

**IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY**

**No. V621 of 2005**

**IN THE MATTER OF ANSETT AUSTRALIA LIMITED  
(ACN 004 209 410) & ORS (in accordance with the  
Schedule attached) (All Subject to a Deed of  
Company Arrangement)**

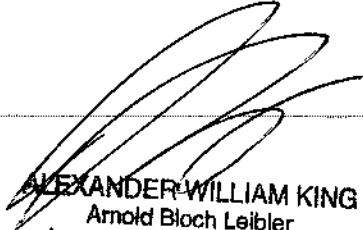
**and**

**MARK ANTHONY KORDA and MARK FRANCIS  
XAVIER MENTHA (as Deed Administrators of the  
Companies)**

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked **"MAK-71"** produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 15 May 2006.

Before me:



ALEXANDER WILLIAM KING  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-71"**  
**Special purpose report, proposed form of  
amended DOCA and notice of meeting**



KordaMentha

# Ansett Aviation Equipment Pty Ltd

(Subject to Deed of Company Arrangement)

**Special Purpose Report to Creditors in Relation to the Proposed  
Pooling of Ansett Aviation Equipment Pty Ltd (subject to Deed of  
Company Arrangement) into Ansett Australia Limited (subject to Deed  
of Company Arrangement)**

**12 April 2006**

Level 24, 333 Collins Street

GPO Box 2985

Melbourne VIC 3001



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## 1 Introduction

This is a special purpose report to creditors in relation to the proposed “pooling” of Ansett Aviation Equipment Pty Ltd (ACN 008 559 733) (subject to Deed of Company Arrangement) (“AAE” or “Company”) into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) (“AAL”). This report has been prepared pursuant to clause 18.4 of the Deed of Company Arrangement (“DOCA”) which governs AAE.

“Pooling” is a mechanism to allow the assets of Ansett Group companies to be pooled into one Ansett Group company (namely, AAL) and to allow the creditors of the companies pooled into AAL to make their claims (by proofs of debt lodged or to be lodged) against the pool of Ansett Group assets to be held by AAL following pooling.

We have convened a meeting of AAE creditors to be held at the offices of KordaMentha, Level 24, 333 Collins Street, Melbourne, Victoria on 21 April at 11.00am (“Pooling Meeting”). The purpose of the Pooling Meeting is to have AAE creditors consider and vote upon resolutions to:

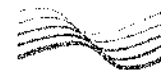
- (a) pool AAE into AAL by varying the DOCA which governs AAE (“Pooling Resolution”); or
- (b) continue the administration of AAE in accordance with the DOCA in its current form; or
- (c) end the administration of AAE by terminating the DOCA; or
- (d) wind up AAE.

The resolutions are such that if creditors pass any of the resolutions there will be no need to consider and vote upon the remaining resolution(s).

A copy of the notice of the Pooling Meeting is attached to this report as **Appendix One**.

In this report we:

- (a) report about AAE’s business, property, affairs and financial circumstances, further to our previous reports to AAE creditors specifically, and further to our previous reports to creditors (as a whole) of the Ansett Group of companies (listed in **Appendix Two**), the last of which was the Sixth Report to Creditors dated 31 March 2006 (“Sixth Report”);
- (b) report about the AAE Pooling Compromise Deed (see Part 4 of this report); and
- (c) state our opinions about whether it would be in the interests of AAE creditors to pass the Pooling Resolution to effect the pooling of AAE into AAL, or whether it would be in the interests of AAE creditors to continue AAE’s administration in accordance with the DOCA in its current form, or whether it would be in the interests of AAE creditors for AAE’s administration to end, or whether it



would be in the interests of AAE creditors for AAE to be wound up, and our reasons for those opinions.

It is important that AAE creditors are aware that the major creditors of AAE ("**Bank Creditors**") have entered into the AAE Pooling Compromise Deed with us, as AAE Deed Administrators, and other necessary Ansett Group companies, as detailed in Part 4 of this report. The purpose of the AAE Pooling Compromise Deed is to compromise and settle a series of disputes or potential disputes with the Bank Creditors, so as to facilitate the pooling of AAE into AAL on terms which we, as AAE Deed Administrators, consider to be in the best interests of AAE creditors as a whole. The effect of the AAE Pooling Compromise Deed is to:

- pool the assets of AAE (\$38 million, estimated) into AAL;
- pay from AAL a total of \$27 million to the Bank Creditors (namely, \$7 million to National Australia Bank, \$10 million to Commonwealth Bank of Australia and \$10 million to BNP Paribas); and
- retain the balance (\$11 million, estimated) in AAL, ultimately for the benefit of priority creditors of those Ansett Group companies which are pooled into AAL.

The operation of the AAE Pooling Compromise Deed is dependent on:

- Federal Court approval, which we obtained by way of an application commenced in the Federal Court in June 2005 in connection with the proposed pooling of all of the Ansett Group companies ("**Pooling Application**"), further details of which are included in Part 3 of this report; and
- approval of the Pooling Resolution at the meeting of the creditors of AAE convened pursuant to this report.

In summary, as AAE's Deed Administrators, we consider the pooling of AAE into AAL, and performance of the AAE Pooling Compromise Deed, to be in the best interests of all AAE creditors, whether or not party to the AAE Pooling Compromise Deed. Although, ultimately, it is a decision for AAE creditors as to whether they vote in favour of or against the Pooling Resolution, for the reasons set out in this Part 1 and as detailed further in this report, **we recommend that AAE creditors vote in favour of the Pooling Resolution.**

## 2 Report about AAE's Business, Property, Affairs and Financial Circumstances

### 2.1 Statement of Financial Position

Further to previous reports to creditors, AAE owned five 767 Boeing aircraft, seven spare CF6-80A engines, a B767 flight simulator and four Fokker 50 aircraft, all of which have now been sold. Overall, we achieved total net realisations of approximately \$38 million. Other assets, principally comprising inter-company receivables from Ansett Group entities, are unlikely to deliver any return to AAE creditors.

The final significant post-administration liability, a title warranty provided to the purchaser of the B767 aircraft - Aeroturbine Inc, expired on 27 February 2006. The final significant funds realisation was from the sale of the flight simulator. These funds were received via an agreed early settlement with the purchaser in February 2006. All proceeds from sale of assets have now been received in cleared funds and are on deposit with various banks.

The Statement of Financial Position as at **31 March 2006** is as follows:

	31 March 2006 AUD'000
<b>Assets</b>	
Boeing 767 aircraft (5)	28,323
Fokker 50 aircraft (4)	9,856
Boeing B767-277 Digital Flight Simulator	451
Spare engines (7)	15,866
Gross Realisations	54,496
<b>Costs</b>	
Insurance	(1,523)
Idle Maintenance	(8,348)
Heavy Maintenance	(3,154)
Other, including remarketing, valuation and Administration cost	(2,800)
Contingency	(671)
Gross Costs	(16,496)
<b>Estimated Available for Creditors</b>	<b>38,000</b>



A general contingency amount of approximately \$0.67 million, together with a provision for future administration costs of \$0.2 million, has been included in calculating the net amount of \$38 million (estimated) available for AAE creditors.

## 2.2 Creditor Claims

As set out in paragraph 213 of Mark Korda's 12 September 2005 affidavit in the Pooling Application, the following parties claim to be creditors of AAE for the following amounts (excluding interest):

<b>Alleged creditor</b>	<b>Amount of claim (approximate)</b>
Ansett Equipment Finance Ltd (subject to deed of company arrangement ("AEF") (inter-company debt)	\$14.05 million
Australian Taxation Office ("ATO")	\$3.5 million
National Australia Bank Limited	up to \$179.6 million
Commonwealth Bank of Australia Limited	\$20 million
BNP Paribas	\$20 million
<b>Total</b>	up to \$237.15 million

As Deed Administrators of AAE, we have not admitted or otherwise conceded the validity of any of the above alleged claims. Further, we have not conducted a formal proof of debt process for AAE.

As noted in Part 5 of this report, AAE creditors are now invited to submit a proof of debt if they have not done so already or wish to amend their existing claim.

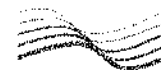
No distributions have been made to any AAE creditors to date.



## 2.3 Previous Reports to AAE Creditors

Previous reports to AAE creditors include:

Update	Date	Major Issues Reported
12	16 May 2005	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aircraft Delivery</li> <li>• Engine Lease</li> <li>• Return of Landing Gear</li> </ul>
11	2 Feb 2005	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aircraft Delivery</li> <li>• Engine Lease</li> <li>• Return of Landing Gear</li> <li>• Maintenance Services</li> </ul>
10	13 Dec 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Executive Summary</li> <li>• Creditors</li> <li>• Update on Activities to Date</li> <li>• Open Issues</li> <li>• Statement of Financial Position</li> </ul>
09	8 Nov 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aeroturbine</li> <li>• Engine Lease</li> </ul>
08	19 Oct 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• AASS Claim</li> <li>• Delivery of Aircraft</li> </ul>
07	14 Sept 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Agreement Boeing 767-200 Aircraft</li> <li>• Statement of Financial Position</li> </ul>
06	8 Sept 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aeroturbine</li> </ul>
05	6 Sept 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aeroturbine</li> <li>• Possible Claim Impacting Sale</li> </ul>
04	31 Aug 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aeroturbine</li> <li>• Engine Transactions</li> <li>• Possible Claim Impacting Sale</li> <li>• Statement of Financial Position</li> </ul>
03	29 July 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Sale to Aeroturbine</li> <li>• Other Matters</li> <li>• Comparison Offers</li> </ul>
02	30 June 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Aircraft</li> <li>• Evaluation of Creditor Values</li> <li>• Engines</li> <li>• Statement of Financial Position</li> <li>• Simulator</li> </ul>
01	24 May 2004	AAE Creditors Update <ul style="list-style-type: none"> <li>• Introduction</li> <li>• Simulator</li> <li>• Aircraft</li> <li>• Creditor Amounts</li> <li>• Engines</li> <li>• Statement of Financial Position</li> </ul>



### 3 Pooling Application and why we recommend that the Ansett Group as a whole be pooled

Note: This Part 3 of this report describes the Pooling Application and the reasons why we, as Deed Administrators of the various Ansett Group as a whole, think that Pooling into AAL of the Ansett Group companies other than AAL is in the interests of Ansett Group creditors as a whole. This Part 3 is background information, to assist AAE creditors to understand why we made the Pooling Application and our opinions about the likely results of the pooling of Ansett Group companies into AAL. However, the reasons why we think the pooling of AAE into AAL and implementation of the AAE Pooling Compromise Deed are in the interests of AAE creditors as a whole are set out in Parts 1, 2, 4 and 5 of this report.

#### 3.1 Pooling Application

As noted in the Fifth Report to Creditors dated 31 March 2005 ("**Fifth Report**") and set out in detail in the Sixth Report, we commenced the Pooling Application in June 2005.

In the Pooling Application we presented evidence to the Court as to why, in our opinion, the Ansett Group companies should be pooled and, to that end, told the Court that we would recommend pooling to Ansett Group creditors. We sought the Court's permission to vote in favour of pooling resolutions, as proxies for Ansett Group companies which are creditors of other Ansett Group companies, in meetings of Ansett Group company creditors to be convened to consider pooling resolutions ("**Voting Direction**"). We also sought the Court's approval of, and directions that we may properly perform and give effect to the AAE Pooling Compromise Deed.

The Pooling Application was heard on 24 October 2005. On 22 March 2006 the Court published its written reasons for judgment in the Pooling Application. In summary, the Court:

- (a) stated, based on the evidence we presented to the Court, that our pooling proposal for the Ansett Group as a whole "*is sensible and advantageous to most of the [Ansett Group] creditors from a practical point of view*";
- (b) despite that, declined to give us the Voting Direction, pending our presenting further evidence to the Court about the potential disadvantages of pooling to a very small minority of Ansett Group creditors, following which the Court would be likely to reconsider our request for the Voting Direction; and
- (c) approved the AAE Pooling Compromise Deed, and directed that we, as Deed Administrators of the Ansett Group companies which are parties to the Deed, may properly perform and give effect to the Deed.

Copies of all relevant Court documents in the Pooling Application (except confidential documents) have been posted on and may be downloaded from the Ansett websites, which are:

- (a) [www.ansett.com.au](http://www.ansett.com.au)
- (b) [www.kordamentha.com.au](http://www.kordamentha.com.au)

(c) [www.abl.com.au](http://www.abl.com.au) (go to "Ansett" page)

**Appendix Three** to this report is a list of those relevant Court documents.

Various non-Ansett parties participated in the Pooling Application, namely the Commonwealth, the Australian Securities and Investments Commission ("**ASIC**"), the ACTU and affiliated unions and each of the Bank Creditors.

To ensure that all Ansett Group creditors' interests were considered by the Court, we identified an Ansett Group creditor whose interests may be adversely affected by pooling to act as a "contradictor" to the Pooling Application and to represent the interests of all other creditors who may be adversely affected by pooling. WTH Pty Ltd, trading as "Avis Australia", a creditor of several Ansett Group companies, agreed to act as contradictor ("**Contradictor**").

As is usual in these sorts of applications, the Ansett Group indemnified the Contradictor for its legal costs to oppose the Pooling Application and Orders, and agreed to indemnify all of the other parties to the Pooling Application for their legal costs in relation to the Pooling Application.

Each of the parties made submissions to the Court. In summary, the parties' submissions at the hearing of the Pooling Application were as follows:

(a) The Commonwealth

The Commonwealth supported the making of the orders and directions we sought from the Court ("**Orders**"). The Commonwealth submitted that pooling of the Ansett Group companies into AAL is commercially appropriate, will mean that the vast majority of Ansett Group employees and SEES Pty Ltd ("**SEES**"), as "priority" unsecured creditors, will be better off, and is likely to lead to substantial savings in administration and legal fees.

(b) ASIC

ASIC declined to make submissions on the merits of the Pooling Application but submitted that the Orders as sought were appropriate if the Court decided that pooling was appropriate.

(c) ACTU and affiliated unions

The ACTU and affiliated unions supported the making of the Orders because, for the vast majority of Ansett Group employees (over 99% of them, on our estimation), the implications of pooling are positive.

(d) Contradictor

The Contradictor was asked to oppose the Application, which it did. It submitted to the Court that our decision to exercise Ansett Group company proxy votes, and casting votes, in favour of the Pooling Resolutions at the Pooling Meetings of those Ansett Group companies whose creditors are likely to be worse off as a result of pooling would be contrary to the interests of those creditors and should not be approved or sanctioned by the Court. The Court agreed with the Contractor's



submission and, as noted above, invited us to present further evidence on this point before it would further consider giving us the Voting Direction.

(e) Bank Creditors

Each of the Bank Creditors supported the making of the Orders.

Following the 22 March 2006 judgment, we obtained orders from the Court (among others) permitting us to present further evidence to the Court as to why it should give us the Voting Direction. That evidence (by affidavit) is due to be filed with the Court and served on the parties to the Pooling Application by 12 May 2006.

### 3.2 What is pooling?

Pooling is a mechanism to allow the assets of Ansett Group companies to be pooled into one Ansett Group company (namely, AAL) and to allow the creditors of the companies pooled into AAL to make their claims (by proofs of debt lodged or to be lodged) against the pool of Ansett Group assets to be held by AAL following pooling. We, as administrators of AAL, would then pay distributions to Ansett Group company creditors as a whole from the pool of Ansett Group assets held by AAL, in accordance with the priority regime set out in the AAL DOCA (as varied to facilitate pooling).

