

ASX Market Announcements Office Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

19 June 2017

**GARDA Diversified Property Fund (ASX: GDF)**

**Constitution amendments for Attribution Managed Investment Trust (AMIT) regime**

The accompanying notice, which has also been placed on the GARDA Capital Group website, relates to proposed amendments to the constitution of GARDA Diversified Property Fund ARSN 104 391 273 (**GDF**).

The proposed amendments:

- are being made by GARDA Capital Limited ACN 095 039 366 (**GCL**) as the responsible entity of GDF;
- are being made in accordance with the requirements of notional subsection 601GCA of the *Corporations Act 2001* (Cth), as modified by *ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489*; and
- will enable GDF to apply the new income tax regime for managed investment trusts that was recently enacted under the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth).

Yours faithfully



Lachlan Davidson  
**Company Secretary**  
GARDA Capital Limited

Monday 19 June 2017

## **PROPOSED CONSTITUTION AMENDMENTS TO FACILITATE ADOPTION OF THE ATTRIBUTION MANAGED INVESTMENT TRUST REGIME**

### **NOTICE PURSUANT TO SECTION 601GCA(3) OF THE CORPORATIONS ACT**

GARDA Capital Limited ACN 095 039 366 (**GCL**) is the responsible entity of the GARDA Diversified Property Fund ARSN 104 391 273 (**GDF**).

GCL gives notice<sup>1</sup> that it proposes to make changes to the Constitution of GDF (**Constitution**), to provide specific clauses to allow for the application of the income tax regime for managed investment trusts that was recently enacted under the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth) (**AMIT regime**).

GDF is eligible to be an 'attribution managed investment trust' (**AMIT**), if an irrevocable election is made. GCL has not yet decided whether it will in fact make that election for GDF for the financial year ended 30 June 2017. GCL intends to make the Constitution changes in any case to enable an election to be made with effect from this financial year, or from any subsequent financial year.

GCL will decide whether to elect into the AMIT regime based on the best interests of unitholders as a whole. If an election is made, GCL will inform unitholders.

A summary of the effect of the proposed amendments to the Constitution is set out in the table below.

### **Reasons for proposed amendments to the Constitution**

The proposed amendments would allow GCL to choose to adopt the AMIT regime for GDF. GCL believes the benefits of operating under the AMIT regime include:

- greater certainty in respect of various tax positions due to the AMIT regime's attribution of taxable income to unitholders, compared to the current 'present entitlement' regime;
- greater fairness associated with the AMIT regime's attribution of taxable income to unitholders, as income can be allocated on a 'fair and reasonable basis', compared to the current 'proportionate share' which is inflexible in various circumstances;
- greater certainty as to the tax status of GDF and its entitlement to certain tax concessions, including deemed 'fixed trust' status for tax purposes;
- reduced potential for adverse taxation for unitholders, by allowing for cost base adjustments where distributions are less than the taxable income attributed to unitholders;
- preservation of the character of the income for income tax purposes in the hands of unitholders; and
- the ability to reconcile 'under and over' estimations of net income of GDF to allow for adjustments in the year of discovery, rather than requiring amendments to previously lodged income tax returns and previous tax distribution statements.

### **How to contact us if you wish to respond to this notice**

**You are not required to respond to this notice.** GCL intends to amend the Constitution as proposed, on or after the day that is 7 days after the date of this notice, unless it receives requests to call and arrange a meeting of unitholders of GDF to consider and vote on a special resolution to amend the Constitution as

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<sup>1</sup> GCL has published this notice under notional subsection 601GCA(3) of the *Corporations Act 2001* (Cth), as modified by ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489, to inform unitholders of proposed amendments to be made to the GDF Constitution.

proposed, from unitholders with at least 5% of the votes that may be cast on the resolution by the time specified below.

If you do wish to request a meeting of unitholders of GDF to vote on the amendments to the Constitution as proposed in this notice, your request must be made in writing to GCL by 5pm (AEST) Monday 26 June 2017. A request may be sent by email to [lachlan.davidson@gardacapital.com.au](mailto:lachlan.davidson@gardacapital.com.au).

If no meeting is called, GCL will amend the Constitution by executing a supplemental deed to the Constitution and lodging it with the Australian Securities and Investments Commission. You will be notified after that happens.

### Effect of amendments to the Constitution

The table below gives is a brief summary of the effect of the proposed amendments to the Constitution of GDF to allow for the AMIT regime.

Proposed amendment	Summary of nature of amendment
<b>Powers of the Trustee<sup>2</sup></b>	The Trustee will be given all the powers necessary to elect into and comply with the AMIT regime, including doing all things necessary to give effect to the matters outlined below.
<b>When GDF elects to be an AMIT</b>	<p>If the Trustee does elect to enable the AMIT provisions, new clause 18 provides that the new AMIT schedule (Schedule 4), will apply.</p> <p>It does not change the existing distribution clauses, but does 'qualify' these clauses to the extent that they are inconsistent with the specific clauses added into new Schedule 4.</p>
<b>New Schedule 4 – The AMIT Provisions</b>	<p>A new <b>Schedule 4 - AMIT Provisions</b> will be inserted into the Constitution. It contains the powers for the Trustee to comply with the new AMIT rules.</p> <p>Clause 18 of the Constitution provides the Trustee with the general discretion to make an election to apply the AMIT rules. Clause 2 of Schedule 4 then allows for:</p> <ul style="list-style-type: none"> <li>determining various components for any AMIT income year;</li> <li>making attributions to Members on a 'fair and reasonable' basis;</li> <li>providing for updated reporting statements for Members (an 'AMMA Statement'), including any amendments; and</li> <li>requiring the Trustee to comply with the AMIT legislation from time to time.</li> </ul> <p>Clause 2 of Schedule 4 also deals with 'unders and overs', for the purpose of adjustments to income which can be made in the year they are discovered, rather than reissuing distribution statements that require Members to adjust their returns for a prior year. It also deals with the reporting required to Members when a determination is made.</p> <p>Clause 3 of Schedule 4 allows the Trustee to attribute 'Determined Trust Components' (as defined) to Members, in accordance with the Constitution and the AMIT rules. The clause utilises terminology consistent with both the Tax Act and AMIT Regime (as defined) to attribute amounts of different character, and provides the principles under which the Trustee must apply them.</p> <p>Clause 3 of Schedule 4 requires that the attribution to Members under the AMIT schedule must take into account the existing distribution provisions already in the Constitution.</p>
<b>Trustee protections</b>	Clause 5 of Schedule 4 confirms that the Trustee's existing limitation of liability and indemnity extends to all actions taken by it under the AMIT regime, and all costs expenses and liabilities, including for tax payable.

<sup>2</sup> GCL (as responsible entity) is the 'Trustee' in the GDF Constitution.

<b>Definitions</b>	<p>General definitions relevant for the AMIT regime will be inserted into clause 1.1 of the Constitution. These provide for underlying changes to the AMIT legislation going forward.</p> <p>There are also specific definitions incorporated into Schedule 4 itself.</p>
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