shall, as a result of the bringing of any such proceedings, be obliged to pay any sums representing or measured by reference to principal or interest on the Notes sooner than the same would otherwise have been payable by it.

- (b) Without prejudice to Condition 13.4(a) but subject to Condition 13.4(c), if the Issuer breaches any of its obligations under the Note Trust Deed, the Note Trustee may, either at its discretion or pursuant to a direction of Noteholders in accordance with paragraph (c)(i) below and, in either case, without further notice, bring such proceedings as it may think fit to enforce such obligations.
- (c) The Note Trustee must not take any of the actions referred to in paragraphs (a) or (b) above to enforce the obligations of the Issuer in respect of the Notes or take any other enforcement action pursuant to or in connection with the Note Trust Deed or the Notes unless:
  - (i) it shall have been so requested in writing by Noteholders who hold in aggregate 25 per cent. or more of the outstanding principal amount of all Notes then outstanding; and
  - (ii) it shall have been indemnified to its satisfaction in accordance with the terms of the Note Trust Deed.
- (d) If, prior to acting on a direction received pursuant to paragraph (a), the Note Trustee receives further directions to take any action pursuant to this paragraph (c)(i) that are, in its reasonable opinion, materially inconsistent or conflicting in any material respect with the initial directions, the Note Trustee must call a meeting of Noteholders in accordance with the terms of these Conditions, the Note Trust Deed and the Meeting Provisions in order to resolve the inconsistency or conflict and shall act in accordance with any resolutions passed at that meeting or in accordance with any direction by Noteholders who hold in aggregate 50 per cent. or more of the outstanding principal amount of all Notes then outstanding.
- (e) No Noteholder is entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any Note, the Note Trust Deed or the Security Trust Deed unless expressly entitled to do so under these Conditions or the Note Trust Deed or the Security Trust Deed or the Note Trustee or the Security Trustee, having become bound to proceed, fails to do so within five days from the date that the Note Trustee is notified by a Noteholder of the failure, and such failure is continuing.

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## **14 Agents**

### **14.1 Role of Agents**

In acting under an Agency Agreement, each Agent acts solely as agent of the Issuer and does not assume any obligations towards or relationship of agency or trust with any Noteholder.

### **14.2 Appointment and replacement of Agents**

Each initial Agent for the Notes is specified in the Pricing Supplement. Subject to Condition 14.4 ("Required Agents"), the Issuer reserves the right at any time to vary or terminate the appointment of any Agent and to appoint a successor.

### **14.3 Change of Agent**

The Issuer (or the Agent on its behalf) must notify the Note Trustee and the Noteholders if there is any change in the identity of any Agent or any Agent's Specified Office.

#### **14.4 Required Agents**

The Issuer must at all times maintain a Registrar, an Issuing & Paying Agent and a Calculation Agent.

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#### **15 Meetings of Noteholders**

The Meeting Provisions contain provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including any variation of these Conditions. Any resolution duly passed by the Noteholders pursuant to the Meeting Provisions shall be binding on all Noteholders (whether or not they were present at the meeting at which such resolution was passed).

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#### **16 Variation**

##### **16.1 Variation with consent**

Unless Condition 16.2 (“Variation without consent”) applies, any Note may be varied by the Noteholders in accordance with the Meeting Provisions.

##### **16.2 Variation without consent**

Any Condition may be amended by the Issuer with the consent of the Note Trustee (not to be unreasonably withheld or delayed) but without the consent of the Noteholders if the amendment:

- (a) is of a formal, minor or technical nature;
- (b) is made to correct a manifest error; or
- (c) is made to cure any ambiguity or correct or supplement any defective or inconsistent provision,

provided that, in all cases, in the reasonable opinion of the Issuer and the Note Trustee, such amendment is not materially prejudicial to the interests of the Noteholders.

