

**Form 603**Corporations Act 2001  
Section 671B**Notice of initial substantial holder**To, Company Name/Scheme nib holdings limitedACN/ARSN 125 633 856**1. Details of substantial holder (1)**Name Australian Executor Trustees Limited as trustee of the nib Overseas Policyholders and Unverified Policyholders TrustACN/ARSN (if applicable) 007 869 794The holder became a substantial holder on 1/10/2007**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary	108,268,050	108,268,050	20.91%

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Australian Executor Trustees Limited as trustee of the nib Overseas Policyholders and Unverified Policyholders Trust	Registered holder (see note 1 below)	108,268,050 ordinary

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Australian Executor Trustees Limited	Australian Executor Trustees Limited	Australian Executor Trustees Limited	108,268,050 ordinary

**NOTES:**

<sup>1</sup> In 2007, nib health funds limited demutualised and became a wholly owned subsidiary of nib Holdings Limited ("nib Holdings"). As part of this restructure, shares in nib Holdings were issued to the nib Overseas and Unverified Policyholders Trust to be held on behalf of the relevant Overseas Policyholders and Unverified Policyholders on the terms of a trust deed dated 19 July 2007, as amended on 28 September 2007 and 5 November 2007 ("Trust Deed"). nib Holdings has a relevant interest in the shares held by Australian Executor Trustees Limited as trustee of the nib Overseas Policyholders and Unverified Policyholders Trust as nib Holdings has the power to control voting and disposal of shares on the terms and subject to the conditions of the Trust Deed.

On 1 October 2007, 108,268,050 shares representing 20.91% of nib Holding's issued capital at that time were issued by nib Holdings to Australian Executor Trustees Limited as trustee of the nib Overseas Policyholders and Unverified Policyholders Trust.

As at 14 April 2010, Australian Executor Trustees Limited as trustee of the nib Overseas Policyholders and Unverified Policyholders Trust holds 48,110,300 shares representing 9.70% of nib Holding's issued capital.

A copy of the Trust Deed is attached as Annexure A.

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-Cash	
Australian Executor Trustees Limited	1/10/2007		No consideration was paid by Australian Executor Trustees Limited for its relevant interests in the shares. See Annexure "A".	108,268,050 ordinary

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
Australian Executor Trustees Limited	Level 22, 207 Kent Street, Sydney NSW 2000

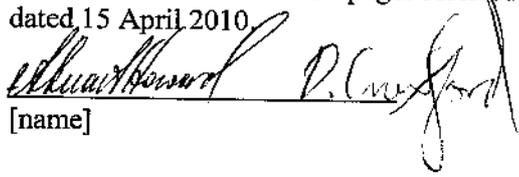
**Signature** Australian Executor Trustees Limited ACN 007 869 794 by its Attorney who certifies that he/she has not received notice of any revocation of the Power of Attorney ) *Stuart Howard* capacity *Senior Administrator*  
 sign here dated: *15/4/2010* ) *Donald Crawford* capacity *Senior Administrator* date *15/4/2010*

**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

This is Annexure "A" of 24 pages referred to in Form 603 (Notice of initial substantial holder) signed by me and dated 15 April 2010.

  
[name]

# MALLESONS STEPHEN JAQUES

## NIB Demutualisation

## Overseas Policyholders and Unverified Policyholders Trust Deed

Dated :

Original Trust Deed dated 19 July 2007

First Amending Deed dated 28 September 2007

Second Amending Deed dated 5 November 2007

**This is a consolidated copy of the Trust deed and the copy is a true copy**

NIB Holdings Limited ("**NIB Holdings**")

NIB Health Funds Limited ("**NIB Health**")

Australian Executor Trustees Limited ("**Trustees**")

**Mallesons Stephen Jaques**

Level 60

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

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# NIB Demutualisation Overseas Policyholders and Unverified Policyholders Trust Deed Details