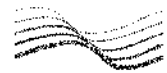
### 3.3 Background to pooling

In our First Report to Creditors dated 16 January 2002 ("**First Report**") we said the following (among other things) in relation to pooling and the (then) proposed Ansett Group company DOCAs:

*"The primary objective of the DOCA is to give certain Ansett companies the election to pool all of the assets and liabilities of each company in the Ansett Group into one company.*

*In the Memorandum of Understanding between ourselves, the Hazelton Administrator and the Air New Zealand Group dated 3 October 2001, we agreed to take all reasonable steps to pool the assets and liabilities of the Ansett Group. We also agreed to consider pooling the assets and liabilities of the Ansett Group in the agreement reached with the Commonwealth in relation to the SEESA payments.*

*The process of pooling occurs where two or more companies in the group are treated as if they were one so that for the purposes of the administration, the assets and liabilities of all of the companies in the Ansett Group are treated as belonging to the one company. Pooling attempts to overcome legal and accounting difficulties [involved in] separating interwoven companies to allow an equal*



*distribution of assets to creditors. Pooling has traditionally been available in circumstances where there has been an intermingling of funds in a manner which makes their separation practically impossible.*

*Pooling may be appropriate for many of the companies for a number of reasons including:*

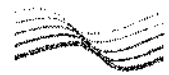
- *Distributing the \$150m lump sum payment from Air New Zealand (net of any Hazelton payments).*
- *...*
- *The large internal inter-company loan accounts of the Ansett Group.*
- *Potential claims between companies in the Ansett Group.*

*Thereafter the DOCA contains special provisions for all participating creditors' claims of the pooling companies to be paid on a pro rata basis from the company that receives all of the assets. The priority of payment follows the order of priorities that would apply in a winding up. Funds generally are applied:*

- *Firstly, to pay the Administrators' costs and expenses,*
- *Secondly, to pay secured creditors their priority entitlements,*
- *Thirdly, to pay retention of title creditors their priority entitlements,*
- *Fourthly, to pay employees in relation to their entitlements and the repayment to the Commonwealth Government of SEESA funds and superannuation funds (if there is a shortfall and if that shortfall would be entitled to a priority on a winding up),*
- *Finally, to pay ordinary unsecured creditors on a pro rated basis."*

In our Second Report to Creditors dated 15 March 2002 ("**Second Report**") we said the following (among other things) in relation to the proposed Ansett Group DOCAs. We noted that one of the purposes of the Ansett Group DOCAs was to enable further meetings of creditors to be called after the major assets of the Ansett Group were realised, to consider the pooling of the assets and liabilities of the various Ansett Group companies or to determine whether to place the Ansett Group companies into liquidation.

We said that after the major assets had been realised, a further report would be prepared outlining the outcome of the asset realisations and details of the investigations conducted, and that a recommendation would also be made whether all of the assets and liabilities of the Ansett Group companies should be pooled. We noted that, in due course, creditors would vote at meetings of creditors as to whether to place the Ansett Group companies into liquidation or to vary the Ansett Group DOCAs to provide for the pooling of Ansett



Group assets and include mechanisms for distributions to creditors. The Ansett Group DOCAs were executed on or about 2 May 2002. As noted in the First Report and the Second Report, the Ansett Group DOCAs provided for the convening of further meetings of creditors to consider (among other things) resolutions to vary the Ansett Group DOCAs to provide for pooling of the Ansett Group companies (see clause 18.4 of the Ansett Group DOCAs).

The Ansett Group DOCAs also included "priority of payment" regimes consistent with that foreshadowed in the First Report (see above). As at the date of this report, all secured creditors and retention of title creditors who were properly entitled to priority payments have received those payments. Accordingly, putting aside the priority accorded to our costs and expenses, there remain two "groups" of priority unsecured creditors whose claims remain unpaid (either in whole or part), namely Ansett Group employees (in relation to their entitlements) and the Commonwealth, through SEES (in relation to its entitlement to be reimbursed for SEESA advances made for the interim benefit of Ansett Group employees, pending payment of their entitlements). Ranking behind those groups of priority unsecured creditors are all of the "ordinary" - in other words, non-priority - unsecured creditors. Non-priority unsecured creditors have to date received no distributions from the Ansett Group.

In our Fourth Report to Creditors dated 31 March 2004 ("**Fourth Report**") we said the following in relation to employee entitlements, the estimated return to SEES for SEESA advances, and the estimated return to non-priority unsecured creditors.

- (a) Employees had received \$547.7 million of the (then) estimated total employee entitlements of \$766.4 million, and we estimated that the employees would receive a further \$85.1 million, leaving an estimated shortfall of over \$100 million.
- (b) SEES had advanced SEESA funds of \$334.9 million for the benefit of employees, of which \$159.5 million had been repaid. We estimated that SEES would ultimately receive repayments totalling \$273.2 million on account of the SEESA advances of \$334.9 million, leaving an estimated shortfall of approximately \$60 million.
- (c) Given the shortfalls on the priority creditor entitlements due to employees and SEES, we estimated that it was unlikely that there would be any return to non-priority unsecured creditors (except perhaps for returns of up to \$40 million derived from realisations in particular Ansett Group companies, which monies we then thought may be available to particular non-priority unsecured creditors of those companies, and about which we would separately report).

Between the publication of the Fourth Report and the Sixth Report further distributions were paid to Ansett Group employees and further reimbursements were paid to SEES. Whilst at the date of the Sixth Report the overall position has changed (employees have received \$586.3 million to date and SEES had been repaid \$270.5 million to date) the employees and SEES, as priority unsecured creditors, are still very likely to suffer a shortfall on their entitlements and, accordingly, the non-priority unsecured creditors would be very unlikely to receive any distributions from the Ansett Group (save, perhaps, for distributions of approximately \$40 million to particular unsecured creditors of particular Ansett Group Companies). (See Part 5 of the Fifth Report.)

### 3.4 What is the likely overall practical effect of pooling?

If the Ansett Group companies are pooled, we estimate (see the Fifth Report and the evidence we presented to the Court in the Pooling Application) that the employees and SEES, as priority unsecured creditors, will ultimately receive total distributions of approximately **84.17** and **80.02** cents in the dollar, respectively, of their entitlements. As to non-priority unsecured creditors, only the Bank Creditors are likely to receive payments, to a total of \$27 million (rather than the \$40 million provisioned for), being the payments to be made under the AAE Pooling Compromise Deed. Otherwise, we estimate that non-priority unsecured creditors will receive no distributions or payments.

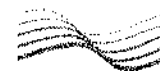
By contrast, if the Ansett Group companies (save for AAE) are not pooled, we estimate (see the Fifth Report and the evidence we presented to the Court in the Pooling Application) is that the employees and SEES, as priority unsecured creditors, will ultimately receive total distributions of approximately **82.40** and **77.79** cents in the dollar, respectively, of their entitlements (that is, approximately 2 cents in the dollar less than the returns if pooling occurs). As to non-priority unsecured creditors, and subject to the comments below about “separate administrations” costs, we estimate (see the evidence we presented to the Court in the Pooling Application) that they may ultimately share distributions totalling up to approximately \$49 million (rather than the \$40 million provisioned for). Of those monies, the Bank Creditors will receive between them a total of \$27 million, leaving a balance of approximately up to \$22 million to be shared among various other non-priority unsecured creditors of at least six Ansett Group companies.

#### *Creditors who may be disadvantaged by pooling*

Our best estimate is that there will be six Ansett Group Companies (“**Potentially Disadvantaged Companies**”) whose non-priority unsecured creditors may be disadvantaged if pooling of the companies of which they are creditors occurs, namely:

- (a) Ansett Australia Holdings Limited (subject to deed of company arrangement) (“**AAHL**”);
- (b) Ansett International Limited (subject to deed of company arrangement) (“**AIL**”);
- (c) Kendell Airlines (Aust) Pty Ltd (subject to deed of company arrangement) (“**Kendell**”);
- (d) ANST Show Pty Ltd (subject to deed of company arrangement), formerly Show Group Pty Ltd (“**Show Group**”);
- (e) Aeropelican Pty Ltd (subject to deed of company arrangement) (“**Aeropelican**”); and
- (f) Skywest Airlines Pty Ltd (subject to deed of company arrangement) (“**Skywest**”).

In this report the non-priority unsecured creditors of the Potentially Disadvantaged Companies are referred to as “**Potentially Disadvantaged Non-priority Creditors**”.



Note that:

- the assets of Aeropelican and Skywest, respectively, available to creditors of those companies are now held by the “Pelican Trust” and the “Westsky Trust” respectively, and creditors’ claims are against the assets held by those trusts; and
- non-priority unsecured creditors of AAL are likely to be Potentially Disadvantaged Creditors of AAHL, by operation of a particular deed of cross-guarantee. Accordingly, the opinions and calculations in this report referable to Potentially Disadvantaged Non-priority Creditors of AAHL apply to the claims of non-priority unsecured creditors of AAL. Similarly, non-priority unsecured creditors of AHL are likely to be Potentially Disadvantaged Creditors of Skywest, by operation of a particular deed of cross-guarantee. Accordingly, the opinions and calculations in this report referable to Potentially Disadvantaged Non-priority Creditors of Skywest apply to the claims of non-priority unsecured creditors of AHL.

### *Qualifications to the potential disadvantage to some creditors of pooling*

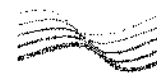
Two important ramifications of not pooling the Ansett Group Companies should be considered by creditors, as follows. These matters are of particular relevance to the Potentially Disadvantaged Non-priority Creditors.

#### *1. Increased costs of separate administrations are likely to be significant*

First, based on our investigations to date, in our opinion the administrations of the Ansett Group companies are likely to be very significantly more complex and time consuming if pooling does not occur than would be the case if pooling occurs, because without pooling the Ansett Group companies (or at least those which do not pool) will have to continue to be separately administered. As a result, there are likely to be very significant “separate administrations” costs incurred (including significant administrators’ and legal fees), which costs we estimate to range between approximately \$10 million and at least \$24 million. Those costs would largely be incurred resolving (or trying to resolve) the outstanding issues in the administrations described at paragraph 3.5 below, which would need to occur if pooling does not.

Furthermore, it is extremely difficult, if not impossible, to presently accurately estimate which “separate administrations” costs would be incurred by which Ansett Companies. This is the issue on which the Court has invited us to submit further evidence in the Pooling Application. However, our best estimate as at the date of this report is that the up to \$22 million likely to be available for distribution to Potentially Disadvantaged Non-priority Creditors would be significantly eroded, perhaps by many millions of dollars, by “separate administrations” costs, with a corresponding decrease in the ultimate possible return to those creditors. (For example, of the 12 “separate administrations” costs issues identified on page 16 of Mark Korda’s 13 October 2005 affidavit in the Pooling Application, no less than eight and up to 11 of those issues affect each of the Potentially Disadvantaged Companies.)





## *2. Separate administrations will cause further delays*

Second, all creditors (and in particular, the employees and SEES, as priority unsecured creditors) will have to wait a lot longer for distributions (at least a year, but more likely longer) because many, if not all, of the issues which pooling avoids (described at paragraph 3.5 below) will need to be resolved before individual Ansett Group companies can start to make distributions to creditors.

Finally, our best estimate is that for all Ansett Group creditors other than Potentially Disadvantaged Non-priority Creditors the likely practical effects of pooling will be either advantageous or neutral. In other words, we estimate that pooling will be advantageous or neutral for the creditors of 35 of the 41 Ansett Group companies.

## **3.5 Reasons why we recommend that the Ansett Group companies be pooled**

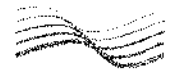
Our reasons for seeking the Orders and the reasons why we have sought the Voting Direction are set out in the affidavits of Mark Korda sworn 12 September, 30 September and 13 October 2005 in the Pooling Application (all of which are available on the Ansett websites).

In summary:

- (a) Historically, the Ansett Group was in many respects operated as a single business, not separate entities, as evidenced by:
  - (i) provision of cash by some Ansett Group companies to other Ansett Group companies without the taking of security or being repaid;
  - (ii) sharing of Ansett Group employees between various Ansett Group companies in circumstances where no charges were raised by the employer (or apparent employer) company against the recipient company and no formal or documented arrangements existed to govern such sharing;
  - (iii) sharing of numerous Ansett Group company or Ansett Group assets and liabilities, in circumstances where the "asset owning" (or apparently "asset owning") companies either did not levy charges, or did not levy charges at commercial rates, to the recipient companies for the use of those assets, such assets including the Ansett Flight Simulator Centre, Ansett Group brands, trademarks and other intellectual property, information technology software applications and programs, Ansett Group headquarters located at 501 Swanston Street at the northern end of the Melbourne CBD ("**Head Office**") and adjoining properties located at 465-475 and 489 Swanston Street and 20-32 Franklin Street ("**Other Ansett CBD Properties**");
  - (iv) complex cross-Ansett Group leasing and financing arrangements in relation to the use and operation of numerous Ansett Group aircraft;
  - (v) treatment of the Ansett Group as a whole for the purposes of taxation, in circumstances where Ansett Group income tax returns were prepared and tax losses transferred between Ansett Group companies without adjustment of inter-company loan balances.



- (b) Because of the pre-administration “single business”-style operations, the Ansett Group as a whole would need to spend very significant time and costs to determine (or attempt to determine) whether, and if so, to properly and/or equitably raise “charge-backs” as between Ansett Group companies for the pre-administration use by some Ansett Group companies of particular assets and/or tax benefits belonging (or apparently belonging) to, and of personnel employed (or apparently employed) by other Ansett Group companies, without guarantee of accurate, or even fair and equitable results. This issue is directly linked to the Ansett Group’s inter-company loans position and problems. In brief, to the extent pre-administration “charge-backs” were raised they were normally reflected in Ansett Group company inter-company loan accounts. The Ansett Group has inter-company loan transactions to a total value of approximately \$3.3 billion. Any “charge-backs” adjustments would affect the inter-company loan position.
- (c) In our opinion it is impracticable and, in some cases, impossible for us determine which Ansett Group companies owned the following Ansett Group assets, or parts of them:
  - (i) Head Office, and hence the proceeds of its sale;
  - (ii) the Other Ansett CBD Properties, and hence the proceeds of their sale;
  - (iii) certain aircraft and engines;
  - (iv) information technology systems and software.
- (d) The operation of certain deeds of cross-guarantee affect many Ansett Group companies.
- (e) If pooling does not occur significant time and costs will be required to raise “charge-backs” as between Ansett Group companies for the post-administration use by some Ansett Group companies of particular assets and/or tax benefits belonging (or apparently belonging) to, and personnel employed by other Ansett Group companies.
- (f) If pooling does not occur we will need to undertake an apportionment of certain costs incurred in the Administrations, those costs having so far been funded out of AAL.
- (g) If pooling does not occur the time and costs which would be required to resolve (if possible) various Ansett Group tax issues would be enormous, without guarantee of accurate, or even fair and equitable results.
- (h) If pooling does not occur very significant time and costs will be incurred in conducting a proof of debt process for each Ansett Group company.
- (i) In our opinion it is impracticable, if not impossible, for us to apportion the monies received by the Ansett Group under the Air New Zealand memorandum of understanding entered into in October 2001 (“**MOU Monies**”) between the Ansett Group companies without seeking the Court’s directions and orders. In any event, we apprehend that were we to purport to allocate the MOU Monies, those creditors who thought themselves adversely affected by our apportionment decisions would



commence legal proceedings. If past experience is any guide, such litigation would be extremely expensive and time consuming.

- (j) The provisions of the MOU require us to facilitate pooling and to ensure payment in full of all priority entitlements held by employees within the Ansett Group.
- (k) The provisions of the deed governing the SEESA scheme require us to seek pooling so as to maximise repayment of monies loaned to us, as administrators, under the SEESA scheme.
- (l) The provisions of the Ansett Group DOCAs expressly contemplate pooling.
- (m) To the best of our knowledge, no Ansett Group company creditor objected to or opposed the proposed "pooling" provisions of any of the MOU, the SEESA scheme or the Ansett Group DOCAs.

## 4 AAE Pooling Compromise Deed

The AAE Pooling Compromise Deed is posted on and may be downloaded from the Ansett websites (see there exhibit MAK-5 of Mark Korda's affidavit sworn 12 September 2005). As noted earlier in this report, one of the Orders made by the Federal Court in the Pooling Application was that it approved the AAE Pooling Compromise Deed, and directed that we, as Deed Administrators of the companies which are parties to the Deed, may properly perform and give effect to the Deed.

We believe that the compromises documented in the AAE Pooling Compromise Deed are in the best interests of the Ansett Group as a whole, for the reasons set out in detail in paragraphs 212 to 217 of Mark Korda's affidavit sworn 12 September 2005 and paragraphs 8 to 16 of Mark Korda's affidavit sworn 30 September 2005.