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#### **17 Further issues of Notes**

The Issuer may from time to time, without the consent of the Noteholders, issue further Notes having the same conditions as the Notes in all respects (or in all respects except for the first payment of interest, if any, on them) so as to form a single series with the Notes.

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#### **18 Notices**

##### **18.1 Notices to Noteholders**

All notices and other communications to Noteholders must be in writing and must be sent by prepaid post (airmail, if appropriate) to or left at the address of the Noteholder (as shown in the Register at close of business on the day which is 3 Business Days before the date of the notice or communication) and may also be given by an advertisement published in *The Australian Financial Review* or *The Australian*.

##### **18.2 Notices to the Issuer, the Note Trustee, the Security Trustee and the Agents**

All notices and other communications to the Issuer, the Note Trustee, the Security Trustee or an Agent must be in writing and may sent by prepaid post (airmail, if appropriate) to or left at the Specified Office of the Issuer, the Note Trustee, the Security Trustee or the Agent.

### **18.3 Receipt - publication in newspaper**

If published in a newspaper, a notice or other communication is taken to be received on the first date that publication has been made in all the required newspapers.

### **18.4 Deemed receipt - postal**

If sent by post, notices or other communications are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **18.5 Deemed receipt - general**

Despite Condition 18.4 ("Deemed receipt - postal"), if notices or other communications are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day.

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## **19 Governing law**

### **19.1 Governing law**

These Conditions are governed by the law in force in New South Wales, Australia.

### **19.2 Jurisdiction**

The Issuer irrevocably and unconditionally submits and each Noteholder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. The Issuer waives any right it has to object to any actions or proceedings ("**Proceedings**") being brought in those courts including, without limitation, by claiming that the Proceedings have been brought in an inconvenient forum or that those courts do not have jurisdiction.

### **19.3 Serving documents**

Without preventing any other method of service, any document in any Proceedings (including, without limitation any writ of summons or other originating process or any third or other party notice) may be served on the Issuer by being delivered or left at the Specified Office of the Issuer or otherwise at the Issuer's registered office or principal place of business.

# Form of Pricing Supplement

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*The Pricing Supplement to be issued in respect of the Notes will be substantially in the form set out below.*

Series No.: [●]

Tranche No.: [●]



**IMF Bentham Limited**  
(ABN 45 067 298 088)  
("Issuer")

Issue of  
**A\$[●] [●]% Fixed Rate Notes due [●]**  
("Notes")

The date of this Pricing Supplement is [●].

This Pricing Supplement (as referred to in the Information Memorandum dated [●] ("**Information Memorandum**")) relates to the Tranche of Notes referred to above. It is supplementary to, and should be read in conjunction with (i) the terms and conditions of the Notes ("**Conditions**") contained in the Information Memorandum and (ii) the Note Trust Deed dated [●] and made by the Issuer and the Note Trustee.

Unless otherwise indicated, terms defined in the Conditions have the same meaning when used in this Pricing Supplement.

This Pricing Supplement does not constitute, and may not be used for the purposes of, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation. No action is being taken to permit an offering of the Notes or the distribution of this Pricing Supplement in any jurisdiction where such action is required.

The particulars to be specified in relation to the Tranche of Notes referred to above are as follows:

- |   |                                     |  |
|---|-------------------------------------|--|
| 1 | Issuer                              | : IMF Bentham Limited (ABN 45 067 298 088)     |
| 2 | Lead Manager and Initial Subscriber | : FIIG Securities Limited (ABN 68 085 661 632) |