**Interpretation** – definitions are at the end of the General terms

<b>Parties</b>	<b>NIB Holdings, NIB Health and Trustee</b>	
<b>NIB Holdings</b>	Name	<b>NIB Holdings Limited</b>
	ACN	125 633 856
	Address	384 Hunter Street Newcastle NSW 2000
	Attention	Company Secretary
<b>NIB Health</b>	Name	<b>NIB Health Funds Limited</b>
	ACN	000 124 381
	Address	384 Hunter Street Newcastle NSW 2000
	Attention	Company Secretary
<b>Trustee</b>	Name	<b>Australian Executor Trustees Limited</b>
	ABN	84 007 869 794
	Address	Level 22 207 Kent Street Sydney NSW 2000
	Attention	Corporate Trust Services
<b>Recitals</b>	<b>A</b>	NIB Health intends to issue NIB Health Shares pursuant to the terms and conditions of the Eligible Policyholders' Scheme.
	<b>B</b>	NIB Holdings intends to issue NIB Holdings Shares pursuant to the terms and conditions of the Eligible Policyholders' Scheme.
	<b>C</b>	The Trustee has agreed to act as the first trustee of the Trust and to hold NIB Health Shares and NIB Holdings Shares in accordance with this deed for the benefit of Overseas Policyholders and Unverified Policyholders.
<b>Governing law</b>	New South Wales	
<b>Date of deed</b>	See Signing page	

# NIB Demutualisation Overseas Policyholders and Unverified Policyholders Trust Deed

## General terms

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### 1 Establishment of Trust

The Trust comes into operation on the date that NIB Holdings pays the sum of \$100 to the Trustee to be held by the Trustee on the terms of this deed.

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### 2 Trustee

#### 2.1 Nature, appointment and removal

The Trustee is hereby appointed by NIB Holdings, and, in respect of any future property to be vested in the Trust from time to time, agrees to act in its capacity as trustee of the Trust subject to the terms of this deed.

#### 2.2 Ceasing to be Trustee

The Trustee ceases to be the trustee of the Trust when:

- (a) either:
  - (i) the Trustee gives at least 60 days prior notice in writing to NIB Holdings that it wishes to retire as trustee of the Trust; or
  - (ii) on the expiry of 30 days from the date NIB Holdings serves notice in writing to the Trustee that it is to be removed as trustee of the Trust; and
- (b) a new trustee of the Trust is appointed by NIB Holdings (being such new trustee of the Trust as it thinks fit in its absolute discretion.)

#### 2.3 Transfer of assets

On a change of Trustee, the retiring Trustee must execute all transfers, deeds or other documents necessary to transfer the assets of the Trust into the name of the new Trustee to take effect on and from the date of the change of Trustee.

#### 2.4 Powers of Trustee

Subject to this deed, the Trustee has all the powers in respect of the Trust Property that it is legally possible for a Trustee, as a body corporate, to have and as though it were the absolute owner of the Trust Property and, for the avoidance of doubt, these powers are in addition to all the powers invested in trustees by the *Trustee Act 1925* and (to the maximum extent permitted by law) are not subject to any restrictions on the powers of trustees that may be imposed under the *Trustee Act 1925*. For example, in relation to the Trust Property the Trustee has the following powers (subject to the other terms of the Trust):

- (a) to enter into and execute all contracts, deeds and documents and do all acts or things which it deems expedient for the purpose of giving effect to and carrying out the trusts, powers and discretions conferred on the Trustee by this deed;

- (b) to subscribe for, purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on terms and conditions which it thinks fit;
- (c) to appoint and, at its discretion, remove or suspend custodians, trustees, managers, servants and other agents, determine the powers and duties to be delegated to them, pay such remuneration to them as it thinks fit and any person so employed or engaged is deemed for the purpose of the deed to be employed or engaged by the Trustee;
- (d) to institute, conduct, defend, compound or abandon any legal proceeding concerning the Trust and also to settle or compromise and allow time for payment or satisfaction of any debts due and any claims or demands by or against the Trustee in respect of the Trust;
- (e) to refer any claim or demand by or against the Trustee in respect of the Trust to arbitration and observe and perform awards;
- (f) to make and give receipts, releases and other discharges for money payable to the Trust;
- (g) to open bank accounts and to retain on current or deposit account at any bank any money which it considers proper and to make regulations for the operation of those bank accounts including the signing and endorsing of cheques;
- (h) to take and act upon the advice or opinion of any legal practitioner (whether in relation to the interpretation of this deed, any other document or statute or as to the administration of the Trust) or any other professional person and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with such advice or opinion;
- (i) to determine who is entitled to sign on the Trustee's behalf receipts, acceptances, endorsements, releases, contracts and documents; and
- (j) generally to do all acts and things which the Trustee considers necessary or expedient for the administration, maintenance and preservation of the Trust and in performance of its obligations under this deed.