We also believe that the compromises documented in the AAE Pooling Compromise Deed are in the best interests of AAE's creditors. Further, in his March 2006 reasons for judgment in the Pooling Application Justice Goldberg of the Court stated:

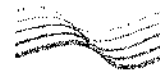
*"I am disposed to approve of [the AAE Pooling Compromise Deed], on the basis that it provides benefits and advantages for AAE and for its creditors generally which would not otherwise be obtainable. The advantages of AAE entering into the Deed are supported by confidential legal advice given to the Administrators which I have read."*

and

*"...I consider it appropriate that I approve of "the agreements and the compromises documented" in the Deed as it is advantageous and beneficial for the creditors of AAE and its administration."*

In summary:

- (a) we estimate that, if AAE is not pooled into AAL, ultimately approximately \$38 million is likely to be available for distribution to AAE's creditors;
- (b) in the course of preparing for, and since the Pooling Application was commenced, it became clear to us that unless the Bank Creditors' claims were compromised (including non-AAE-related claims between various Ansett Group Companies and National Australia Bank Limited), then lengthy, complex and costly litigation would inevitably ensue between the Ansett Group and National Australia Bank Limited, and probably also between AAE and one or more of its other creditors; and
- (c) the AAE Pooling Compromise Deed compromises all of the claims against AAE by all of creditors (except for a relatively small unsecured, non-priority claim by the ATO against AAE) and all of the



claims between the Ansett Group and National Australia Bank Limited (save for certain rights of that bank to lodge proofs of debt in the administration of AAL following pooling).

If AAE is pooled into AAL, AAL will retain an estimated \$11 million from AAE for distribution to Ansett Group priority creditors. In contrast, if AAE is not pooled into AAL we estimate that AAL would receive distributions from AAE of between \$3 million and \$5 million. The difference between the estimates of \$3-5 million and \$11 million arises largely by reason of settlement of one of the claims between the Ansett Group and National Australia Bank Limited. For these reasons we estimate that the Ansett Group, as a whole, and its priority creditors (including the employees and SEES), in particular, derive a benefit of approximately \$6 million to \$8 million as a result of the AAE Pooling Compromise Deed which would not otherwise be obtained.

If AAE's creditors do not vote to pool AAE into AAL:

- the AAE Pooling Compromise Deed will lapse; and
- there will almost inevitably be protracted and costly litigation with the Bank Creditors (or some of them) concerning those creditors' entitlements to distributions from AAE's assets and, in relation to National Australia Bank Limited, broader Ansett Group claims and issues.

AAE creditors should consider seeking independent legal advice as to the implications of resolving to pool AAE into AAL.



## 5 Pooling Meeting

### 5.1 Details of the Pooling Meeting

The Pooling Meeting will be held at the offices of KordaMentha, Level 24, 333 Collins Street, Melbourne Victoria on **21 April 2006 at 11:00 am**. Registration for all creditors will open at 10.30 am. The meeting will commence at 11.00 am sharp. For the purposes of the meeting, please find attached the following:

- formal Notice of Meeting – Form 509C (**Appendix One**)
- Appointment of Proxy Form – Form 532 (**Appendix Four**)
- Formal Proof of Debt of Claim – Form 535 (**Appendix Five**)

Creditors are required to lodge **proofs of debt no later than 4:00pm on 20 April 2006**, failing which they may be excluded from voting at the meeting pursuant to Regulation 5.6.23 of the Corporations Regulations. Proofs of Debt may be sent to KordaMentha at GPO Box 2985, Melbourne Vic 3001 or faxed to +61 3 8600 8484.

Those creditors who have already lodged any proof of debt (formal or informal) are not required to lodge a further proof (unless they wish to amend their claim).

If you intend to appoint another person to act on your behalf at the Pooling Meeting, or if you are a corporate creditor, you are required to complete the proxy form appointing your representative and return it to KordaMentha at GPO Box 2985, Melbourne Vic 3001 or faxed to +61 3 8600 8484 **no later than 4:00pm on 19 April 2006**.

If you are representing a corporate creditor, please ensure that your proxy form is properly executed pursuant to Section 127 of the Corporations Act or that you have properly been appointed pursuant to Section 250A of the Corporations Act, failing which you will not be entitled to vote at the Pooling Meeting.

Please note that any proxies lodged in respect of prior meetings of creditors held on various dates are not valid for this meeting.

### 5.2 Resolutions

- “1 That the Deed of Company Arrangement be varied in the manner set out in the document titled “Proposed Amendments to AAE Deed of Company Arrangement” available at each of [www.ansett.com.au](http://www.ansett.com.au), [www.kordamentha.com](http://www.kordamentha.com), and [www.abl.com.au](http://www.abl.com.au), so as to effect the pooling of the



Company's assets into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) ("AAL") and to allow the Company's creditors to make claims against AAL instead of the Company" (being **Appendix Six** to this report)

"2 That the Deed of Company Arrangement continue to operate"

"3 That the Deed of Company Arrangement is hereby terminated"

"4 That the Company be wound up"

### **5.3 Our vote on behalf of AEF, as a creditor of AAE**

Despite our opinion that the pooling of AAE into AAL is in the interests of AAE's creditors, we **do not** intend to exercise the vote of AEF, as a creditor of AAE, in relation to the Pooling Resolution, due to potential conflicts of interests and duties. To explain, were we to vote, either way, in respect of the Pooling Resolution we may or would be acting in conflict of our various duties and interests as administrators of AAE, on the one hand, and AEF on the other.

### **5.4 Casting vote**

For exactly the same reasons as outlined in Part 5.3 above, we **do not** intend to exercise a casting vote, as chairman of the Pooling Meeting.

### **5.5 Example DOCA**

For AAE creditors' convenient reference we have prepared and posted on the Ansett websites a copy of the AAE DOCA, in the form the DOCA will appear if the Pooling Resolution is passed by AAE creditors (namely, **Appendix Six**).

## 6 Our opinions

Our opinions as to each of the resolutions to be put to the Pooling Meeting are set out under each resolution below:

- "1 That the Deed of Company Arrangement be varied in the manner set out in the document titled "Proposed Amendments to AAE Deed of Company Arrangement" available at each of [www.ansett.com.au](http://www.ansett.com.au), [www.kordamentha.com](http://www.kordamentha.com), and [www.abl.com.au](http://www.abl.com.au), so as to effect the pooling of the Company's assets into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) ("AAL") and to allow the Company's creditors to make claims against AAL instead of the Company."

Opinion: For the reasons set out in this report, we recommend that AAE creditors vote in favour of resolution 1.

- "2 That the Deed of Company Arrangement continue to operate"

Opinion: We recommend that, if resolution 1 is not passed, AAE creditors vote in favour of resolution 2.

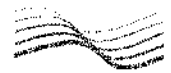
- "3 That the Deed of Company Arrangement is hereby terminated"

Opinion: For the reasons set out in this report, if resolutions 1 and 2 are not passed, we recommend that AAE creditors vote against resolution 3.

- "4 That the Company be wound up"

Opinion: For the reasons set out in this report, if resolutions 1, 2 and 3 are not passed, we recommend that AAE creditors vote against resolution 4.





KordaMentha

## 7 Queries

If you have any queries in relation to the above, please contact Sebastian Hams of this office on +61 3 8600 8466.

Mark Korda  
Joint Deed Administrator

Mark Mentha  
Joint Deed Administrator



## Appendix 1 Formal Notice of Meeting – Form 509C

### Form 509C

Paragraph 445F (2) (a)

*Corporations Act 2001*

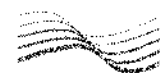
### NOTICE OF MEETING OF CREDITORS TO VARY OR TERMINATE DEED OF COMPANY ARRANGEMENT

**Ansett Aviation Equipment Pty Ltd (ACN 008 559 733) (subject to Deed of Company Arrangement)  
("the Company")**

1. Notice is given that a meeting of the creditors of the Company will be held at the offices of  
KordaMentha, Level 24, 333 Collins Street, Melbourne Victoria on 21 April 2006 at 11:00 am.  
Registration for all creditors will open at 10.30 am.
2. The purpose of the meeting is to consider and vote on the following resolutions:
  - "1 That the Deed of Company Arrangement be varied in the manner set out in the document titled "Proposed Amendments to AAE Deed of Company Arrangement" available at each of [www.ansett.com.au](http://www.ansett.com.au), [www.kordamentha.com](http://www.kordamentha.com), and [www.abl.com.au](http://www.abl.com.au), so as to effect the pooling of the Company's assets into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) ("AAL") and to allow the Company's creditors to make claims against AAL instead of the Company"
  - "2 That the Deed of Company Arrangement continue to operate"
  - "3 Alternatively to resolution 2, that the Deed of Company Arrangement is hereby terminated"
  - "4 Alternatively to resolution 3, that the Company be wound up"

Dated this 12th day of April 2006

Mark Korda  
Joint Deed Administrator  
KordaMentha  
Level 24  
333 Collins Street  
MELBOURNE VIC 3000

**Appendix 2 Ansett Group Companies**

501 Swanston Street Pty Ltd (ACN 005 477 618)	Northern Territory Aerial Work Pty Ltd (ACN 009 611 321)
Aeropelican Pty Ltd (ACN 000 653 083)	Rock-It-Cargo (Aust) Pty Ltd (ACN 003 004 126)
Airport Terminals Pty Ltd (ACN 053 976 444)	ANST Show Pty Ltd (Formerly Show Group Pty Ltd) (ACN 002 968 989)
Aldong Services Pty Ltd (ACN 000 258 113)	South Centre Maintenance Pty Ltd (ACN 007 286 660)
Ansett Aircraft Finance Limited (ACN 008 643 276)	Spaca Pty Ltd (ACN 006 773 593)
Ansett Aviation Equipment Pty Ltd (ACN 008 559 733)	Skywest Airlines Pty Ltd (ACN 008 997 662)
Ansett Australia Limited (ACN 004 209 410)	ANST Travel Pty Ltd (Formerly Traveland Pty Ltd) (ACN 000 240 746)
Ansett Australia and Air New Zealand Engineering Services Limited (ACN 089 520 696)	ANST Travel International Pty Ltd (Formerly Traveland International Pty Ltd) (ACN 000 598 452)
Ansett Australia Holdings Limited (ACN 004 216 291)	Traveland International (Aust) Pty Ltd (ACN 000 275 936)
Ansett Carts Pty Ltd (ACN 055 181 215)	Traveland New Staff Pty Ltd (ACN 080 739 037)
Ansett Equipment Finance Limited (ACN 006 827 989)	Walgali Pty Ltd (ACN 055 258 921)
Ansett Finance Limited (ACN 006 555 166)	Westintech Limited (ACN 009 084 039)
Ansett Holdings Limited (ACN 065 117 535)	Westintech Nominees Pty Ltd (ACN 009 302 158)
Ansett International Limited (ACN 060 622 460)	Whitsunday Affairs Pty Ltd (ACN 009 694 553)
Bodas Pty Ltd (including in its capacity as trustee of the Westsky Trust and the Pelican Trust) (ACN 002 158 741)	Whitsunday Harbour Pty Ltd (ACN 010 375 470)
Brazson Pty Ltd (ACN 055 259 008)	Wridgways (Vic) Pty Ltd (ACN 004 153 413)
Eastwest Airlines (Operations) Limited (ACN 000 259 469)	Wridgways Holdings Limited (ACN 004 449 085)
Eastwest Airlines Limited (ACN 000 063 972)	ANST Westsky Aviation Pty Ltd (Formerly Skywest Aviation Pty Ltd) (ACN 004 444 866)
ANST Lednek Airlines (Aust) Pty Ltd (Formerly Kendell Airlines (Aust) Pty Ltd) (ACN 000 579 680)	ANST Westsky Jet Charter Pty Ltd (Formerly Skywest Jet Charter Pty Ltd) (ACN 008 800 155)
Morael Pty Ltd (ACN 003 286 440)	ANST Westsky Holdings Pty Ltd (Formerly Skywest Holdings Pty Ltd) (ACN 008 905 646)
Northern Airlines Limited (ACN 009 607 069)	

Note: All subject to Deed Company Arrangement, except Aeropelican Pty Ltd and Skywest Airlines Pty Ltd

## **Appendix 3 Documents available on the Ansett websites**

### **Applications**

Federal Court of Australia: Victorian District Registry: VID621 of 2005, 21 June 2005

### **Orders**

Orders - 30 August 2005

Orders - 26 September 2005

Orders - 10 October 2005

Notice of Listing - 11 October 2005

### **First Korda Affidavit**

First Affidavit of Mark Anthony Korda, sworn 21 June 2005

### **Exhibits to First Korda Affidavit**

Exhibit MAK 1 - Historical Company Extracts of Plaintiff Companies (pages 1-617)15MB

Exhibit MAK 2 - Copy Deed of Company Arrangement executed by Ansett Australia Holdings Ltd ("AAHL"), dated 2 May 2002

Exhibit MAK 3 - Copy MOU, dated 3 October 2001

Exhibit MAK 4 - Copy SEESA Deed, dated 14 December 2001

### **Second Korda Affidavit**

Second Affidavit of Mark Anthony Korda, sworn 12 September 2005

### **Exhibits to Second Korda Affidavit**

Exhibit MAK 5 - AAE Deed of Compromise

Exhibit MAK 6 - Court's final orders, Justice Goldberg's reasons for judgment and corrigenda in the MOU Application

Exhibit MAK 7 - Court's final orders, and Justice Goldberg's reasons for judgment in the SEESA Application

Exhibit MAK 8 - Second Meeting resolutions and results of poll

Exhibit MAK 9 - First Report to Creditors

Exhibit MAK 10 - Second Report to Creditors

- Exhibit MAK 11 - Third Report to Creditors
- Exhibit MAK 12 - Fourth Report to Creditors
- Exhibit MAK 13 - Fifth Report to Creditors
- Exhibit MAK 14 - The Ansett Group Entities
- Exhibit MAK 15 - Intranet memorandum dated 10 August 2000
- Exhibit MAK 16 - Extract of Kendell loan account with AAL for January 2001 to July 2001
- Exhibit MAK 17 - Extract from May 2000 edition of "Panorama"
- Exhibit MAK 18 - AAL trade-marks
- Exhibit MAK 19 - Extract of July-August 2000 edition of "Flight Safety Australia"
- Exhibit MAK 20 - Except from AAL Asset Register
- Exhibit MAK 21 - Numbered bundle of documents relating to Head Office, 501 Swanston Street and Other Ansett Melbourne CBD Properties matters
- Exhibit MAK 22 - Schedule of inter-company loan balances
- Exhibit MAK 23 - Numbered bundle of documents relating to Head Office Proceeds
- Exhibit MAK 24 - Class A Cross-Guarantee and Revocation Deeds
- Exhibit MAK 25 - Class B Cross-Guarantee, Revocation Deeds and Assumption Deed
- Exhibit MAK 26 - Class C Cross-Guarantee
- Exhibit MAK 27 - Affidavit of Mark Francis Xavier Mentha sworn 8 October 2001 (excluding exhibits)
- Exhibit MAK 28 - Affidavit of Mark Francis Xavier Mentha sworn 10 October 2001 (excluding exhibits)
- Exhibit MAK 29 - Affidavit of the Hazelton Group Administrator sworn 22 October 2001 (excluding exhibits)
- Exhibit MAK 30 - Affidavit of Mark Anthony Korda sworn 1 November 2001 (excluding exhibits)
- Exhibit MAK 31 - Affidavit of Leon Zwier sworn 20 September 2002 (excluding exhibits)
- Exhibit MAK 32 - Affidavit of Mark Anthony Korda sworn 26 September 2002 (excluding exhibits)
- Exhibit MAK 33 - Affidavit of Bradley Fowler sworn 13 March 2003 (excluding exhibits)
- Exhibit MAK 34 - Hazelton Deed of Settlement