- 3 Registrar : AET Structured Finance Services Pty Limited (ABN 12 106 424 088)
- 4 Issuing & Paying Agent : AET Structured Finance Services Pty Limited (ABN 12 106 424 088)
- 5 Calculation Agent : AET Structured Finance Services Pty Limited (ABN 12 106 424 088)
- 6 Note Trustee : Australian Executor Trustees Limited (ABN 84 007 869 794)
- 7 Security Trustee : AET Structured Finance Services Pty Limited (ABN 12 106 424 088)
- 8 Aggregate principal amount of Tranche : A\$[●]
- 9 Issue Date : [●] 2016
- 10 Issue Price : 100%
- 11 Denomination : A\$1,000 per Note on the Issue Date
- 12 Minimum parcel size on initial issue : A\$50,000
- 13 Maturity Date : [30 June 2020]
- 14 Record Date : As per the Conditions
- 15 Condition 7 (Fixed Rate Notes) applies : Yes

Interest Rate : [●]% per annum

However, if Total Equity falls below A\$100,000,000 during any Interest Period, the Interest Rate applicable from the start of the immediately following Interest Period will be increased for so long as Total Equity remains below A\$100,000,000 by 1.00% per annum (the “**Step-Up**”).

If, during any Interest Period in which the Interest Rate is subject to the Step Up, Total Equity increases to A\$100,000,000 or above, then the Step Up will be removed from the start of the immediately following Interest Period.

There is no limit on the number of times that the Step Up can be applied or removed.

Interest Commencement Date : [●] 2016

Interest Payment Dates : [●] and [●] of each year, commencing on [●] up to, and including, the Maturity Date or, if redeemed earlier, an Optional Redemption Date

Business Day Convention : Following Business Day Convention

	Day Count Fraction	:	RBA Bond Basis
16	Noteholder puts	:	Yes.
			The Notes may be redeemable before their Maturity Date at the option of the Noteholders on:
			(a) a Change of Control as set out in Condition 9.2 (“Early redemption at the option of Noteholders (change of control)”); and
			(b) a Delisting Event as set out in Condition 9.3 (“Early redemption at the option of Noteholders (delisting)”).
17	Issuer calls	:	Yes.
			The Notes are redeemable before their Maturity Date at the option of the Issuer:
			(a) as set out in Condition 9.4 (“Early redemption at the option of the Issuer (Issuer call)”) and the Optional Redemption Date is [30 June 2019];
			(b) as set out in Condition 9.5 (“Early redemption at the option of the Issuer (tax)”); and
			(c) as set out in Condition 9.6 (“Early redemption at the option of the Issuer (clean-up call)”).
18	Clearing system	:	Austraclear System.
			Interests in the Notes may also be traded through Euroclear and Clearstream as set out on page [●] of the Information Memorandum.
19	ISIN	:	[●]
20	Austraclear I.D.	:	[●]
21	Australian interest withholding tax	:	It is the Issuer’s intention that the Notes will be issued in a manner which will comply with the public offer test under section 128F of the Australian Tax Act.
22	Listing	:	Not applicable

The Issuer accepts responsibility for the information contained in this Pricing Supplement.

Date: [●]

**CONFIRMED**

For and on behalf of  
**IMF BENTHAM LIMITED**

By: .....

By: .....

Name: .....

Name: .....

Title: .....

Title: .....

# Selling Restrictions

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*Under the Subscription Agreement dated 6 April 2016 between the Issuer and the Lead Manager and Initial Subscriber ("**Subscription Agreement**") and subject to the Conditions contained in the Information Memorandum, the Notes will be offered by the Issuer through the Lead Manager and Initial Subscriber. The Issuer will have the sole right to accept any offers to purchase Notes and may reject any such offer in whole or (subject to the terms of such offer) in part.*

*None of the Issuer or the Lead Manager and Initial Subscriber has represented that any Notes may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction, or in accordance with any available exemption, or assumes any responsibility for facilitating that sale.*

