

31 August 2017

Dear Securityholder

**GARDA Capital Group (ASX: GCM)**

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

The constitution of GARDA Capital Trust ARSN 150 164 720 (**GCT**), which forms part of the stapled group listed under 'GARDA Capital Group' (ASX: **GCM**), was amended on 28 June 2017 in accordance with the procedure set out under ASIC Instrument 2016/489 for amendments necessary for or incidental to a trust being able to be operated in a manner permitted by the Income Tax Assessment Act 1997 as an AMIT.

The accompanying notice summarises the reasons for, and effect of, the amendments to the constitution of GCT which were made to facilitate the AMIT regime. The amended constitution was uploaded to ASX on 30 June 2017.

Yours faithfully



Lachlan Davidson  
**Company Secretary**  
GARDA Capital Limited and GARDA Funds Management Limited

31 August 2017

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

### **NOTICE PURSUANT TO SECTION 601GCB OF THE CORPORATIONS ACT**

GARDA Capital Group (ASX: **GCM**) is a stapled group, with each stapled security consisting of one share in GARDA Capital Limited ACN 095 039 366 and one unit in GARDA Capital Trust ARSN 150 164 720 (**GCT**). GARDA Funds Management Limited ACN 140 857 405 (**GFML**) is the responsible entity of GCT.

GFML gives notice<sup>1</sup> that it amended the constitution of GCT (**Constitution**) by supplemental deed poll, as foreshadowed in the ASX announcement on 19 June 2017. The amendment provides 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* (Cwth) (**AMIT regime**). This notice relates to GCT only.

GCT is not presently eligible to be an 'attribution managed investment trust' (**AMIT**), but may become so if certain 'not closely-held' requirements are met and an irrevocable election is made. GCT has not yet qualified based on the current composition of its member base, but if and when it does, GFML may still be able to make that election for GCT under a 'start up concession' with effect from the financial year ended 30 June 2017. The amendments to the Constitution will enable an election to be made once the qualification conditions are met, if GFML considers this is appropriate.

GFML will decide (if and at such time that it qualifies) whether to elect into the AMIT regime based on the best interests of securityholders as a whole. If an election is made, GFML will inform securityholders.

The amended Constitution was lodged with the Australian Securities and Investments Commission on 28 June 2017, and posted to the ASX on 30 June 2017. A summary of the effect of the amendments to the Constitution is set out in the table below.

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

The amendments allow GFML to choose to adopt the AMIT regime for GCT. GFML believes the possible 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 securityholders, compared to the current 'present entitlement' regime;
- greater fairness associated with the AMIT regime's attribution of taxable income to securityholders, 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 GCT and its entitlement to certain tax concessions, including deemed 'fixed trust' status for tax purposes;
- reduced potential for adverse taxation for securityholders, by allowing for cost base adjustments where distributions are less than the taxable income attributed to securityholders;
- preservation of the character of the income for income tax purposes in the hands of securityholders; and
- the ability to reconcile 'under and over' estimations of net income of GCT to allow for adjustments in the year of discovery, rather than requiring amendments to previously lodged income tax returns and previous tax distribution statements.

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<sup>1</sup> GFML has published this notice under notional subsection 601GCB of the *Corporations Act 2001* (Cwth), as modified by ASIC Corporations (*Attribution Managed Investment Trusts*) Instrument 2016/489, to inform securityholders of the amendments which were made to the GCT Constitution.

## Effect of the amendments made to the Constitution

The table below gives is a brief summary of the effect of the amendments to the Constitution.

Amendment	Summary of nature of amendment
<b>Powers of the Manager<sup>2</sup></b>	The Manager has been 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 GCT elects to be an AMIT</b>	<p>If GCT becomes eligible and the Manager does elect to enable the AMIT provisions, new clause 17 provides that the new AMIT schedule (Schedule 3), 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 3.</p>
<b>New Schedule 3 – The AMIT Provisions</b>	<p>The new <b>Schedule 3 - AMIT Provisions</b> contains the powers for the Manager to comply with the new AMIT rules.</p> <p>Clause 17 of the Constitution provides the Manager with the general discretion to make an election to apply the AMIT rules. Clause 2 of Schedule 3 then provides 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>issuing updated reporting statements for Members (an 'AMMA Statement'), including any amendments; and</li> <li>requiring the Manager to comply with the AMIT legislation from time to time.</li> </ul> <p>Clause 2 of Schedule 3 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 re-issuing 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 3 allows the Manager 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 Manager must apply them.</p> <p>Clause 3 of Schedule 3 requires that the attribution to Members under the AMIT schedule must take into account the existing distribution provisions already in the Constitution.</p>
<b>Manager protections</b>	Clause 5 of Schedule 3 confirms that the Manager'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.
<b>Definitions</b>	<p>General definitions relevant for the AMIT regime have been 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 3 itself.</p>

**There is no action required to be taken by securityholders in relation to this notice.**

Lachlan Davidson  
**Company Secretary**  
 GARDA Capital Limited and GARDA Funds Management Limited

<sup>2</sup> GFML (as responsible entity) is the 'Manager' in the GCT Constitution.