- Exhibit MAK 35 - Ansett written contentions dated 5 May 2003 in the Allocation Applications
- Exhibit MAK 36 - Further Hazelton Terms of Settlement
- Exhibit MAK 37 - Court's orders in the Hazelton Allocation Application
- Exhibit MAK 38 - Affidavit of Mark Anthony Korda sworn 3 December 2001(excluding exhibits)
- Exhibit MAK 39 - Loan Deed
- Exhibit MAK 40 - AAL DOCA Variation Application terms of settlement
- Exhibit MAK 41 - AAL DOCA Variation Orders and Justice Goldberg's reasons for judgment
- Exhibit MAK 42 - Skywest/Aeropelican reports to creditors dated 15 January 2002
- Exhibit MAK 43 - Skywest/Aeropelican DOCAs
- Exhibit MAK 44 - Skywest Sale Agreement
- Exhibit MAK 45 - Aeropelican Sale Agreement and Variation Documents
- Exhibit MAK 46 - Skywest Transfer Agreement and the Westsky Trust Deed
- Exhibit MAK 47 - Aeropelican Transfer Agreement and the Pelican Trust Deed
- Exhibit MAK 48 - Abbreviated Notice Application
- Exhibit MAK 49 - Affidavit Of Leon Zwier sworn 27 December 2001
- Exhibit MAK 50 - Affidavit Of Leon Zwier sworn 3 January 2002
- Exhibit MAK 51 - Final orders of the Court and Justice Goldberg's reasons for judgment in the Abbreviated Notice Application

#### **First King Affidavit**

First Affidavit of Alexander William King, affirmed 23 September 2005

#### **Exhibits to First King Affidavit**

- Exhibit AWK-1 - Letter dated 2 September 2005 regarding proposed affidavit of Mark Anthony Korda
- Exhibit AWK-2 - Email dated 7 September 2005 regarding proposed affidavit of Mark Anthony Korda
- Exhibit AWK-3 - Email dated 8 September 2005 enclosing unsworn affidavit of Mark Anthony Korda, without exhibits
- Exhibit AWK-4 - Letter dated 8 September 2005 enclosing exhibit "MAK-14" to unsworn affidavit of Mark Anthony Korda

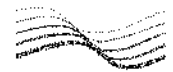


Exhibit AWK-5 - Email dated 8 September 2005 enclosing exhibit "MAK-14" to unsworn affidavit of Mark Anthony Korda

Exhibit AWK-6 - Letter dated 8 September 2005 enclosing proposed exhibits to unsworn affidavit of Mark Anthony Korda

Exhibit AWK-7 - Letter dated 9 September 2005 enclosing proposed exhibits to unsworn affidavit of Mark Anthony Korda

Exhibit AWK-8 - Extracts from Websites

Exhibit AWK-9 - Form of letter dated 15 September 2005 sent to certain Ansett Group creditors

Exhibit AWK-10 - Form of letter dated 15 September 2005 sent to certain Skywest creditors

Exhibit AWK-11 - Form of letter dated 15 September 2005 sent to certain Aeropelican creditors

Exhibit AWK-12 - List of letter recipients (of 15 September 2005 letter)

Exhibit AWK-13 - Copy notice to Ansett Group creditors published in "The Australian" on 21 September 2005

Exhibit AWK-14 - Email dated 19 September 2005 to Ansett Committees of Creditors

Exhibit AWK-15 - Letter dated 19 September 2005 from ASIC to ABL

### **Third Korda Affidavit**

Third Affidavit of Mark Anthony Korda, sworn 30 September 2005

### **Exhibit to Third Korda Affidavit**

Exhibit MAK-52 - ASIC request dated 19 September 2005

### **Fourth Korda Affidavit**

Fourth Affidavit of Mark Anthony Korda, sworn 13 October 2005

### **Exhibits to Fourth Korda Affidavit**

Exhibit MAK-53: Letter from Contradictor dated 29 September 2005

Exhibit MAK-54: Letter from ASIC dated 7 October 2005

Exhibit MAK-55: Email from Rockwell Collins dated 20 September 2005

Exhibit MAK-56: Email from Skippers Aviation dated 22 September 2005

Exhibit MAK-57: Minutes of 23 September 2005 meeting between Mark Korda and union representatives (and others)

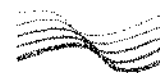


Exhibit MAK-58: Written presentation from 23 September 2005 meeting between Mark Korda and union representatives (and others)

Exhibit MAK-59: Email from KordaMentha to ACTU dated 23 September 2005

Exhibit MAK-60: Email from AGS to ABL dated 26 September 2005

Exhibit MAK-61: Email from ABL to AGS dated 28 September 2005

Exhibit MAK-62: Email from AGS to ABL dated 28 September 2005

Exhibit MAK-63: Email from Steven Parbery to Mark Korda dated 28 September 2005

Exhibit MAK-64: Letter from ABL to various parties dated 29 September 2005

Exhibit MAK-65: Email from ABL to ASIC dated 29 September 2005

) Exhibit MAK-66: Email from ABL to various parties dated 30 September 2005

Exhibit MAK-67: Letter from AGS to ABL dated 3 October 2005

Exhibit MAK-68: Letter from AGS to ABL dated 5 October 2005

Exhibit MAK-69: Letter from Mark Korda to Steven Parbery and Ross McClure (for the Commonwealth) dated 5 October 2005

### **Second King Affidavit**

Second Affidavit of Alexander William King, affirmed 18 October 2005

### **Submissions**

Plaintiffs' Outline of Submissions dated 20 October 2005

) Submissions of Commonwealth of Australia dated 20 October 2005

Outline of Submissions to be made on behalf of WTH Pty Ltd in its capacity as Contradictor dated 21 October 2005

### **Transcripts of Proceedings**

Transcript - 23 June 2005

Transcript - 19 July 2005

Transcript - 16 August 2005

Transcript - 30 August 2005

Transcript - 26 September 2005



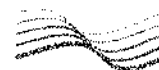


Transcript - 24 October 2005

Transcript – 22 March 2006

**Judgment**

Judgment - 22 March 2006

**Appendix 4 Appointment of Proxy Form – Form 532**

<b>APPOINTMENT OF PROXY</b>	<b>Form 532</b>
<b>Ansett Aviation Equipment Pty Ltd (ACN 008 559 733) (subject to Deed of Company Arrangement) (“the Company”)</b>	<b>Regulation 5.6.29 Corporations Act 2001</b>

**A. Insert Full Name and Contact Details (please print)**

Given Name \_\_\_\_\_ Surname \_\_\_\_\_

Company Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

**B. Appointment of a Proxy (please complete)**

I/We, a creditor of the Company appoint:

\_\_\_\_\_ of \_\_\_\_\_

as my/our proxy, or in his/her absence \_\_\_\_\_ to vote at a meeting of creditors to be held on 27 April 2006 at the offices of KordaMentha, Level 24, 333 Collins Street, Melbourne Victoria at 11:00 am, or at any adjournment of that meeting.

**C. Voting by Your Proxy**

**Option 1:** If appointed as a general proxy, as he/she determines on my/our behalf. ☐

**AND/OR**

**Option 2:** If appointed as a special proxy for some or all resolutions, specifically in the manner set out below (please tick). ☐

	<b>Resolution (please specify the particular resolution)</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
(1)	That the Deed of Company Arrangement be varied in the manner set out in the document titled “Proposed Amendments to AAE Deed of Company Arrangement” available at each of <a href="http://www.ansett.com.au">www.ansett.com.au</a> , <a href="http://www.kordamentha.com">www.kordamentha.com</a> , and <a href="http://www.abl.com.au">www.abl.com.au</a> , so as to effect the pooling of the Company’s assets into Ansett Australia Limited (ACN 004 209 410) (subject to Deed of Company Arrangement) (“AAL”) and to allow the Company’s creditors to make claims against AAL instead of the Company”; <b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	That the Deed of Company Arrangement continue to operate; <b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3)	Alternatively to resolution 2, that the Deed of Company Arrangement is hereby terminated; <b>OR</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4)	Alternatively to resolution 3, that the Company be wound up	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



**D. Signature Section (in accordance with Sections 82A, 127 or 250D of the Corporations Act 2001)**

**Signature of individual or person authorised by corporate resolution to represent corporation**

**Print Name:**

**The common seal was affixed hereto in the presence of:**

**Director**

**Director/Company Secretary**

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

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**CERTIFICATE OF WITNESS**

**Please Note:** This certificate is to be completed only where the person giving the proxy is blind or incapable of writing. The signature of the creditor is not to be attested by the person nominated as proxy. I, \_\_\_\_\_ of \_\_\_\_\_ certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the person appointing the proxy and read to him before he attached his signature or mark to the instrument.

Signature of witness: \_\_\_\_\_

**Appendix 5 Formal Proof of Debt of Claim – Form 535**

Subregulation 5.6.49(2)

**Form 535****Corporations Act 2001**

**Ansett Aviation Equipment Pty Ltd (ACN 008 559 733) (subject to Deed of Company Arrangement)**  
**("the Company")**

**FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)**

To: The Deed Administrators of Ansett Aviation Equipment Pty Ltd (ACN 008 559 733) (subject to Deed of Company Arrangement)

1. This is to state that the company was on 12 September 2001 and still is, justly and truly indebted:

TO: .....  
 (name of creditor)

OF: .....  
 (address of creditor)

FOR: .....  
 (amount owed to creditor)

AND ..... cents.

Particulars of the debt are:

<u>Date</u>	<u>Consideration</u>	<u>Amount (\$)</u>	<u>Remarks</u>
(insert date when debt arose)	(state how the debt arose & <u>attach supporting invoices &amp; statements of account</u> )		(include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: (insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

<u>Date</u>	<u>Drawer</u>	<u>Acceptor</u>	<u>Amount (\$...c)</u>	<u>Due Date</u>
-------------	---------------	-----------------	------------------------	-----------------



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\*3. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

\*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

---

Dated this \_\_\_\_ day of \_\_\_\_\_

Signature.....

Name .....

Address .....

\* Delete if not applicable.

.....



**Appendix 6    AAE Deed of Company Arrangement (with pooling variations)**



**THIS DEED OF COMPANY ARRANGEMENT** is made the 2nd day of May 2002 and varied the 21st day of April 2006 pursuant to the provisions of Part 5.3A of the Corporations Act.

**BETWEEN:**

**ANSETT AVIATION EQUIPMENT PTY LTD**  
**(ACN 008 559 733)** (Administrators  
~~Appointed~~ subject to deed of company arrangement)  
("Company")

**EACH ACKNOWLEDGING ANSETT GROUP  
COMPANY**

**MARK FRANCIS XAVIER MENTHA** and **MARK  
ANTHONY KORDA** in their capacity as Voluntary  
Administrators of the Company

**AND**

**MARK FRANCIS XAVIER MENTHA** and **MARK  
ANTHONY KORDA** in their capacity as Deed  
Administrators of the Company

**RECITALS:**

- A Mark Anthony Korda and Mark Francis Xavier Mentha were appointed administrators of the Ansett Group Companies pursuant to an order of the Court on either 17 September or 3 October 2001, as the case may be, ~~which appointment subsists today~~. This appointment followed the resignation of Messrs. Hall, Hedge and Watson as administrators of the Ansett Group Companies.
- B A meeting of creditors of the Company was convened pursuant to Section 439A of the Act and held on 29 January 2002 ("**Meeting**"). At the Meeting, the creditors of the Company resolved inter alia to adjourn the Meeting to a later date on which they would consider whether it would be in the creditors' interests for the Company to execute a deed of company arrangement, for the administration to end or for the Company to be wound up.
- C The adjourned Meeting was held on 27 March 2002 ("**Reconvened Meeting**"). The creditors of the Company voting at the Reconvened Meeting resolved ("**Section 439C Resolution**") that the Company execute a



deed of company arrangement in accordance with the outline contained in the statement pursuant to Section 439A(4)(c) of the Act subject to certain amendments.

- D On 17 April 2002, in Federal Court proceeding no. V3062 of 2002, the Court ordered that the time by which the Voluntary Administrators must execute the deed of company arrangement pursuant to Section 444B(2)(b) be extended to 24 April 2002. (A copy of this order is Exhibit 5).
- E On 24 April 2002, in Federal Court proceeding no. V3065 of 2002, the Court reserved its judgment on an application for a further extension of the time by which the Voluntary Administrators must execute the deed of company arrangement pursuant to Sections 444B(2)(b) and 447A of the Act. As a result of the orders made by the Court on 24 and 29 April 2002 (copies of which are Exhibit 6), the deed of company arrangement ~~must~~ had to be executed by midnight on 2 May 2002.
- F A primary objective of the deed of company arrangement as outlined to creditors in the Section 439A(4)(c) statement dated 15 March 2002 and approved by the Company's creditors at the Reconvened Meeting is to provide for a better return for the Company's creditors than would result from a winding up of the Company.
- G On 2 May 2002 this deed of company arrangement was made, as a result of which the Voluntary Administrators became the Deed Administrators.
- H On 31 March 2006, in Federal Court proceeding no. VID621 of 2005, the Court made orders ("Pooling Orders") (Exhibit 10) approving the AAE Pooling Compromise Deed (Exhibit 10), in part facilitating the pooling ("Pooling") of the assets of the Company into Ansett Australia Limited (subject to deed of company arrangement) ("AAL") following which the Deed Administrators convened a meeting of the Company's creditors pursuant to s445 of the Act, and as required pursuant to clause 18.4 of this deed ("Pooling Meeting"). At the Pooling Meeting the creditors of the Company voted on and carried a resolution ("Pooling Resolution"), thereby amending this Deed so as to effect the Pooling of the Company's assets into AAL.
- I The Deed Administrators will do all such acts and things to effect Pooling.
- GJ Subject to the rights of any Secured Creditor, Owner or Lessor, this Deed binds all creditors of the Company in accordance with Section 444D of the Act and also binds the Company, its Officers and Members in accordance with Section 444G of the Act.