## **2.5 Instructions by and directions from NIB Holdings**

For the purposes of this deed, the Trustee is entitled to regard as valid an instruction, direction, consent or other authorisation given or purported to be given by NIB Holdings, whether:

- (a) in writing and signed by the NIB Holdings employee authorised by NIB Holdings and notified to the Trustee from time to time; or
- (b) in any other form approved by the Board, including a written notice signed by any other person expressly authorised by the Board (where the Trustee has received written notification from the Board of that person's authorisation).

## **2.6 Remuneration of Trustee**

Unless otherwise directed by NIB Holdings and subject to complying with the Trustee Sole Activity test (if any) and any relevant statute, rule of common law or equity, and the Listing Rules, the Trustee is not entitled to receive from the Trust any fees, commission or other

remuneration in respect of its office or reimbursement of any expenses or charges (other than Expenses or Tax in accordance with clause 6.5) incurred in the establishment, operation or administration of the Trust. NIB Holdings shall otherwise pay to the Trustee from NIB Holdings' own resources such fees and reimburse such expenses incurred by the Trustee as NIB Holdings and the Trustee agree from time to time. The Trustee is entitled to retain for its own benefit any such fee or reimbursement.

## **2.7 No security**

Neither the Trustee nor NIB Holdings may charge or otherwise encumber the Trust Property (or any of it) held by the Trustee.

## **2.8 Conflict of interest**

- (a) A person who is a director of the Trustee may, except where prohibited by the Corporations Act, act in that capacity notwithstanding a conflict of interest or duty provided that NIB Holdings has received prior written notice of that conflict of interest or duty.
- (b) The Trustee may assume other roles and exercise other powers in the course of its normal business activities notwithstanding a conflict of interest or duty, provided that NIB Holdings has received prior written notice of that conflict of interest or duty.

## **2.9 Relationships**

The Trustee does not act as an agent of NIB Holdings, NIB Health, the Overseas Policyholders or the Unverified Policyholders.

## **2.10 Trustee's determination**

As between itself and the Unverified Policyholders and Overseas Policyholders, the Trustee has full power to determine (acting reasonably and in good faith) all questions and doubts arising in relation to any of the provisions of this deed, and every such determination (whether made upon a question actually raised or implied in the acts or proceedings of the Trustee) is conclusive and binds the Unverified Policyholders and Overseas Policyholders.

## **2.11 No obligation to do 'know your customer' checks**

NIB Holdings and NIB Health agree that the Trustee has no responsibility to do any know your customer checks in relation to Overseas Policyholders, Unverified Policyholders or any other person in relation to the execution or purported execution of the provisions of the Trust.

NIB Holdings and NIB Health confirm to the Trustee that they are solely responsible for any know your customer checks which are required to be carried out in connection with or as a result of the execution or purported execution of the provisions of the Trust and that they may not rely on any statement in relation to such checks made by the Trustee or any of its agents, employees or contractors.

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### **3 Issue of Shares to Trustee**

#### **3.1 Issue of NIB Health Shares**

On the Conversion Date, in discharge of its obligation to issue NIB Health Shares to Eligible Policyholders who are Overseas Policyholders or Unverified Policyholders (as the case may be), NIB Health will issue to the Trustee, and the Trustee will accept, the aggregate number of NIB Health Shares to which Overseas Policyholders and Unverified Policyholders would be entitled pursuant to the Eligible Policyholders' Scheme. The Trustee will hold those NIB Health Shares as trustee for the relevant Overseas Policyholder or Unverified Policyholder on the terms of the Trust.