*Persons into whose hands this Information Memorandum comes are required by the Issuer, the Lead Manager and Initial Subscriber to comply with all applicable laws and directives in each country or jurisdiction in which they purchase, offer, sell, resell, reoffer or deliver Notes or have in their possession or distribute or publish the Information Memorandum or other offering material and to obtain any authorisation, consent, approval or permission required by them for the purchase, offer, sale, reoffer, resale or delivery by them of any Notes under any applicable law or directive in force in any jurisdiction to which they are subject or in which they make such purchases, offers, sales, reoffers, resales or deliveries, in all cases at their own expense, and none of the Issuer or the Lead Manager and Initial Subscriber has responsibility for such matters. In accordance with the above, any Notes purchased by any person which it wishes to offer for sale or resale may not be offered in any jurisdiction in circumstances which would result in the Issuer being obliged to register any further prospectus or corresponding document relating to the Notes in such jurisdiction.*

*The following selling restrictions apply to Notes.*

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## **Australia**

The Lead Manager and Initial Subscriber has acknowledged that:

- (a) no "prospectus" or other "disclosure document" (each as defined in the Corporations Act) in relation to the Notes has been or will be lodged with ASIC or any other government agency or authority; and
- (b) no action has been taken, or will be taken, by it in any jurisdiction which would permit a public offering of the Notes, or possession or distribution of the Information Memorandum or any other offering material in relation to Notes, in any jurisdiction where action for that in connection with the primary distribution of the Notes.

The Lead Manager and Initial Subscriber has represented and agreed that it:

- (i) has not made or invited, and will not make or invite, an offer of the Notes for issue or sale in Australia (including an offer or invitation which is received by a person in Australia); and
- (ii) has not distributed or published, and will not distribute or publish, any Information Memorandum or other offering material or advertisement relating to any Notes in Australia,

unless:

- (A) the offer or invitation falls within the exemption for offers to sophisticated investors set out in section 708(8) of the Corporations Act or the offer or invitation does not otherwise require disclosure to investors under Part 6D.2 or Chapter 7 of the Corporations Act;
- (B) such action does not require any document to be lodged with ASIC or ASX;



- (C) the offer or invitation is not made to a person who is a “retail client” as defined for the purposes of section 761G of the Corporations Act; and
- (D) the offer or invitation and all conduct in connection with it complies with all applicable laws and directives.

In addition, the Lead Manager and Initial Subscriber has agreed, that, in connection with the primary distribution of the Notes, it will not offer or sell Notes to any person if, at the time of such sale, the officers and employees of the Lead Manager and Initial Subscriber aware of, or involved in, the sale, knew or had reasonable grounds to suspect that, as a result of such sale, any Notes or an interest in any Notes were being, or would later be, acquired (directly or indirectly) by an associate of the Issuer for the purpose of section 128F(9) of the Income Tax Assessment Act 1936 of Australia (“**Australian Tax Act**”) and associated regulations except as permitted by section 128F(5) of the Australian Tax Act.

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## Singapore

This Information Memorandum has not been and will not be registered as a prospectus with the Monetary Authority of Singapore under the Securities and Futures Act, Chapter 289 of Singapore, as amended (“**Securities and Futures Act**”).

The Lead Manager and Initial Subscriber has represented and agreed that the Information Memorandum and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Notes has not been and will not be circulated or distributed by it nor have the Notes been, nor will the Notes be, offered or sold by it, or be subject to an invitation for subscription or purchase by it, whether directly or indirectly, to persons in Singapore other than:

- (a) to an institutional investor under Section 274 of the Securities and Futures Act;
- (b) to a relevant person pursuant to Section 275(1) of the Securities and Futures Act, or any person pursuant to Section 275(1A) of the Securities and Futures Act, and in accordance with the conditions specified in Section 275 of the Securities and Futures Act; or
- (c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the Securities and Futures Act.