## NOW THIS DEED PROVIDES AS FOLLOWS:

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed unless the subject or context otherwise requires:

"AAL" has the meaning given in Recital H;

**"Acknowledging Ansett Group Company"** means each of the companies named in Part 1 of Schedule 1 other than the Company;

**"Act"** means the *Corporations Act 2001* (Cth);

**"Administrators' Website"** means collectively the websites maintained at the following URLs:

(a) <http://www.ansett.com.au/administrator/>; and

(b) <http://www.abl.com.au/administrator/>;

**"Air New Zealand Director"** means each person who is, or was at any time since Air New Zealand Limited acquired full ownership of the Ansett Group a director or secretary of any company in the Air New Zealand Group or the Ansett Group, as set out in a schedule to the Air New Zealand MOU;

**"Air New Zealand Group"** means Air New Zealand Limited and its subsidiaries, other than the Ansett Group, as set out in a schedule to the Air New Zealand MOU;

**"Air New Zealand MOU"** means the Memorandum of Understanding dated 3 October 2001 between, amongst others, the Ansett Group, the Voluntary Administrators, the Air New Zealand Group and directors of both the Air New Zealand Group and the Ansett Group, approved by an order of the Court in proceeding no. V3045 of 2001 (a copy of both the Air New Zealand MOU and the relevant order are attached as Exhibit 4);

**"Aircraft Lessor"** means any person other than the Company who is the legal or beneficial owner of an aircraft that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date;

**"Ansett Group Company"** means each of the companies named in Parts 1 and 2 of Schedule 1;

**"Ansett Group"** means collectively the Company and each other Ansett Group Company;



**"Appointment Date"** means, in respect of:

- (a) Ansett Australia and Air New Zealand Engineering Services Limited, the date Messrs. Mentha and Korda were appointed its administrators, being 3 October 2001; and
- (b) each other Ansett Group Company, the date that Messrs. Hall, Hedge and Watson were appointed as administrators of that company, being either 12 or 14 September 2001, as the case may be;

**"ASIC"** means the Australian Securities and Investments Commission;

**"Asset"** includes a mere cause of action or chose in action;

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

**"Claim"** means a debt payable by, and all claims against, the Company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred on or before the Appointment Date;

**"Committee"** means a committee of Deed Creditors formed in accordance with Clause 25 of the Deed;

**"Coupon Creditor"** means a person who on the Appointment Date was the holder of a ticket for air travel to be provided by the Company on or after the Appointment Date and which has not been honoured by the relevant carrier;

**"Court"** means the Federal Court of Australia at its Melbourne Registry;

**"Deed"** means this Deed of Company Arrangement as amended from time to time;

**"Deed Administrators"** means Mark Francis Xavier Mentha and Mark Anthony Korda in their capacity as administrators of the Deed;

**"Deed Administrators' Remuneration, Costs and Indemnity"** means the amount which the Deed Administrators are entitled to be remunerated, reimbursed and indemnified against under Clause 23.2 of the Deed;

**"Deed Creditor"** means any person who has a Claim, including (to the extent applicable):

- (a) Employees;
- (b) SEESA Payer;
- (c) Suppliers;
- (d) Non Cost Effective Dividend Recipients;
- (e) Aircraft Lessors;
- (f) Domestic Terminal Lessors;
- (g) Other Lessors;
- (h) Secured Finance Lease Creditors;
- (i) Coupon Creditors;
- (j) Global Rewards Creditors;
- (k) Golden Wing Creditors;
- (l) Superannuation Fund trustees;

**"Deed Period"** means the period commencing on the Effective Date and ending on the Termination Date;

**"Distribution Amounts"** means the amounts described in Clause 18.1;

**"DOCA"** means deed of company arrangement (as amended);

**"Domestic Terminal Leases"** means the leases for any of the airport terminals located at the following Australian airports which are used by, occupied or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, namely:

- (a) Melbourne Airport;
- (b) Sydney Airport;
- (c) Brisbane Airport;
- (d) Adelaide Airport;
- (e) Perth Airport;
- (f) Hobart Airport;
- (g) Darwin Airport;



- (h) Alice Springs Airport;
- (i) Townsville Airport;
- (j) Coolangatta Airport; and
- (k) Rockhampton Airport;

**"Duplicated Claim"** means any debt payable by, and any claim against any Ansett Group Company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred on or before the Appointment Date, in respect of which the relevant creditor would have been entitled, immediately prior to the passing of the Pooling Resolutions, to have lodged a proof of debt in relation to the entirety or any part thereof in more than one of the administrations of the Ansett Group Companies or against the Pelican or Westsky Trusts, whether that entitlement arose by way of guarantee, indemnity or otherwise;

**"Domestic Terminal Lessors"** means the lessors under Domestic Terminal Leases;

**"Effective Date"** means the date this Deed is executed by all parties;

**"Employee"** means each past and present employee of the Company who has a Claim;

**"Employee Amounts"** means in relation to an Employee all amounts owing (if any) to that Employee in respect of their employment including (but without limitation) entitlements to payment of wages or salary in lieu of notice, long service leave, annual and sick leave;

**"Enforcement Process"** in relation to property means:

- (a) execution against the property; or
- (b) any other enforcement process in relation to that property that involves a court or sheriff;

**"Entitlement"** means the amount of a Claim that a Participating Creditor is entitled to be paid as a distribution in accordance with the provisions of the Deed;

**"Equipment"** means aircraft, motor vehicles, plant and equipment and fixtures and fittings of whatever description but for the avoidance of doubt does not include Real Property;

**"Excluded Creditors"** means any Deed Creditor to the extent they have been paid during or after the Voluntary Administration Period or the Deed Period;

**"Finance Lease"** means a lease constituting, or accounted for in a similar way to, a finance lease or capitalised lease under Australian Accounting Standards;

**"Finance Lease Creditors"** means Participating Creditors whose Claim arises under a valid Finance Lease for Equipment;

**"Fixed Charge Assets"** means the assets, property and undertaking of the Company over which a Secured Creditor has a fixed charge as at the Appointment Date under the terms of a Security granted by the Company to the Secured Creditor;

**"Floating Charge Assets"** means the assets, property and undertaking of the Company over which a Secured Creditor has a floating charge as at the Appointment Date under the terms of a Security granted by the Company to the Secured Creditor;

**"Goods"** means any trading stock, packaging or other goods or materials supplied to the Company on or before the Appointment Date;

**"Global Reward Creditor"** means a person who is a member of the frequent flyer scheme operated by the Company known as Global Rewards as at the Appointment Date;

**"Golden Wing Creditor"** means a person who was a member of the Golden Wing Club or would be a member of the Golden Wing Club but for the administration of the Company;

**"Lease"** means any lease, licence or other agreement to which a Lessor is a party, including (without limitation) the Domestic Terminal Leases;

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

**"Lessor"** means any person other than the Company who is the legal or beneficial owner of Real Property or other property that is occupied or used or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, comprising any or all of the Property Lessors, Aircraft Lessors and Other Lessors;



**"Mediation Agreement"** means an agreement reached between the Deed Administrators and a ROT Creditor in respect of a ROT Claim during or after the process of mediation under Clause 15 of the Deed;

**"Mediator"** means a mediator agreed by the Deed Administrators and a ROT Creditor to mediate any dispute in relation to that ROT Creditor's ROT Claim pursuant to Clause 15;

**"Members"** means shareholders of the Company;

**"Non Cost Effective Claim"** means the Claim of a Deed Creditor whose Claim in the bona fide assessment of the Deed Administrators would receive a dividend for an amount less than \$AUD25 after an accurate estimation of the dividend is made ~~in accordance with Clause 18.4;~~ [The deletion is due to the deletion of Clause 18.4 from the amended DOCA.]

**"Non Cost Effective Dividend Recipients"** means a person with a Claim which is a Non Cost Effective Claim;

**"Officer"** has the meaning given in paragraphs (a) and (b) of that term as defined in Section 9 of the Act;

**"Other Lessor"** means any person other than the Company who is the legal or beneficial owner of an asset (other than Real Property or an aircraft) that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date;

**"Owner"** means any person other than the Company who is the legal or beneficial owner of property used or occupied by or on behalf of or in the possession of the Company at the Appointment Date;

**"Participating Creditors"** means Deed Creditors other than Non Cost Effective Dividend Recipients and Excluded Creditors;

**"Pelican Pooling Resolution"** means the resolution put to creditors of Aeropelican Air Services Pty Ltd described in orders 3 to 5 of the Pooling Orders;

**"Pooling", "Pooling Meeting", "Pooling Orders" and "Pooling Resolution"** have the meanings given in Recital H.

**"Premises"** means any Real Property used, occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date and which is not owned by the Company;



**"Priority Creditors"** means:

- (a) the Voluntary Administrators and the Deed Administrators in relation to any amounts due and payable to the Voluntary Administrators or the Deed Administrators pursuant to the Act or the terms of the Deed;
- (b) Secured Creditors in relation to the amounts they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the terms of their Security;
- (c) Priority ROT Creditors to the extent of their Priority ROT Amount;
- (d) Employees who would have priority pursuant to Section 556 of the Act to the extent of their Employee Amounts and the SEESA Payer in relation to SEESA Payments;
- (e) trustees of Superannuation Funds to the extent of their Priority Creditor Amounts,

but does not include Top Up Retrenchment Benefit Creditors;

**"Priority Creditor Amounts"** means:

- (a) in the case of Priority ROT Creditors, their respective Priority ROT Amounts;
- (b) in the case of Employees, the amount to which they would be afforded priority under Section 556 of the Act if the Company were wound up;
- (c) in the case of the Voluntary Administrators or the Deed Administrators, the Voluntary Administrators Remuneration Costs and Indemnity and the Deed Administrators Remuneration Costs and Indemnity respectively;
- (d) in the case of a trustee of a Superannuation Fund, the amount of any unpaid employer superannuation contributions and/or any unpaid member superannuation contributions, relating to the relevant Superannuation Fund, but not including the amount of any Top Up Retrenchment Benefit Claim; and
- (e) in the case of Secured Creditors, the amount which they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the



terms of the Security granted in favour of that Secured Creditor by the Company;

**"Priority ROT Creditor"** means a ROT Creditor in relation to its respective Priority ROT Amount;

**"Priority ROT Amount"** means that part of a ROT Claim that is determined to be valid:

- (a) by the Deed Administrators (whose determination is not disputed by the ROT Creditor pursuant to Clause 15.6);
- (b) pursuant to a Mediation Agreement; or
- (c) as required by the Court;

**"Property Lessor"** means any person other than the Company who is the legal or beneficial owner of Real Property that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date, including (without limitation) the Domestic Terminal Lessors;

**"Real Property"** means a legal or equitable estate or interest in real property of any description;

**"Regulations"** means the *Corporations Regulations*;

**"Reconvened Meeting"** has the meaning given in Recital C;

**"Related Body Corporate"** has the meaning given in the Act and **"Related"** bears a corresponding meaning;

**"Resolution"** means a resolution passed at a meeting of Deed Creditors convened in accordance with this Deed;

**"ROT Claim"** means a claim by a Supplier that pursuant to the terms of trade by which the Supplier traded with the Company, the Supplier retained an interest in or ownership of Goods and in respect of which there is no provision or act undertaken by that Supplier inconsistent with those retention of ownership or interest provisions and, in respect of which such Goods remained in the possession of the Voluntary Administrators as at the Appointment Date and for which payment of such Goods have not previously been made by the Company;

**"ROT Claim Amount"** means in the case of each ROT Creditor the monetary extent of a ROT Claim asserted by that ROT Creditor which have not been sold and were in the possession of the Company on the Appointment Date;





**"ROT Creditor"** means a person who has a ROT Claim;

**"Secured Creditor"** means any Deed Creditor who had the benefit of a Security which was valid at the Appointment Date or which is validated within 14 Business Days of the execution of the Deed, over all or any assets of the Company securing all or any part of its Claim but only to the extent of that Security at the Appointment Date;

**"Secured Finance Lease Creditor"** means any Secured Creditor who has entered into a Finance Lease with the Company and holds, as security for the payment of any debt or liability or the performance of any obligation under that Finance Lease, a Security over an aircraft that is used or occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date but only to the extent of that Security as at the Appointment Date;

**"Security"** means any mortgage, chattel mortgage, pledge, charge, agreement, encumbrance, lien, any right of set-off (arising otherwise than by operation of law or as a result of a banker's right to combine accounts), assignment which provides for and secures the payment of any debt or monetary liability or the performance of any obligation;

**"SEESA Deed"** means the deed between the Commonwealth of Australia, Ansett Holdings Ltd (Administrators Appointed) (ACN 065 117 535), various other Ansett companies and the Voluntary Administrators dated 14 December 2001 and attached as Exhibit 1;

**"SEESA Payer"** means SEES Pty Ltd ABN 35 098 586 308;

**"SEESA Payments"** means payments made by the SEESA Payer pursuant to the Special Employee Entitlement Scheme for Ansett Group employees established under the *Air Passenger Ticket Levy (Collection) Act* 2001 and paid to the Voluntary Administrators or the Deed Administrators in accordance with the SEESA Deed and the SEESA Payments Deed, and in accordance with the order of the Court in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7) and a determination made by the Minister for Employment and Workplace Relations under that Act;

**"SEESA Payments Deed"** means the Deed dated 18 December 2001 between the SEESA Payer, the Ansett Group and the Voluntary Administrators setting out the terms on which SEESA Payments are to be paid to the Voluntary Administrators or the Deed Administrators and the priority in which such payments shall be repaid, a copy of which is attached as Exhibit 2;



**"Superannuation Funds"** means the Ansett Australia Ground Staff Superannuation Plan (*trustee - Ansett Australia Ground Staff Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Pilots/Management Superannuation Plan (*trustee - Ansett Australia Pilots/Management Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Flight Engineers' Superannuation Plan (*trustee - Ansett Australia Flight Engineers' Superannuation Plan Pty Ltd*); the Ansett Transport Industries Limited Flight Attendants Superannuation Plan (*trustee - Ansett Australia Flight Attendants Superannuation Plan Pty Ltd*); and Ansett Accumulation Plan (*trustee - Ansett Australia Pilots Accumulation Plan Pty Ltd*);

**"Supplier"** means a Deed Creditor whose Claim arises from, or in consequence of, the supply of Goods;

**"Termination Date"** means the date upon which the Deed is terminated pursuant to Clause 21 of the Deed.

**"Top Up Retrenchment Benefit Claim"** means the amount of any claim for payment or contribution to a Superannuation Fund in respect of any shortfall in the Superannuation Fund in meeting or paying retrenchment benefits, being a claim of the type raised in Victorian Supreme Court proceeding no. 2115/01 (a copy of the statement of claim in that proceeding is attached as Exhibit 3), as so determined in that proceeding (if any);

**"Top Up Retrenchment Benefit Creditor"** means a person that is or was a trustee of a Superannuation Fund or a Superannuation Fund with a Top Up Retrenchment Benefit Claim;

**"Voluntary Administration Period"** means the period of time commencing on the Appointment Date and concluding on the Effective Date;

**"Voluntary Administrators"** means Mark Francis Xavier Mentha and Mark Anthony Korda in their capacity as administrators of the Company; and

**"Voluntary Administrators' Remuneration, Costs and Indemnity"** means the amount which the Voluntary Administrators are entitled to be remunerated, reimbursed and indemnified against under Clause 23.1 of the Deed;

**"Westsky Trust"** means the trust established for the benefit of creditors of Skywest Airlines Pty Ltd pursuant to the Westsky Trust Deed.



## **1.2 Interpretation**

In the Deed, unless the subject or context otherwise requires:

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing any one gender include the other gender and vice versa;
- 1.2.3 words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.2.4 words "written " and "in writing" include any means of visible reproduction of words in a tangible and permanently viable form;
- 1.2.5 if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 1.2.6 reference to Clauses and Schedules are references to clauses and schedules of the Deed;
- 1.2.7 references in the Deed to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction; and
- 1.2.8 references in the Deed to Sections shall be construed as references to Sections of the Act;
- 1.2.9 references to (or to any specified provision of) the Deed or to any other agreement or document shall be construed as references to (that provision of) the Deed or that other agreement or document as amended, substituted, novated, supplemented, varied or replaced with the agreement of the relevant parties and in force at any relevant time;
- 1.2.10 unless otherwise provided in the Deed, the provisions of Schedule 8A of the Regulations shall not apply to or be incorporated in this Deed;
- 1.2.11 a construction that would promote the purpose or object underlying the Deed (whether or not stated in this Deed)





is to be preferred to a construction that would not promote that purpose or object;

- 1.2.12 headings in the Deed are for the purpose of more convenient reference only and do not form part of the Deed or affect its construction or interpretation;
- 1.2.13 a reference to "a Form" means a reference to the applicable form as set out in Schedule One of the Regulations, with such modification as the Voluntary Administrators or the Deed Administrators (as the case may be) considers appropriate to adapt the Form to the circumstances for which the Form is to be used under the Deed;
- 1.2.14 a term or expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act provided that meaning is not inconsistent with the purpose or object of the Deed; and
- 1.2.15 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Deed or any part of it.

### **1.3 Inconsistency with Act or Regulations**

If there is any inconsistency between the provisions of the Deed and the Act or Regulations, the Deed shall prevail to the extent permitted by law.

### **1.4 Other Inconsistencies**

- 1.4.1 If there is any inconsistency between the provisions of the Deed and the Constitution of the Company or any other obligation binding on the Company other than the SEESA Deed and the SEESA Payments Deed, the provisions of the Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company.
- 1.4.2 For the avoidance of doubt, all of the parties bound by the Deed acknowledge that the Top Up Retrenchment Benefit Claims are not intended to rank in priority above ordinary unsecured claims in a winding up of the Company, even if a court should so determine and notwithstanding the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's



order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7).

### **1.5 Business Days**

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

### **1.6 Successors and Assigns**

The obligations and liabilities imposed and rights and benefits conferred on the parties under the Deed shall be binding upon and enure in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

## **2 COMMENCEMENT OF THIS DEED**

### **2.1 Operative Date**

Subject to Clause 2.2, this Deed shall take effect on the Effective Date.

