



MEMO

To: Board of Directors
From: Company Secretary
Subject: **DEEDS OF CROSS GUARANTEE – LEAVING GROUP**

With the de-merger of SAC it will no longer be part of the group of FLX companies which have cross guaranteed each other under a formal Deed arrangement.

Background

Pursuant to ASIC Class Order 98/1418, FLX's complying wholly-owned subsidiaries have enjoyed relief from the requirement to prepare and lodge separate audited annual financial statements with ASIC on the basis that they have met certain conditions and have entered into a Deed of Cross Guarantee with their parent company and its other subsidiaries (together a "Closed Group").

ASIC provides a *pro forma* "Deed of Cross Guarantee" (PF24) which must be strictly adhered to. A Trustee 'manages' the operation of the Deed and the parties thereto in relation to their mutual obligations and responsibilities – although in practice the Trustee's role is basically a dormant one unless someone takes action based on the Deed.

Under the Deed each company in the group covenants to make up any shortfall of funds in a liquidation of any other company in the group. The effect of this is to make the group akin to a single legal entity in many respects. Creditors, suppliers and customers of the company and/or any subsidiary can then just consider the consolidated position of the group to ascertain its financial strength rather than have to consider/rely on the accounts/financial position of each individual entity in the group.

ASIC Information Sheet 24 provides further general information on Deeds of Cross Guarantee.

Leaving a Group

Should a company, for whatever reason, leave or otherwise exit a group then the mechanism laid down by ASIC to remove them from the Deed must be followed. Such a situation is deemed a 'disposal' of the company leaving the group. The provision allowing disposal is set out in clause 4.2 of PF24.

Disposal can occur for various reasons, most particularly because of sale of the shares in a subsidiary either 'voluntarily' by the parent, or by a mortgagee, or through appointment of a liquidator, receiver, administrator, etc.



ASIC provides a *pro forma* "Notice of Disposal" (PF25) – and also gives a 'checklist' on the ASIC website to assist in completion of the Notice – which must be completed by SAC with inclusion of the following information:

- date SAC became a party to the Deed
- date SAC shares were disposed of
- that the disposal was not to an associated company

and be signed (by a director or the Company Secretary of SAC), dated and lodged with ASIC together with Certificate signed by the directors of FLX certifying that the disposal is a *bona fide* sale and that the consideration for the sale was fair and reasonable.

On lodgement with ASIC the Deed of Cross Guarantee will cease to apply to SAC (and all of its subsidiaries, if any) and it will be released from all liability and obligations under the Deed, including:

- arising or accruing prior to or after the disposal
- due to the Deed becoming enforceable

but, on the other hand, the other Closed Group companies will, *ipso facto*, no longer be responsible for any SAC liabilities or obligations.

Also, if SAC requires it and pays the costs, the Trustee must execute a deed providing SAC with a formal release from the Deed of Cross Guarantee (see clause 4.4 of PF24).

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.