Where the Notes are subscribed or purchased under Section 275 of the Securities and Futures Act by a relevant person which is:

- (1) a corporation (which is not an accredited investor (as defined in Section 4A of the Securities and Futures Act)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (2) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

that securities (as defined in Section 239(1) of the Securities and Futures Act) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the Notes pursuant to an offer made under Section 275 of the Securities and Futures Act except:

- (i) to an institutional investor (under Section 274 of the Securities and Futures Act) or to a relevant person (as defined in Section 275(2) of the Securities and Futures Act) and in accordance with the conditions specified in Section 275 of the Securities and Futures Act;
- (ii) (in the case of a corporation) where the transfer arises from an offer referred to in Section 276(3)(i)(B) of the Securities and Futures Act or (in the case of a trust) where the transfer arises from an offer referred to in Section 276(4)(i)(B) of the Securities and Futures Act;
- (iii) where no consideration is, or will be, given for the transfer;

- (iv) where the transfer is by operation of law;
- (v) as specified in Section 276(7) of the Securities and Futures Act; or
- (vi) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

# Australian Taxation

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## 1. INTRODUCTION

*The following is a summary of the Australian withholding tax treatment under the Australian Tax Act and the Taxation Administration Act 1953 of Australia, at the date of this Information Memorandum, of payments of interest (as defined in the Australian Tax Act) by the Issuer on the Notes and certain other Australian tax matters.*

*A term used below but not otherwise defined has the meaning given to it in the Conditions.*

*This summary applies to Noteholders that are:*

- residents of Australia for tax purposes that do not hold their Notes, and do not derive any payments under the Notes, in carrying on a business at or through a permanent establishment outside of Australia, and non-residents of Australia for tax purposes that hold their Notes, and derive all payments under the Notes, in carrying on a business at or through a permanent establishment in Australia (“**Australian Holders**”); and*
- non-residents of Australia for tax purposes that do not hold their Notes, and do not derive any payments under the Notes, in carrying on a business at or through a permanent establishment in Australia, and residents of Australia for tax purposes that hold their Notes, and derive all payments under the Notes, in carrying on a business at or through a permanent establishment outside of Australia (“**Non-Australian Holders**”).*

*The summary is not exhaustive and, in particular, does not deal with the position of certain classes of Noteholders (including, without limitation, dealers in securities, custodians or other third parties who hold Notes on behalf of any person).*

*The summary generally outlines the Australian taxation position of Noteholders who hold their Notes as long term investments on capital account. It is not intended to apply to Noteholders who hold their Notes as trading stock or acquire Notes for the principal purpose of making a profit from a future disposal of those Notes.*

*Prospective Noteholders should also be aware that particular terms of issue of any Series of Notes may affect the tax treatment of that Series of Notes. Information regarding taxes in respect of Notes may also be set out in the relevant Pricing Supplement.*

*This summary is not intended to be, nor should it be construed as, legal or tax advice to any particular Noteholder. Each Noteholder should seek professional tax advice in relation to their particular circumstances.*

## 2. AUSTRALIAN INTEREST WITHHOLDING TAX

The Issuer intends to issue Notes which should be characterised as “debt interests” (and returns paid in relation thereto are intended to constitute “interest”) for Australian tax purposes. On this basis:

### *Australian Holders*

Payments of interest in respect of the Notes to Australian Holders should not be subject to Australian Interest Withholding Tax (“**IWT**”).

### *Non-Australian Holders*

Australian IWT should be payable at a rate of 10% of the gross amount of interest paid by the Issuer to a Non-Australian Holder, unless an exemption is available.

*(a) Section 128F exemption from Australian IWT*

An exemption from Australian IWT is available in respect of interest paid on the Notes if the requirements of section 128F of the Australian Tax Act are satisfied.

Unless otherwise specified in any relevant Pricing Supplement (or another relevant supplement to this Information Memorandum), the Issuer intends to issue the Notes in a manner which will satisfy the requirements of section 128F of the Australian Tax Act.

In broad terms, the requirements are as follows:

- (i) the Issuer is a resident of Australia and a company (as defined in section 128F(9) of the Australian Tax Act) when it issues the Notes and when interest is paid;
- (ii) the Notes are issued in a manner which satisfies the “public offer” test in section 128F of the Australian Tax Act.