### **2.2 Interim Effect**

Insofar as a person would be bound by the Deed if it had already been executed, the person must not, at any time on or after the Section 439C Resolution, but before the Deed is executed:

- 2.2.1 do anything inconsistent with the Deed except with the leave of the Court; or
- 2.2.2 do any of the following:
  - 2.2.2.1 make an application for an order to wind up the Company;
  - 2.2.2.2 proceed with such an application made before the Deed became binding on the person;
  - 2.2.2.3 begin or proceed with a proceeding against the Company or in relation to any of its property except with the leave of the Court and in accordance with such terms (if any) as the Court imposes; or



- 2.2.2.4 begin or proceed with enforcement process in relation to property of the Company except with the leave of the Court and in accordance with such terms (if any) as the Court imposes.

### **3 PURPOSE AND OBJECTS**

The purposes and objects underlying this Deed are to provide for the business, property and affairs of the Company to be administered in a way that:

#### **3.1 Maximum Return**

provides the maximum possible return for the Deed Creditors from the orderly sale and realisation of assets of the Company;

#### **3.2 No Compromise**

does not compromise any Deed Creditor's debts;

#### **3.3 No Crystallisation of Domestic Terminal Lessors' Rights**

may avoid crystallisation of Domestic Terminal Lessors' rights to terminate Domestic Terminal Leases;

#### **3.4 Moratorium**

provides for a moratorium on all Deed Creditors taking action against the Company;

#### **3.5 Variations**

provides for subsequent meetings of Deed Creditors to consider variations to the provisions of the Deed;

#### **3.6 Better Return than Winding-up**

results in a better return for the Deed Creditors of the Company than would result from an immediate winding-up of the Company;

#### **3.7 Commercial Resolution**

facilitates a commercial resolution to the financial difficulties of the Company without unnecessary impediment or legal dispute; and

#### **3.8 Due Regard to Court Orders and Directions**

has due regard to any orders or directions made by the Court as to how Part 5.3A of the Act is to operate in relation to the Company,

save that the parties bound by the Deed acknowledge that the Top Up Retrenchment Benefit Claims are not intended to rank in priority above ordinary unsecured claims in a winding up of the Company, even if a court should so determine and notwithstanding the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7); and

### **3.9 Pooling**

as a result of the carriage of the Pooling Resolution, provides for Pooling.

## **4 MORATORIUM CREATED BY THIS DEED**

### **4.1 This Deed Binds All Persons**

Subject to the rights of any Secured Creditor pursuant to Section 444D(2) of the Act or any Owner or Lessor pursuant to Section 444D(3) of the Act, this Deed binds:

- 4.1.1 in accordance with Section 444D(1) of the Act, all Deed Creditors; and
- 4.1.2 in accordance with Section 444G of the Act, the Company, its Officers and Members and the Deed Administrators.

### **4.2 Restrictions on Persons Bound by this Deed**

During the Deed Period, without the Deed Administrators' prior written consent, a Deed Creditor shall not in relation to its Claim:

- 4.2.1 make an application for an order to wind up the Company;
- 4.2.2 proceed with any such application made before this Deed became binding on the Deed Creditor;
- 4.2.3 begin or continue any proceeding against the Company or in relation to any of its property except with the leave of the Court and in accordance with such terms (if any) as the Court imposes;
- 4.2.4 begin or continue with any Enforcement Process in relation to the property of the Company except with leave of the Court and in accordance with such terms (if any) as the Court imposes;





4.2.5 take any action whatsoever to seek to recover any part of its Claim other than pursuant to the Deed; or

4.2.6 commence or take any further step in any arbitration against the Company or to which the Company is a party.

#### **4.3 Deed Administrators Not Liable**

The Deed Administrators are not liable to an action or other proceeding for damages in respect of a refusal to give an approval or consent for the purposes of this moratorium.

#### **4.4 No Effect on Rights of Secured Creditors**

Nothing in the Deed shall affect in any way and at any time the rights of the Secured Creditors in relation to the enforcement of their Securities during the Deed Period or their interests in the assets of the Company over which they have Security.

#### **4.5 No Effect on Rights of Deed Administrators to Limit Secured Creditors**

Nothing in the Deed shall affect in any way the Deed Administrators' rights to limit the Secured Creditors in relation to the enforcement of their Securities or their interests in the assets of the Company over which they have Security.

#### **4.6 No Release**

The Deed does not release the Company from any Claims, except to the extent (if any) provided for in any subsequent variation to the Deed which may be approved by Deed Creditors at a meeting of creditors convened under Section 445F of the Act ~~(as contemplated by Clause 18.4).~~ [The deletion is due to the deletion of Clause 18.4 from the amended DOCA.]

### **5 DEED ADMINISTRATORS**

#### **5.1 Acceptance of Appointment**

The Deed Administrators:

5.1.1 accept the appointment as administrators of the Deed; and

5.1.2 agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or



are removed from office in accordance with the Deed or the Act.

## **5.2 Role of Deed Administrators**

The Deed shall be administered by the Deed Administrators who shall have the powers, functions and duties conferred on them by this Deed and the Act. Without limiting the foregoing, during the Deed Period, the Deed Administrators:

- 5.2.1 have control of the Company's business, property and affairs;
- 5.2.2 may carry on that business and manage that property and those affairs;
- 5.2.3 may terminate or dispose of all or part of that business and may dispose of any of that property or any other; and
- 5.2.4 may perform any function and exercise any power that the Company or any of its Officers could perform or exercise if the Company were not subject to the Deed;
- 5.2.5 may sell or dispose of shares in the Company; ~~and~~
- 5.2.6 may transfer assets or novate liabilities from the Company to another Ansett Group Company (or vice versa) for the purpose of maximising the proceeds of sale of the Company's assets or for maximising the return to Deed Creditors; and
- 5.2.7 will effect Pooling.

## **6 DEED ADMINISTRATORS ACT AS COMPANY'S AGENT**

In performing the functions or exercising the powers conferred by the Deed, and carrying out the duties arising under the Deed, the Deed Administrators shall act as agent for and on behalf of the Company.

## **7 POWERS OF OTHER OFFICERS SUSPENDED**

### **7.1 No Exercise of Power as Officer of Company Without Consent**

While the Company is subject to the Deed, a person (other than the Deed Administrators) cannot perform or exercise and must not purport to perform or exercise a function or power as an Officer of the Company except with the Deed Administrators' prior written approval.



## **7.2 No Resolutions by Company's Directors Without Consent**

For the avoidance of doubt, the directors of the Company shall not pass a resolution to place the Company into voluntary administration or take any step to wind it up except with the Deed Administrators' prior written approval.

## **8 DEED ADMINISTRATORS MAY INVESTIGATE AFFAIRS**

The Deed Administrators may investigate the Company's business, property, affairs and financial circumstances and may report the results of their investigations to ASIC and the Deed Creditors.

## **9 DEED ADMINISTRATORS' RIGHT TO COMPANY'S BOOKS**

### **9.1 Deed Administrators' Rights to Company's Books**

A person is not entitled as against the Deed Administrators:

- 9.1.1 to obtain possession of books of the Company; or
- 9.1.2 to claim or enforce a lien on such books, but such a lien is not otherwise prejudiced.

### **9.2 Secured Creditors' and Secured Finance Lease Creditors' Rights to Records**

Notwithstanding the effect of Clause 9.1, a Secured Creditor or a Secured Finance Lease Creditor is entitled as against the Deed Administrators to possession of all the technical records for an aircraft, engine or part that is the subject of such Secured Creditor's or Secured Finance Lease Creditor's Security upon enforcement of that Security.

## **10 TRANSFER OF SHARES**

During the Deed Period, a Member shall not transfer any shares owned by it in the Company except with the Deed Administrators' prior written approval.

## **11 ACKNOWLEDGMENTS AND AGREEMENTS OF OWNERS AND LESSORS**

### **11.1 Acknowledgements**

Each Owner and Lessor bound by the Deed acknowledges and agrees that:

- 11.1.1 the Voluntary Administrators have not, during the Voluntary Administration Period or prior to or as at the



Effective Date, adopted, ratified or become liable to the Lessors under any Lease with the Lessors;

- 11.1.2 the Deed Administrators shall not adopt, ratify or become liable to the Lessors under any Lease with the Lessors; and
- 11.1.3 it shall use its best endeavours to mitigate any loss and damage suffered by it.

## **11.2 Voluntary Administrators Not Personally Bound**

- 11.2.1 The Voluntary Administrators have not ratified, adopted or in any other manner become bound under, or become liable to any Lessor under, any Lease by virtue of:

- 11.2.1.1 any discussions or correspondence they may have had or entered into with any Lessor; or
- 11.2.1.2 the use, occupation or possession of any Premises or Equipment by the Company,

during the Voluntary Administration Period or prior to or as at the Effective Date.

- 11.2.2 For the avoidance of doubt, nothing in Clause 11.2.1 is intended to avoid the Voluntary Administrators' liability under Sections 443A or 443B of the Act for the payment of rent or other amounts payable in respect of a Lease.

## **11.3 Owners and Lessors**

The Deed does not affect a possessory right that an Owner or Lessor of Real Property has in relation to that Real Property except so far as:

- 11.3.1 the Court grants any equitable relief;
- 11.3.2 the Deed so provides in relation to that Owner or Lessor who voted in favour of the Section 439C Resolution; or
- 11.3.3 a Court orders under Section 444F(4) of the Act or otherwise.

## **11.4 Deed Administrators Rights Not Limited**

Nothing in the Deed affects or limits in any way or at any time the rights of the Deed Administrators to:



- 11.4.1 oppose any attempt by a Secured Creditor, Owner or Lessor to enforce, realise or otherwise deal with its Security, Real Property or property as the case may be, at common law or under the Act; or
- 11.4.2 to seek relief from the Court pursuant to Section 444F of the Act or otherwise.

## **12 SALE AND REALISATION OF ASSETS**

### **12.1 Sale at Best Price Reasonably Obtainable**

The Deed Administrators shall take reasonable care and endeavour to sell or otherwise realise all property, assets and rights of the Company for the best price that is reasonably obtainable having regard to Section 442C of the Act and the circumstances existing when those assets are sold and having regard to the diminution of the Company's liabilities in general and a reduction of payments to Participating Creditors in particular.

### **12.2 Further Assurances**

The Company and each person bound by the Deed shall do all things and sign all documents required by the Deed Administrators to effect, ratify and perfect any transfer of assets and liabilities of the Company.

### **12.3 No Disposal of Fixed Charge Assets or Floating Charge Assets Without Prior Consent**

The Deed Administrators and the Company shall not sell or dispose of:

- 12.3.1 Fixed Charge Assets without the prior consent of the Secured Creditor who holds the relevant fixed charge; or
- 12.3.2 Floating Charge Assets without the prior consent of the Secured Creditor who holds the relevant floating charge other than in the ordinary course of business.

For the purposes of the Deed, the Deed Administrators and the Company acknowledge that a sale of any part of the business of the Company to a third party purchaser is not a sale in the ordinary course of the Company's business.

## **13 POSSIBLE POOLING**

All persons bound by the Deed acknowledge that:



### 13.1 **Obligation to take Reasonable Steps to Pool**

The Voluntary Administrators ~~are~~ were required, pursuant to the terms of the Air New Zealand MOU and the SEESA Deed, to take all reasonable steps to propose and recommend that each Ansett Group Company shall seek to pool all of the assets and liabilities of the Ansett Group, so that all Ansett Group Companies are treated as one company; and

### 13.2 **Pooling Meeting of Deed Creditors**

The Deed Administrators ~~shall convene~~ convened the Pooling Meeting, ~~at which meeting the Pooling Resolution was carried a further meeting of Deed Creditors to consider a variation to the Deed which shall include a regime for the pooling of all assets and liabilities.~~

### 13.3 **Deed Administrators will effect Pooling**

As a result of the carriage of the Pooling Resolution the Deed Administrators will effect Pooling.

## 14 **-This Clause has been deleted PROOFS OF DEBT ASCERTAINMENT OF CLAIMS**

~~The rules and mechanisms to be applied to proofs of debt and the ascertainment of Claims shall be similar to the rules and mechanisms for such things prescribed by the Act in the context of the liquidation of a company, amended or adjusted as appropriate to make the process as cost effective as possible.~~

## 15 **RETENTION OF TITLE CLAIMS**

### 15.1 **Provisions of this Clause to Apply**

- 15.1.1 The provisions of this Clause apply to the determination of ROT Claims and ROT Claim Amounts.
- 15.1.2 Notwithstanding any other provisions in this Clause 15, the Deed Administrators may in their sole and absolute discretions resolve any ROT Claims as they see fit provided that it is in the commercial interest of the Company for the Deed Administrators to do so.
- 15.1.3 Nothing in the Deed affects or limits in anyway the right or rights of the Deed Administrators to oppose any attempt by a ROT Creditor to enforce, realise or otherwise deal with its property at common law or under



the Act or to seek relief from the Court pursuant to Section 444F of the Act.

## **15.2 Advertisement**

- 15.2.1 After the Effective Date the Deed Administrators may, if they deem it necessary to do so, advertise once in newspapers circulating generally in each State and Territory of Australia and on the Administrators' Website requiring each person claiming to have a ROT Claim to deliver to the Deed Administrators within seven days of the date of the advertisement a notice in writing of that person's ROT Claim (the "ROT Notice"). The ROT Notice shall contain particulars of the ROT Claim and the estimated ROT Claim Amount, including a statement of account and shall specify the documents by which that statement can be substantiated, and the person shall bear all costs and expenses incurred by it in relation to the ROT Notice.
- 15.2.2 If a person does not deliver to the Deed Administrators a ROT Notice prior to the expiration of the period specified in the advertisement referred to in Clause 15.2.1, that person shall forever be barred from asserting a ROT Claim, but without prejudice to the right of that person to have a Claim;
- 15.2.3 Each person bound by this Deed acknowledges and agrees that the Deed Administrators may in their sole and absolute discretion determine that:
  - 15.2.3.1 the terms and conditions of a ROT Creditor's terms of trade are inconsistent with retention of ownership or an interest in Goods by that ROT Creditor;
  - 15.2.3.2 the terms and conditions of a ROT Creditor's terms of trade do not retain ownership or an interest in Goods by that ROT Creditor; or
  - 15.2.3.3 a ROT Creditor has in its dealings with the Company acted inconsistently with retention of ownership or an interest by that ROT Creditor.



### **15.3 Evidence**

Each ROT Creditor shall provide the Deed Administrators with such evidence or information in support of its ROT Claim and its ROT Claim Amount as the Deed Administrators may reasonably require, and each ROT Creditor shall be responsible for obtaining all such evidence and information and shall bear all costs and expenses incurred by it in doing so. The Deed Administrators may provide each ROT Creditor with such information as the ROT Creditor may reasonably require in relation to its ROT Claim and ROT Claim Amount, provided such information is readily available to the Deed Administrators.

### **15.4 Opinion on Validity**

The Deed Administrators shall form an opinion on the admissibility and validity of the ROT Claim and the extent of the Priority ROT Amount of each ROT Creditor to the extent they are able to do so, and in seeking to form that opinion the Deed Administrators shall have regard to the appropriate principles of law.

### **15.5 Notification of ROT Claim Amount**

The Deed Administrators shall (without prejudice to the Voluntary Administrators' and Deed Administrators' rights) notify each ROT Creditor in writing of the Deed Administrators' opinion on the ROT Claim and the Priority ROT Amount. The Deed Administrators' opinion on the validity of a ROT Claim and a Priority ROT Amount pursuant to this Clause is without prejudice to any rights of the Voluntary Administrators and Deed Administrators.

### **15.6 Dispute and Mediation**

If a ROT Creditor disputes the Deed Administrators' opinion on the Priority ROT Amount, the ROT Creditor may, within fourteen days of being advised of the Deed Administrators' opinion on the Priority ROT Amount, give a notice in writing of dispute ("a ROT Dispute Notice") to the Deed Administrators, in which case the Deed Administrators and the ROT Creditor shall have the ROT Claim and the Priority ROT Amount referred to mediation by a mediator agreed by the Deed Administrators and the ROT Creditor in an endeavour to resolve the dispute.