#### **3.2 Issue of NIB Holdings Shares to Trustee**

On the Demutualisation Date, in discharge of its obligation to issue NIB Holding Shares to Eligible Policyholders who are Overseas Policyholders or Unverified Policyholders (as the case may be), NIB Holdings will issue to the Trustee, and the Trustee will accept, the aggregate number of NIB Holdings Shares to which Overseas Policyholders and Unverified Policyholders would be entitled pursuant to the Eligible Policyholders' Scheme. The Trustee will hold those NIB Holdings Shares as Trustee for the relevant Overseas Policyholder or Unverified Policyholder on the terms of the Trust.

#### **3.3 Trustee agrees to be bound**

The Trustee agrees to be bound by the terms of clauses 3.5 to 3.9 of the Eligible Policyholders' Scheme, as if those clauses were set out in full in this deed and as if the Trustee were an Eligible Policyholder.

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### **4 Overseas Policyholders**

#### **4.1 Sale of Overseas Policyholders' NIB Holdings Shares**

At or about the Listing Date and subject to clause 4.5, the Trustee will sell all NIB Holdings Shares then held on trust for Overseas Policyholders at such price and in such manner as the Trustee may be directed by the Board.

#### **4.2 Distribution of proceeds**

Subject to clause 4.5, no later than 6 weeks after the Listing Date, NIB Holdings must direct the Trustee to distribute, and the Trustee must distribute to each Overseas Policyholder the amount calculated pursuant to clause 4.3.

#### **4.3 Distribution amount**

- (a) The amount to be distributed to each Overseas Policyholder under clause 4.2, notwithstanding the actual sale price realised for any particular NIB Holdings Share, is an amount equal to:

$$\text{NPS} \times \frac{\text{EPA}}{\sum \text{EPA}}$$

where:

**NPS** is the aggregate Net Proceeds of Sale with respect to all NIB Holdings Shares held by Overseas Policyholders; and

**EPA** is the Eligible Policyholder Allocation with respect to that Overseas Policyholder.

**ΣEPA** means the aggregate Eligible Policyholder Allocations for all Overseas Policyholders.

- (b) The amount to be distributed to each Overseas Policyholder under clause 4.2 and according to the formula in clause 4.3(a) will be calculated by NIB Holdings.
- (c) NIB Holdings will communicate, or procure the Share Registry to communicate, the amount to be distributed to each Overseas Policyholder to the Trustee, and will take all action or procure the Share Registry to take all action (including without limitation the preparation of all documentation, electronic or otherwise) necessary to enable the Trustee to distribute to each Overseas Policyholder the amount calculated pursuant to clause 4.3.

#### **4.4 Entitlement of Overseas Policyholder ceases**

After the Trustee has made a distribution to an Overseas Policyholder pursuant to clause 4.2, but subject to any other provision of this Trust, the Overseas Policyholder will cease to have any interest or entitlement to any property of the Trust or any claim under this Trust Deed.

#### **4.5 When Overseas Policyholders can hold NIB Holdings Shares**

- (a) If, prior to September 30, 2007, the Share Registry receives notice from NIB Holdings of a bona fide change of address to Australia of an Overseas Policyholder, the Trustee (at the direction of NIB Holdings) must transfer the relevant NIB Holdings Shares to the Overseas Policyholder no later than six weeks after the Listing Date.
- (b) If, prior to any sale under clause 4.1, an Overseas Policyholder provides NIB Holdings with evidence that satisfies NIB Holdings (in its absolute discretion) that the issue of NIB Holdings Shares to that Overseas Policyholder will not violate, or cause registration or filing obligations under, the laws of relevant overseas jurisdictions the Trustee (at the direction of NIB Holdings) must transfer the relevant NIB Holdings Shares to the Overseas Policyholder no later than six weeks after the Listing Date.