In relation to the Notes, there are five principal methods of satisfying the public offer test. In summary, the five methods are:

- offers to 10 or more unrelated financiers, securities dealers or entities that carry on the business of investing in securities in the course of operating in financial markets;
  - offers to 100 or more investors of a certain type;
  - offers of listed Notes;
  - offers via publicly available information sources; or
  - offers to a dealer, manager or underwriter who offers to sell the Notes within 30 days by one of the preceding methods.
- (iii) the Issuer does not know, or have reasonable grounds to suspect, at the time of issue, that the Notes (or interests in the Notes) were being, or would later be, acquired, directly or indirectly, by an “associate” of the Issuer, except as permitted by section 128F(5) of the Australian Tax Act (see below); and
  - (iv) at the time of the payment of interest, the Issuer does not know, or have reasonable grounds to suspect, that the payee is an “associate” of the Issuer, except as permitted by section 128F(6) of the Australian Tax Act (see below).

An “associate” of the Issuer for the purposes of section 128F of the Australian Tax Act includes:

- a) a person or entity which holds more than 50% of the voting shares of, or otherwise controls, the Issuer;
- b) an entity in which more than 50% of the voting shares are held by, or which is otherwise controlled by, the Issuer;
- c) a trustee of a trust where the Issuer is capable of benefiting (whether directly or indirectly) under that trust; and
- d) a person or entity who is an “associate” of another person or company which is an “associate” of the Issuer under paragraph (a) above.

However, for the purposes of sections 128F(5) and (6) of the Australian Tax Act (see paragraph (iii) and (iv) above), an “associate” of the Issuer does not include:

- (A) an Australian Holder; or
- (B) a Non-Australian Holder that is acting in the capacity of:
  - (I) in the case of section 128F(5), a dealer, manager or underwriter in relation to the placement of the relevant Notes, or a clearing house, custodian, funds manager or responsible entity of a registered scheme (for the purposes of the Corporations Act 2001 of Australia); or
  - (II) in the case of section 128F(6), a clearing house, paying agent, custodian, funds manager or responsible entity of a registered scheme (for the purposes of the Corporations Act 2001 of Australia).

*(b) Exemptions under certain double tax conventions*

The Australian government has signed new or amended double tax conventions (“**New Treaties**”) with a small number of countries (each a “**Specified Country**”). The New Treaties apply to interest derived by a resident of a Specified Country.

Broadly, the New Treaties effectively prevent IWT applying to interest derived by:

- governments of the Specified Countries and certain governmental authorities and agencies in a Specified Country; and / or
- a “financial institution” resident in a Specified Country which is unrelated to and dealing wholly independently with the Issuer. The term “financial institution” refers to either a bank or any other enterprise which substantially derives its profits by carrying on a business of raising and providing finance. However, interest paid under a back to back loan or an economically equivalent arrangement should not qualify for this exemption.

The Australian Federal Treasury maintains a listing of Australia’s double tax conventions which provides details of country, status, withholding tax rate limits and Australian domestic implementation. This listing is available to the public on the Federal Treasury’s Department website.

*(c) Payment of additional amounts*

As set out in more detail in the Conditions for the Notes, if the Issuer is at any time required by law to withhold or deduct an amount in respect of any Australian withholding taxes imposed or levied by the Commonwealth of Australia in respect of the Notes, an additional amount (gross-up payment) is payable by the Issuer to a Noteholder to ensure that the Noteholder is entitled to receive total amounts equal to what it would have received if no withholdings or deductions had been required (subject to certain exclusions).

### **3. SALE OR DISPOSAL OF THE NOTES**

*(a) Australian Holders*

Any profit or gain made on disposal of Notes by a Non-Australian Holder may give rise to a taxable gain for Australian Holders under the income tax or capital gains tax rules in the income year in which the disposal occurs.