### **15.7 Mediation Conduct Agreement**

Each ROT Creditor giving a ROT Dispute Notice ("a Disputing ROT Creditor") shall execute an agreement governing the conduct of the mediation process in the form provided by the Deed Administrators, and each Disputing ROT Creditor shall perform all obligations





under and be bound by the provisions of that agreement. The Deed Administrators shall also execute an agreement in the form provided to Disputing ROT Creditors by the Deed Administrators in respect of each Disputing ROT Creditor and shall perform all obligations under and be bound by the provisions of those agreements.

#### **15.8 Professional privilege**

The principles of legal professional privilege shall apply to any mediation and be preserved for the benefit of the parties to the mediation, and no act or other conduct on the part of a party in the course of the mediation shall be taken as, or be asserted or relied upon by the other party to the mediation as being, a waiver of any legal professional privilege that would otherwise be available to the first party.

#### **15.9 Mediation on without prejudice basis**

All discussion and negotiation during the mediation shall be on a "without prejudice" basis unless such privilege is waived by the parties by agreement, either generally or in relation to any aspect, or agreement is reached. Neither of the parties to the mediation may refer in any subsequent proceedings to any such privileged discussions and negotiations or require the mediator to do so and no party may have access to any of the Mediator's notes or call the Mediator as a witness in any proceedings.

#### **15.10 Mediation Resolving Dispute**

If mediation results in an agreement being reached between the Deed Administrators and a Disputing ROT Creditor in respect of the ROT Claim and the Priority ROT Amount of the Disputing ROT Creditor, all persons bound by this Deed are bound by that agreement. If the agreement provides that the whole or any part of the ROT Claim is or is deemed to be valid in respect of a ROT Claim Amount, the valid portion shall constitute a Priority ROT Amount to be included as a Priority Creditor Amount. If the agreement provides that the whole or any part of the ROT Claim is or is deemed to be invalid, the invalid part of the ROT Claim Amount shall rank as an ordinary unsecured Claim.

#### **15.11 Mediation not resolving Dispute**

If the Mediator declares that the mediation has not resolved the dispute the Deed Administrator shall be deemed to have not admitted the Disputing ROT Creditor's ROT Claim, and the Disputing ROT Creditor may apply to the Court for relief.



### **15.12 Distribution where no notice of dispute**

If a ROT Creditor does not give a Dispute Notice to the Deed Administrator within the time provided in Clause 15.6, that ROT Creditor shall be bound by the Deed Administrators' opinion on the Priority ROT Amount of that ROT Creditor, and the balance owing to each ROT Creditor in respect of their ROT Claim shall rank as an ordinary unsecured Claim.

## **16 TOP UP RETRENCHMENT BENEFIT CLAIMS**

### **16.1 No Priority**

16.1.1 All Top Up Retrenchment Benefit Claims by trustees of the Superannuation Funds shall be treated as ordinary unsecured Claims, and shall not constitute Priority Creditor Amounts for the purposes of this Deed, even if a court determines that all or any of such claims rank to priority in a liquidation of the Company.

16.1.2 For the avoidance of doubt, all persons bound by the Deed acknowledge that the provisions of Clauses 16.1.1 and 18.3 are intended to govern the treatment of Top Up Retrenchment Benefit Claims under the Deed, notwithstanding:

16.1.2.1 the provisions of the SEESA Deed, the SEESA Payments Deed and the terms of the Court's order in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7); and

16.1.2.2 that a court may determine that Top Up Retrenchment Benefit Claims rank to priority in a winding up of the Company as referred to in Clause 16.1.1.

### **16.2 Deed Administrators' Consent**

For the avoidance of doubt, the Deed Administrators consent to the Supreme Court of Victoria determining whether the provisions of Clause 16.1 are oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more creditors of the Company (in their capacity as Top Up Retrenchment Benefit Creditors) and should be severed from the Deed in accordance with Clause 29 or pursuant to Section 447A of the Act.



## 17 AIR NEW ZEALAND MOU

17.1 All parties bound by the Deed acknowledge that pursuant to the terms of Clause 18 of the Air New Zealand MOU, the Voluntary Administrators agreed as follows:

"18 The Voluntary Administrators will take all reasonable steps to propose and recommend (as the case may be) that each company in the Ansett Group enters into a Deed of Company Arrangement which will:

18.1 acknowledge and incorporate the terms of the Memorandum of Understanding or if in existence the Proposed Agreement; ..."

17.2 All parties bound by the Deed acknowledge that:

17.2.1 the Deed incorporates by reference the releases of Air New Zealand and the Air New Zealand Directors in the same terms as the Air New Zealand MOU; and

17.2.2 in accordance with the Air New Zealand MOU, the Deed Administrators may, after the Deed is entered into, request the Air New Zealand Group to sign and deliver to the Deed Administrators a transfer in blank of all shares held by the Air New Zealand Group in the Ansett Group for nominal value together with the share scrip for those shares.

## 18 SPECIFIC REALISATIONS FOR THE COMPANY—PAYMENT OF CLAIMS AND POOLING OF THE COMPANY'S ASSETS AND LIABILITIES INTO AAL

### 18.1 ~~Funds for Distribution to Deed Creditors~~

Until such time as the transfers referred to in Clause 18.1A have been completed, the~~The~~ Company shall hold for its own benefit:

18.1.1 the proceeds from the sale of any assets owned by it;

18.1.2 the refunds of stamp duty received on termination or surrender of any lease held by it; and

18.1.3 the proceeds from the realisation of any of its other Assets, including proceedings,

which shall constitute the **Distribution Amounts**.



**18.1A Transfer of Distribution Amounts and all other Company Assets to AAL**

The Deed Administrators will cause the Company to transfer all of its assets (including the Distribution Amounts) to AAL.

**18.1B Consent to transfer of Assets**

Each person bound by this Deed, in particular the Deed Creditors and AAL, consents to and will do all such things and execute all such documents required by the Deed Administrators to effect, ratify or perfect the transfer of assets to AAL referred to in Clause 18.1A.

**18.1C Deed Creditors entitled to prove in administration of AAL**

Each person bound by this Deed acknowledges that the creditors of AAL may in future resolve to vary the AAL DOCA so as to incorporate provisions of the AAL DOCA permitting each Deed Creditor (other than Excluded Creditors) to lodge in the administration of AAL a proof of debt in respect of their Claim for the same amount and with the same priority that the Claim would have enjoyed in the administration of the Company immediately prior to the passing of the Pooling Resolution, subject only to any future provisions of the AAL DOCA concerning Duplicated Claims.

**18.1D Releases**

Each person bound by this Deed, upon completion of the transfers referred to in Clause 18.1A, irrevocably releases and discharges the Company and the Deed Administrators in their capacities as deed administrators of the Company from any and all liability whatsoever in relation to any Claim, including any liability arising in connection with the Company having provided a guarantee or indemnity or otherwise having become jointly or severally liable in relation to the obligations of any other Ansett Group Company.

**18.1E Plea in bar**

This Deed may be pleaded by the Company and the Deed Administrators in their capacities as deed administrators of the Company in absolute bar to any demand, action, suit, claim or proceeding (including set offs, counterclaims, cross-claims and the like) in relation to any Claim.

## 18.2 ~~This clause has been deleted~~ **Payment of Distribution Amounts**

~~The Distribution Amounts shall be applied in payment of the Voluntary Administrators, the Deed Administrators and the Participating Creditors of the Company as follows:~~

~~18.2.1 firstly, the Voluntary Administrators and the Deed Administrators in relation to any amounts owing to them and unpaid pursuant to the terms of the Deed, to the extent they would be afforded priority in a winding up of the Company;~~

~~18.2.1 secondly, the Secured Creditors of the Company, to the extent that their Security is valid;~~

~~18.2.1 thirdly, Priority ROT Creditors of the Company in relation to their Priority ROT Amount;~~

~~18.2.1 fourthly, in the order of priority set out in section 556:~~

~~18.2.1.1 Employees of the Company;~~

~~18.2.1.1 the SEESA Payer in accordance with the terms of the SEESA Deed and the SEESA Payments Deed;~~

~~18.2.1.1 any trustee of a Superannuation Fund that is a Priority Creditor, to the extent of its Priority Creditor Amount (but, for the avoidance of doubt, excluding the amount of any Top Up Retrenchment Benefit Claim that trustee may have); and~~

~~18.2.1.1 any other Participating Creditors of the Company entitled to a priority under section 556 of the Act as if the Company were to be wound up; and~~

~~18.2.1 fifthly (but subject to Clause 18.12), other Participating Creditors of the Company (including Top Up Retrenchment Benefit Creditors to the extent of their Top Up Retrenchment Benefit Claims) on a pro rata basis,~~

~~in the amounts and on the dates determined by the Deed Administrators in their absolute discretion.~~

## 18.3 **Inconsistency with SEESA Deed or SEESA Payments Deed**

For the avoidance of doubt, if there is any apparent inconsistency between the Deed and the SEESA Deed or the SEESA Payments Deed concerning the priority of repayment to the SEESA Payer, the terms of the SEESA Deed and the SEESA Payments Deed shall prevail to the extent of the inconsistency, and all persons bound by

this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company, save that the SEESA Deed and the SEESA Payments Deed did not and were not intended to deal with any matter or thing other than the SEESA Payments in general and were not intended to and did not deal with the priority of the Top Up Retrenchment Benefit Claims.

#### **18.4 This clause has been deleted Meeting of Creditors**

~~When the Deed Administrators have sold or otherwise realised sufficient assets so that they are able to make an accurate estimation of the amounts to be paid to Participating Creditors in accordance with the priority regime set out in Clause 18 and prior to the distribution of any money to Participating Creditors (other than Priority Creditors) in accordance with Clause 18.2.5, the Deed Administrators shall convene a meeting of creditors under Section 445F of the Act to consider:~~

~~18.4.1 any proposed variation to the Deed, including the incorporation in the Deed of provisions for releasing Claims of Deed Creditors less their Entitlements and the pooling of assets and liabilities; or~~

~~18.4.1 in the alternative, a resolution to terminate this Deed and wind up the Company.~~

~~For the purposes of such a meeting, the Deed Administrators shall advertise nationally and make available to the Deed Creditors on the Administrators' Website:~~

~~18.4.1 particulars of the proposed variation; and~~

~~18.4.1 such information which would be sent to Deed Creditors as if the meeting were a Second Meeting of Creditors under Section 439A of the Act.~~

#### **18.5 Further Meetings of Creditors**

~~18.5.1 Without limiting the operation of Clause 18.4, the Deed Administrators shall convene a further meeting of Deed Creditors within six months of the date of the Reconvened Meeting.~~

~~18.5.2 At such meeting, and each and any subsequent meetings of creditors convened pursuant to Section 445F, the relevant notice of meeting shall (as an alternative to any other resolutions set out in the notice involving the continuation and/or variation of this Deed) set out a~~



resolution requiring the termination of this Deed and the winding up of the Company.

#### **18.6 Deed Administrators' Discretion**

~~18.6.1 The Entitlement of a Deed Creditor shall be to payment of the portion of that Deed Creditor's Claim as the Deed Administrators in their absolute discretion determine that they are able to pay in accordance with Clauses 18.2.~~

~~18.6.2 No Deed Creditor shall be entitled to receive more than its Entitlement. If it does, it must repay any amount paid to it in excess of its Entitlement ("Excess") to the Deed Administrators as soon as practicable (but no later than 7 days) after becoming aware that the Excess has been paid to it.~~

#### **18.7 Certificate Final and Binding**

~~A certificate signed by the Deed Administrators that an amount paid by it to a Deed Creditor constitutes an Entitlement for the purposes of the Deed shall, in the absence of manifest error, be final and conclusive and binding on the Deed Creditor.~~

#### **18.8 Unclaimed Distributions**

~~The Entitlement of any Deed Creditor which remains unclaimed after a reasonable period of time (to be determined by the Deed Administrators), may be cancelled by the Deed Administrators and remitted to ASIC to be dealt with under Part 9.7 of the Act.~~

### **19 MANAGEMENT OF COMPANY**

The Deed Administrators shall retain day-to-day management and control of the Company until the Termination Date to the exclusion of the Company's directors.

### **20 POWERS OF ADMINISTRATORS**

#### **20.1 General Powers**

The Deed Administrators shall be entitled in their capacity as Deed Administrators or any other capacity to exercise all the rights, powers, privileges, authorities and discretions which are ordinarily exercised by or vest in a trustee of a fixed trust and which are conferred by the Company's constitution or otherwise by law on the Company's directors to the exclusion of the Company's directors, provided that the Deed Administrators shall not be responsible for



such statutory obligations as may continue to be imposed on the directors of the Company during the Deed Period.

## **20.2 Specific Powers**

Without limiting Clause 20.1, the Deed Administrators shall have the following powers:

- 20.2.1 the powers conferred on the Members of the Company to the exclusion of those Members;
- 20.2.2 the powers conferred on the directors of the Company to the exclusion of the directors of the Company;
- 20.2.3 all of the powers set out in paragraph 2 of Schedule 8A of the Regulations;
- 20.2.4 the power to alter share capital;
- 20.2.5 the power to issue shares;
- 20.2.6 the power to vary class rights attaching to shares;
- 20.2.7 the power to change the Company's name;
- 20.2.8 the power to factor the debts of the Company;
- 20.2.9 the power to reduce the Company's capital;
- 20.2.10 the power to alter the Company's constitution;
- 20.2.11 the power to convene meetings of Members of the Company;
- 20.2.12 the power to resolve any dispute of any nature commercially;
- 20.2.13 in relation to the property, assets and rights of the Company, all the powers of a natural person who is the absolute and beneficial owner of such property, assets and rights, including (without limitation) the power to sell or otherwise realise any such property, assets or rights pursuant to a sale process conducted by the Deed Administrators;
- 20.2.14 the power to assign and transfer property, assets and rights, and novate liabilities, of the Company to another Ansett Group Company for the purpose of maximising the sale of assets or for maximising the return to Deed Creditors;





- 20.2.15 the power to accept and take an assignment or transfer of property, assets and rights and to accept novation of liabilities from another Ansett Group Company;
- 20.2.16 the power to control the Company's business, property and affairs;
- 20.2.17 the power to carry on that business and manage that property and those affairs;
- 20.2.18 the power to terminate or dispose of all or part of that business and may dispose of any of that property or any other; and
- 20.2.19 the power to perform any function and exercise any power that the Company or any of its Officers could perform or exercise if the Company were not subject to the Deed;
- 20.2.20 the power to sell or dispose of shares in the Company; and
- 20.2.21 the power to agree to incur and treat a payment obligation arising during the Deed Period in relation to the administration of the Deed, or the Deed Administrators acting as Deed Administrators, including for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of, or in the possession of, the Company, as falling within the indemnity contained in Clause 24.1.

### **20.3 Power of Sale**

In exercising any power of sale, the Deed Administrators must have regard to Section 442C of the Act and take reasonable care and endeavour to sell the relevant asset for the best price that is reasonably obtainable, having regard to the circumstances existing when the asset is sold and having regard to the diminution of the Company's liabilities in general and any reduction in payments to Participating Creditors in particular.

### **20.4 Power to Engage Solicitors and Consultants**

The Deed Administrators shall have power to engage solicitors and consultants, and the Company or AAL shall pay all costs of any solicitors and consultants engaged by the Deed Administrators.



## **20.5 Deed Administrators Acting as Company's Agent**

During the Deed Period the Deed Administrators are acting as the agents of the Company and accept no personal liability for any acts, matters or omissions relating to things done or not done in that capacity.

## **21 TERMINATION OF DEED**

### **21.1 Termination of the Deed Period**

This Deed shall terminate on the Termination Date.

### **21.2 Termination of this Deed by Court Order and Creditors' Resolution**

This Deed terminates:

- 21.2.1 upon Deed Creditors passing a resolution at a meeting of Deed Creditors to terminate the Deed;
- 21.2.2 when a Court makes an order under Section 445D of the Act; or
- 21.2.3 if the Company has paid all of the Deed Creditors' Entitlements, on the 14th day after the Deed Administrators have advertised notices of that fact once in newspapers circulating generally in each State and Territory of Australia and on the Administrators' Website,

whichever happens first.