#### **4.6 Location of Overseas Policyholders**

- (a) NIB Holdings and NIB Health (as the case may be) will communicate, or arrange for the communication, to the Trustee of all information concerning Overseas Policyholders (including, without limitation, the location of such Overseas Policyholders) to enable the Trustee to carry out its duties according to the Terms of the Trust.
- (b) The Trustee is under no duty to undertake its own investigation, inquiries or researches to determine the location of Overseas Policyholders, or to request information concerning the location of Overseas Policyholders.
- (c) The Trustee may rely conclusively on information communicated to it under the operation of this clause, and shall not be liable for acting or refraining from acting in

reliance upon inaccurate or misleading information furnished by NIB Holdings or NIB Health or the employees, agents or contractors of NIB Holdings or NIB Health.

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## **5 Unverified Policyholders**

### **5.1 Verification**

- (a) NIB Holdings and NIB Health will use their reasonable endeavours to verify the identify of the Unverified Policyholders including, for example, through written correspondence inviting those Eligible Policyholders to verify their details in the manner contemplated by the Explanatory Statement.
- (b) NIB Holdings and NIB Health (as the case may be) will communicate, or arrange for the communication, to the Trustee of all information concerning the identity and location of Unverified Policyholders as soon as reasonably practicable after such information is discovered by or revealed to NIB Holdings or NIB Health or the employees, agents or contractors of NIB Holdings or NIB Health.
- (c) The Trustee is under no duty to undertake its own investigations, inquiries or researches to determine either the identity or location of Unverified Policyholders, or to request information concerning the identity or location of Unverified Policyholders.
- (d) The Trustee may rely conclusively on information communicated to it under the operation of this clause, and shall not be liable for acting or refraining from acting in reliance upon inaccurate or misleading information furnished by NIB Holdings or NIB Health or the employees, agents or contractors of NIB Holdings or NIB Health.

### **5.2 Transfer to Unverified Policyholder**

If, within three years of the Demutualisation Date, the identity of an Unverified Policyholder is verified, either by a method of verification contemplated by the Explanatory Statement or another method approved by the Board, the Trustee must, as soon as reasonably practicable after receiving direction from NIB Holdings, transfer the NIB Holdings Shares to which that Unverified Policyholder is entitled, together with any dividends or other Accretions referable to those NIB Holdings Shares, net of any applicable Tax or Expenses pursuant to the Eligible Policyholders Scheme to the Unverified Policyholder, provided that the Trustee is under no obligation to transfer a NIB Holdings Share if to do so would contravene the Corporations Act, the Listing Rules or any other applicable law.

### **5.3 Unverified Policyholder outside Australia**

If the address provided by the Unverified Policyholder is outside Australia, that Unverified Policyholder will be treated as an Overseas Policyholder and:

- (a) if re-classified as an Overseas Policyholder prior to September 30, 2007, clause 4 will apply to their NIB Holdings Shares; and
- (b) if re-classified as an Overseas Policyholder later than the date specified in paragraph (a), the Trustee (acting at the direction of NIB Holdings) will sell all the NIB Holdings Shares of that Overseas Policyholder as soon as reasonably practicable at such price and in such manner as the Trustee may be directed by the Board and distribute the proceeds to the Overseas Policyholder no later than 6 weeks after such sale (subject to NIB Holdings communicating or procuring the Share Registry to communicate all information, and taking or procuring the Share Registry to take all

action (including without limitation the preparation of all documentation, electronic or otherwise) necessary to enable the Trustee to distribute the proceeds to each Overseas Policyholder in accordance with the provisions of this clause).

#### **5.4 Third anniversary of Demutualisation Date**

As soon as reasonably practicable after the third anniversary of the Demutualisation Date, the Trustee must dispose of the entirety of the Trust Property then held by the Trustee, in such manner as directed by the Board of NIB Holdings and the proceeds will be dealt with pursuant to clause 10.

#### **5.5 No further distribution**

For the avoidance of doubt, the Trustee must not make any further distribution of NIB Holdings Shares or proceeds of sale pursuant to clauses 4 or 5 following the third anniversary of the Demutualisation Date.