For capital gains, certain investors (such as Australian resident individuals, trusts and complying superannuation funds) may potentially be entitled to a capital gains discount where they have held the Notes for at least 12 months prior to disposal. Individuals and trusts may be entitled to a capital gains discount of 50% and complying superannuation funds may be entitled to a capital gains discount of 33⅓%. Companies are not entitled to the capital gains discount.

(b) *Non-Australian Holders*

Any profit or gain made on disposal (or redemption) of Notes by a Non-Australian Holder should not give rise to a taxable capital gain under the Australian capital gains tax rules where the Notes are not “taxable Australian property”. The Notes will not be “taxable Australian property” where they have never been business assets of a permanent establishment of the Non-Australian Holder in Australia.

Any profit or gain made on disposal of Notes by a Non-Australian Holder will not be subject to Australian taxation as ordinary income provided that the gain does not have an Australian source.

Whether a gain on disposal has an Australian source is a question of fact that will be determined on the basis of the circumstances existing at the time of the disposal. A gain arising on the sale or disposal of Notes by a Non-Australian Holder to another non-Australian Holder where the Notes are sold outside Australia and all negotiations are conducted, and documentation executed, outside Australia would not be regarded as having an Australian source.

A Non-Australian Holder may be eligible for relief from Australian taxation on gains on disposal if a relevant DTA applies, even if the gain has an Australian source.

#### **4. OTHER TAX MATTERS**

Under Australian laws as presently in effect:

- *income tax* – Australian Holders will include in their assessable income any payment of interest received in respect of the Notes each income year;
- *death duties* – Notes should not be subject to death, estate or succession duties imposed by Australia, or by any political subdivision or authority therein having power to tax, if held at the time of death;
- *stamp duty and other taxes* - no ad valorem stamp, issue, registration or similar taxes should be payable in Australia by the Noteholders on the issue, transfer or redemption of any Notes;
- *TFN withholding* - withholding tax is imposed (see below in relation to the rate of withholding tax) on the payment of interest on certain registered securities unless the relevant payee has quoted an Australian tax file number (“**TFN**”), (in certain circumstances) an Australian Business Number (“**ABN**”) or proof of some other exception (as appropriate);

Assuming the requirements of section 128F of the Australian Tax Act are satisfied with respect to the Notes, then such withholding should not apply to payments to a Non-Australian Holder that is a non-resident of Australia for Australian tax purposes;

The rate of withholding tax is 49% for the 2015-16 and 2016-17 income years and, under current law, will be reduced to 47% following the 2016-17 income year;

- *additional withholdings from certain payments to non-residents* - the Governor-General may make regulations requiring withholding from certain payments to non-residents of Australia (other than payments of interest and other amounts which are already subject to the current IWT rules or specifically exempt from those rules). Regulations may only be made if the responsible Minister is satisfied the specified payments are of a kind that could reasonably relate to assessable income of foreign residents. The possible application of any future regulations to the proceeds of any sale of the Notes will need to be monitored;
- *garnishee directions by the Commissioner of Taxation* – the Commissioner may give a direction requiring the Issuer to deduct from any payment to a Noteholder any amount in respect of Australian tax payable by the holder. If the Issuer is served with such a direction,

then the Issuer will comply with that direction and make any deduction required by that direction;

- *supply withholding tax* - payments in respect of the Notes can be made free and clear of any “supply withholding tax”; and
- *goods and services tax (GST)* - neither the issue nor receipt of the Notes should give rise to a liability for GST in Australia on the basis that the supply of Notes should comprise either an input taxed financial supply or (in the case of an offshore subscriber) a GST-free supply. Furthermore, neither the payment of principal or interest by the Issuer, nor the disposal of the Notes, should give rise to any GST liability in Australia.

# Directory

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## **Issuer**

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## **Registrar, Issuing & Paying Agent and Calculation Agent**

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## **Note Trustee**

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**Security Trustee**

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