### **21.3 Deed Administrators to call meeting of Deed Creditors**

The Deed Administrators shall call a meeting of Deed Creditors (by advertising nationally and by posting on the Administrators' Websites) to consider termination of the Deed if:

- 21.3.1 the Deed Administrators consider (in their sole discretion) that it is no longer practicable or reasonable to continue to implement the Deed; or
- 21.3.2 an order is made by a Court requiring the Deed Administrators to call a meeting of Deed Creditors.



#### **21.4 Previous operation of this Deed preserved**

In accordance with Section 445H of the Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

#### **21.5 Deregistration**

Each person bound by this Deed acknowledges that following Pooling the Deed Administrators intend to apply to ASIC to deregister the Company.

### **22 MEMBERS BOUND BY DEED**

Members consent to the Deed and appoint the Deed Administrators as their proxies or attorneys to vote and pass resolutions to give effect to the terms of the Deed.

### **23 ADMINISTRATORS' REMUNERATION AND COSTS**

#### **23.1 Voluntary Administrators' Remuneration**

The Voluntary Administrators shall be:

23.1.1 remunerated by the Company or AAL in respect of any work done by the Voluntary Administrators, and any partner or employee of the Voluntary Administrators acting on behalf of the Voluntary Administrators, in connection with the performance of their duties, obligations and responsibilities as administrators of the Company at the scale of rates charged from time to time for the provision of services during the period of the Company's administration or as otherwise agreed by the Committee of Creditors and the Voluntary Administrators; and

23.1.2 reimbursed by the Company or AAL in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities as administrator of the Company.

#### **23.2 Deed Administrators' Remuneration**

The Deed Administrators shall be:

23.2.1 remunerated by the Company or AAL in respect of any work done by the Deed Administrators, and any partner or employee of the Deed Administrators acting on





behalf of the Deed Administrators, in connection with the performance of their duties, obligations and responsibilities under the Deed at the scale of rates charged from time to time for the provision of services during the period of the Company's administration or such greater sum as agreed by the Committee of Creditors and the Deed Administrators pursuant to Clause 25.2.4; and

- 23.2.2 reimbursed by the Company or AAL in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities under this Deed.

## **24 VOLUNTARY AND DEED ADMINISTRATORS' INDEMNITY**

### **24.1 Indemnity**

The Voluntary Administrators and the Deed Administrators shall be indemnified out of the assets of the Company and AAL for:

- 24.1.1 all loss and damage suffered by them as a consequence of or arising out of the Company or AAL failing to comply with its obligations under Clauses 23.1 and 23.2;
- 24.1.2 all debts payable, liabilities incurred by and claims against the Voluntary Administrators (present or future, certain or contingent, ascertained or sounding only in damages) in relation to the administration of the Company, including any amounts payable by the Voluntary Administrators by virtue of Section 443A of the Act or by virtue of them having agreed to treat a payment obligation as if it were a debt arising under Section 443A of the Act; and
- 24.1.3 all debts payable, liabilities incurred by and claims against the Deed Administrators (present or future, certain or contingent, ascertained or sounding only in damages) in relation to the administration of the Deed or their acting as Deed Administrators, including any amounts held by a court to be or agreed or accepted by the Deed Administrators as being payable by the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of, or in the possession of, the Company; and
- 24.1.4 all other costs, expenses, losses and liabilities incurred or suffered by them in performing any of their functions,



duties or obligations, or exercising any of their powers, under or in accordance the Act, any other applicable law, or the Deed in connection with their administration of the Company.

#### **24.2 Indemnity Not Affected**

The indemnity under Clause 24.1 shall not affect or prejudice any rights that the Voluntary Administrators or Deed Administrators may have against the Company, AAL or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Voluntary Administrators or the Deed Administrators of or incidental to the exercise or performance of any of the powers or authorities conferred on the Voluntary Administrators or the Deed Administrators at law, by this Deed or otherwise.

#### **24.3 Continuing Indemnity**

Each indemnity in this Clause is a continuing indemnity and shall enure for the benefit of the Voluntary Administrators and the Deed Administrators' Legal Personal Representatives notwithstanding:

- 24.3.1 cessation of the Voluntary Administration Period or the Deed Period;
- 24.3.2 the termination of this Deed for any reason whatsoever; and
- 24.3.3 removal of the Deed Administrators and appointment of a new administrator of the Deed,

and shall not be affected or limited in any way by any defect or invalidity in the appointment of either the Voluntary Administrators or the Deed Administrators. The indemnity shall extend to cover all actions, suits, proceedings, accounts, liabilities, claims and demands arising out of any defect in the appointment of the Voluntary Administrators or the Deed Administrators or any defect in the approval or execution of this Deed or otherwise.

For the avoidance of doubt, the Voluntary Administrators and the Deed Administrators acknowledge that this Deed and any drafts of it published on the Administrators' Website does not and never did contain any provision indemnifying the solicitors for the Voluntary Administrators or the Deed Administrators.

#### **24.4 Section 451C**

All persons bound by this Deed acknowledge and agree that a payment made, transaction entered into or any other act or thing



done in good faith by, or with the consent of, the Voluntary Administrators:

24.4.1 is valid and effectual for the purposes of the Act; and

24.4.2 is not liable to be set aside in a winding up of the Company.

## **25 COMMITTEE OF CREDITORS**

### **25.1 Composition of Committee**

25.1.1 There shall be a Committee of Deed Creditors comprising those persons elected to the committee of creditors at the meeting of creditors of the Company convened by the Voluntary Administrators pursuant to Section 436E save for the Air New Zealand and Qantas representatives and any other persons who have resigned or shall resign from the committee.

25.1.2 The representatives shall otherwise be selected from amongst the creditor groups by the Deed Administrators from those presently appointed to the committee of creditors who nominate themselves for such purpose.

### **25.2 Function**

The function of the Committee shall be:

25.2.1 to consult with the Deed Administrators about matters relating to the administration;

25.2.2 to receive and consider reports by the Deed Administrators;

25.2.3 to fix and approve the Voluntary Administrators' remuneration in accordance with the order of the Court in proceeding no. V3065 of 2001 (a copy of which is attached as Exhibit 8); and

25.2.4 to consider and if appropriate agree with the Deed Administrators (as the case may be) to increase the Deed Administrators' remuneration.

### **25.3 No Directions to Deed Administrators**

The Committee cannot give directions to the Deed Administrators.



## **25.4 Rules**

The following rules apply to the Committee:

- 25.4.1 each member of the Committee must be a Deed Creditor, an attorney of a Deed Creditor or a person otherwise authorised in writing by a Deed Creditor to be a member of the Committee;
- 25.4.2 a Deed Creditor is not entitled to have more than one representative (including the Deed Creditor himself or herself, if a natural person) on the Committee;
- 25.4.3 minutes of all resolutions and proceedings of each meeting of the Committee shall be made and entered in books to be provided from time to time for that purpose by the Deed Administrators;
- 25.4.4 if the minutes of a meeting purport to be signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Committee, the minutes are prima facie evidence of the matter contained in them;
- 25.4.5 unless the contrary is proved, the meeting is taken to have been properly convened and all proceedings taken at the meeting are taken to have been duly passed and taken; and
- 25.4.6 a corporation (being otherwise qualified for membership of the Committee) is entitled to be a member and may appoint a person to represent it on the Committee.

## **25.5 No remuneration for members of the Committee**

- 25.5.1 A member of the Committee may be entitled to be reimbursed for the reasonable out of pocket expenses incurred by him or her in attending meetings of the Committee, as may be approved from time to time by the Committee in its absolute discretion, but shall not otherwise be entitled to claim or receive from the Company, the Deed Administrators or the Deed Creditors (other than, where applicable, the member's appointer) any remuneration for acting as a member of the Committee and such reimbursement shall form part of the Deed Administrators' costs and expenses.
- 25.5.2 For the avoidance of doubt, the Deed Administrators acknowledge Clause 25.5.1, is intended to be and is an amplification of the outline of this Deed contained in the





Section 439A(4) statement dated 15 March 2002, and expressly authorises the Deed Administrators if requested by the Committee to do so to reimburse to Committee members the cost of telephone calls into the conference facilities to be established in holding meetings of the Committee.

## **26 MEETINGS OF DEED CREDITORS**

### **26.1 When Meeting may be Convened**

The Deed Administrators:

- 26.1.1 may at any time convene a meeting of the Deed Creditors; and
- 26.1.2 shall convene a meeting of Deed Creditors if so requested in writing by creditors the value of whose claims against the Company is not less than ten percent (10%) of the value of all creditors' claims against the Company.

### **26.2 Voting at Meetings**

Deed Creditors shall be entitled to vote at these meetings on the same basis as if the meeting were a second meeting of creditors under Section 439A of the Act.

### **26.3 Concurrent Meetings**

The Deed Creditors acknowledge that meetings of the creditors of the Company may be held concurrently with meetings of creditors of other Ansett Group Companies.

### **26.4 Notice of Meeting**

Written notice shall not be sent by post to Deed Creditors of any further meetings. The Notice of Meeting shall be advertised in newspapers nationally and on the Administrators' Website.

### **26.5 Conduct of Meetings**

Regulations 5.6.12 to 5.6.36A of the Regulations apply to meetings of Deed Creditors held under this Deed, as if references to "the Liquidator", "the Liquidator or Provisional Liquidator", "the Liquidator, Provisional Liquidator or Chairman" or "a Liquidator, Provisional Liquidator or Trustee for Debenture Holders", as the case may be, were references to the Deed Administrators, and with



such other modifications as are necessary to comply with the provisions of this Deed.

## **27 FORUM SHOPPING**

All persons bound by the Deed agree that any application or proceedings concerning the Deed or a Claim shall only be made to or brought in the Court, unless otherwise agreed in writing by the Deed Administrators or unless the Court does not have jurisdiction to deal with such applications or proceedings.

## **28 JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria.

## **29 SEVERANCE**

Any provision of the Deed which:

### **29.1 Court order – unfair prejudice**

the Court determines to be oppressive or unfairly prejudicial, or unfairly discriminatory against, one or more creditors of the Company; or

### **29.2 General**

is otherwise prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction,

shall, to the extent permitted by the Court or such law, be severed from the Deed and rendered ineffective so far as is possible without modifying the remaining provisions of this Deed. Where, however, the provisions of any such applicable law referred to in Clause 29.2 may be waived, they are hereby waived by persons bound by the Deed to the full extent permitted by such law to enable the Deed to constitute a valid and binding obligation enforceable according to its terms.

## **30 REPORTING**

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



the Deed Administrators consider ought to be brought to the attention of Deed Creditors.

### **31 FURTHER ASSURANCES**

All persons bound by this Deed shall exercise all such powers as are available to them do all such acts and things, sign execute and deliver all such documents and instruments and provide assistance and co-operation as may be reasonably required to give full effect to the provisions of the Deed.

### **32 LIQUIDATION**

Where:

#### **32.1 Section 445F Meeting**

at a meeting convened under Section 445F of the Act the Deed Creditors pass a resolution terminating the Deed; and

#### **32.2 No Proposed Resolution to Wind-up Required**

whether or not the notice of that meeting set out a proposed resolution that the Company be wound up,

the Deed Creditors may also resolve at the meeting that the Company be wound-up.

### **33 SECTION 513C DAY**

For the avoidance of doubt, if the Deed Creditors resolve to wind-up the Company, the winding up will be deemed to have begun or commenced on the date on which the administration of the Company began.

### **34 POWER OF ATTORNEY**

The Company hereby irrevocably appoints the Deed Administrators its attorney to the exclusion of any Ansett Group Company to exercise or refrain from exercising (in the Deed Administrators' absolute discretion) any and all of the Company's rights or powers in relation to or in connection with its right, title and interest in all the property of the Company and the Company shall make, do and provide all things and documents reasonably necessary to give proper effect to this Clause.

### **35 COMPANY NOT TO PROSECUTE**

The Company agrees not to make any demand, issue any proceedings or otherwise prosecute any action or cause of action which any way relates directly or indirectly in relation to the property of the Company without the prior consent of the Deed Administrators.

### **36 APPLICATION TO COURT**

#### **36.1 Directions**

The Deed Administrators may at any time apply to the Court for directions in relation to any particular matter arising under this Deed or about how Part 5.3A of the Act is to operate in relation to the Company.

#### **36.2 Unforeseen Circumstances**

If any circumstances arise for which this Deed does not either expressly or by necessary implication make provision for, the Deed Administrators may in their sole and absolute discretion make such provision as they think fit for the purpose of effectuating this Deed, and they may if they think fit apply to the Court for directions.

### **37 VARIATION**

The provisions of this Deed may be varied by Resolution passed at a meeting of Deed Creditors convened under Section 445F of the Act, but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

### **38 WAIVER**

The waiver by any of the persons bound by the Deed in respect of any breach by another person bound by the Deed of any of the provisions of the Deed shall not be deemed to be a waiver in respect of any other breach or of any subsequent similar breach by a person bound by the Deed and no delay or omission on the part of a person to exercise or avail itself of any rights accruing to it under the Deed shall operate as a waiver in respect of any default by another person under the Deed.

### **39 NOTICES**

All notices, requests, demands, requisitions, approvals, elections, consents or other communications ("notices") required to be given or served to or upon any of the parties pursuant to or in connection with the Deed shall be



in writing in the English language and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of transmission has been received) to the party to which such notice is given or served at the address of such party as follows:

**39.1 If to the Voluntary Administrators or the Deed Administrators:**

Address: C/- Arnold Bloch Leibler

333 Collins Street, Melbourne, Victoria, Australia

Attention: Mr Leon Zwier

Facsimile: (03) 9229 9603

**39.2 If to the Company:**

Address: C/- Arnold Bloch Leibler

333 Collins Street, Melbourne, Victoria, Australia

Attention: Mr Leon Zwier

Facsimile: (03) 9229 9603

or at such other address as the relevant party may hereafter specify for such purpose to the other parties by notice in writing. A written notice includes a notice by facsimile. Any notice given by facsimile on a day which is not a business day shall be deemed despatched on the next succeeding Business Day. Any such notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

**40 COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instruction.

**41 ACKNOWLEDGEMENT**

Each Acknowledging Ansett Group Company acknowledges and agrees in favour of each other party that it will execute a deed of company arrangement in respect of itself in the same form (mutatis mutandis) as this Deed.



**EXECUTED** as a Deed.

~~SIGNED SEALED AND DELIVERED~~ by }  
~~MARK FRANCIS XAVIER MENTHA~~ }  
~~(Voluntary Administrator) in the presence~~ }  
~~of:~~ }

~~Witness~~

~~Name of Witness~~  
~~(Print)~~

~~SIGNED SEALED AND DELIVERED~~ by }  
~~MARK ANTHONY KORDA~~ (Voluntary }  
~~Administrator) in the presence of:~~ }

~~Witness~~

~~Name of Witness~~  
~~(Print)~~

**SIGNED SEALED AND DELIVERED** by )  
**MARK FRANCIS XAVIER MENTHA** )  
**(Deed Administrator) in the presence of:** )

**Witness**

**Name of Witness**  
**(Print)**



**SIGNED SEALED AND DELIVERED** by )  
**MARK ANTHONY KORDA** (Deed )  
 Administrator) in the presence of: )  
 )

Witness

Name of Witness  
 (Print)

**EXECUTED** for and on behalf of each )  
 company named in Part 1 of Schedule 1 ).....  
 by its administrators **MARK ANTHONY** ) **Mark Anthony Korda**  
**KORDA** and **MARK FRANCIS XAVIER** )  
**MENTHA** in accordance with the )  
 Corporations Act in the presence of: ).....  
 ) **Mark Francis Xavier Mentha**  
 )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Print name of Witness



**Mark Francis Xavier Mentha**  
(Voluntary Administrator)

and

**Mark Anthony Korda**  
(Voluntary Administrator)

and

**Mark Francis Xavier Mentha**  
(Deed Administrator)

and

**Mark Anthony Korda**  
(Deed Administrator)

and

**Each Acknowledging Ansett Group Company**

and

**Ansett Australia Limited (Administrators Appointed)**  
(Company)

## **Deed of Company Arrangement**

Arnold Bloch Leibler  
Ref: LZ:FEH: 01-1201846

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