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## **6 Trustee's holding of Shares**

### **6.1 Registration**

Shares issued to the Trustee pursuant to the Eligible Policyholders' Scheme are to be registered in the name of the Trustee.

### **6.2 Rights in NIB Holdings Shares and NIB Health Shares**

Nothing in this deed confers or is intended to confer on NIB Holdings or NIB Health, any charge, lien or other right or interest in the Shares, issued to the Trustee pursuant to the Eligible Policyholders' Scheme.

### **6.3 Dividends**

- (a) Subject to clause 6.4, if the Trustee receives any dividends or other Accretions it must, subject to complying with the Trustee Sole Activity test (if any), hold those dividends or other Accretions on trust for the Overseas Policyholder or Unverified Policyholder and deal with them under clauses 4 and 5 respectively. The Trustee must elect to participate, or not to participate, in any dividend reinvestment plan offered by NIB Holdings as directed by the Board in the Board's absolute discretion. Any NIB Holdings Shares issued to the Trustee pursuant to the dividend reinvestment plan will be held on trust on the same terms as the Shares in respect of which the dividends were payable.
- (b) NIB Holdings will make arrangements for the keeping, and the communication to the Trustee, of records and all other information detailing the dividends or other Accretions held on trust for each Overseas Policyholder and each Unverified Policyholder to enable the Trustee to take the action contemplated in clause 6.3(a).

### **6.4 Bonus NIB Holdings Shares**

- (a) Bonus NIB Holdings Shares are to be registered in the name of the Trustee, held in the Trust by the Trustee and treated as if they had been issued to the Trustee under clause 3.
- (b) NIB Holdings will make arrangements for the keeping, and the communication to the Trustee, of records and all other information detailing the bonus NIB Holdings

Shares held on trust for each Overseas Policyholder and each Unverified Policyholder to enable the Trustee to discharge its obligations under clause 3.

#### **6.5 Application of income**

- (a) The Trustee may, in accordance with NIB Holdings' instructions, apply in whole or in part the assets and income of the Trust in payment of any Expenses or Tax incurred by the Trustee in the execution or purported execution of the trust or any of the powers, authorities or discretions vested in the Trustee.
- (b) Subject to clause 6.9 and clause 6.10, the Trustee shall, on a semi-annual basis, pay the income of the Trust (net of any payments made pursuant to clause 6.5(a) and excluding Accretions) to NIB Holdings.

#### **6.6 Sale to fund Expenses and Tax**

For the avoidance of doubt, to the extent that any cash distribution received by the Trustee with respect to the NIB Holdings Shares is insufficient to fund liabilities for Expenses and Tax, the Trustee is authorised, subject to the constitution of NIB Holdings, to sell NIB Holdings Shares to fund those liabilities and the number of NIB Holdings Shares allocated to the Overseas Policyholders and/or Unverified Policyholder will be net of any such NIB Holdings Shares sold.

#### **6.7 No interests**

An Overseas Policyholder or an Unverified Policyholder does not have any interest in any particular part of the Trust Property.

#### **6.8 Fractional entitlement**

No Overseas Policyholder or Unverified Policyholder shall be entitled to any fraction or other entitlement arising as a result of the Trustee holding Trust Property and other Accretions in omnibus accounts which is not directly referable to the holding of any Overseas Policyholder or Unverified Policyholder, and such fractions and entitlements (to the extent that they do not relate to or arise from any specific property of an Overseas Policyholder or Unverified Policyholder) shall be at the disposal of the Trustee.

#### **6.9 Rights issue**

If NIB Holdings offers to issue NIB Holdings Shares under a rights issue or similar form of offering, the Trustee must, on direction of the Board:

- (a) subject to the Trustee's obligations to pay Expenses and Tax, apply in whole or in part the income of the Trust to subscribe for NIB Holdings Shares, with any NIB Holdings Shares so acquired to be registered in the name of the Trustee, held in the Trust by the Trustee and treated as if they were issued to the Trustee under clause 3; or
- (b) if the rights are renounceable, sell those rights and hold the proceeds on trust for the Unverified Policyholders and deal with them under clause 5.

If the Board directs that the Trustee should not participate in a rights issue or similar form of offering, then the Trustee must not subscribe for NIB Holdings Shares under that rights issue or offering.

## **6.10 Share purchase plans**

If NIB Holdings offers ordinary shareholders the opportunity to acquire additional NIB Holdings Shares (including where the acquisition can be made without brokerage or other transaction costs under a share purchase plan or similar arrangement), the Trustee must, on direction of the Board, subject to the Trustee's obligations to pay Expenses and Tax, apply in whole or in part the income of the Trust to subscribe for NIB Holdings Shares, with any NIB Holdings Shares so acquired to be registered in the name of the Trustee, held in the Trust by the Trustee and treated as if they were issued to the Trustee under clause 3.

If the Board directs that the Trustee should not participate in a share purchase plan, or similar arrangement, then the Trustee must not subscribe for NIB Holdings Shares under that share purchase plan or arrangement.

## **6.11 Takeover Bid**

In the event of a Takeover Bid for NIB Holdings, the Trustee must, on direction of the Board, accept or reject the Takeover Bid in relation to the NIB Holdings Shares held in the Trust.

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# **7 Voting**

## **7.1 Voting on matters in relation to the Trust**

If there is a resolution put to a general meeting of NIB Holdings:

- (a) to approve a scheme of arrangement or reconstruction which may involve the disposal, cancellation or reconstruction of NIB Holdings Shares which the Trustee holds on behalf of Unverified Policyholders or Overseas Policyholders;
- (b) to amend the constitution of NIB Holdings;
- (c) to approve a capital reduction of NIB Holdings;
- (d) to approve an on-market buy-back, or an off-market buy-back, by NIB Holdings which would result in NIB Holdings purchasing greater than 10% of its issued capital within a 12 month period; or
- (e) to approve a selective buy-back by NIB Holdings,

the Trustee must exercise any voting rights attached to the NIB Holdings Shares as directed by the Board.

## **7.2 Capital Reduction Resolution**

The Trustee undertakes:

- (a) to vote all NIB Health Shares held by it in favour of the Capital Reduction Resolution;
- (b) to consent to short notice of the Capital Reduction Meeting; and
- (c) to do all other things necessary to facilitate the passing and implementation of the Capital Reduction Resolution in the manner contemplated by the Explanatory Statement.

### **7.3 Distribution of the Trust Property**

The Trustee must vote in favour of any resolution proposed by the Board at a general meeting of NIB Holdings for the purpose of implementing any determinations of the Board in relation to the distribution of the Trust Property after the third anniversary of the Demutualisation Date or for any purpose ancillary to that purpose. The Trustee undertakes to act in accordance with any such resolution.

### **7.4 All other matters**

In all other matters not covered by clauses 7.1 to 7.3, the Trustee shall vote as directed by the Board.

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## **8 Audit and register**

### **8.1 Accounts**

The Trustee shall keep or cause to be kept records of payments and receipts in relation to:

- (a) all sums of money received and expended by or on behalf of the Trust and the matters in respect of which such receipt and expenditure takes place; and
- (b) all acquisitions and disposals of NIB Holdings Shares.

### **8.2 Register**

NIB Holdings shall keep and maintain or cause to be kept and maintained a register of the NIB Holdings Shares held for the purposes of the Trust. The register must record:

- (a) the number of NIB Health Shares and the NIB Holdings Shares including any Accretions which the Trustee holds pursuant to the Trust;
- (b) the date of disposal of those NIB Health Shares and the NIB Holdings Shares;
- (c) the instructions received from NIB Holdings from time to time in relation to the NIB Health Shares and the NIB Holdings Shares; and
- (d) any other related information which NIB Holdings or the Trustee considers appropriate to record.

### **8.3 Inspection**

The books of account of the Trust and the register shall be maintained at the registered office of NIB Holdings and shall be available for inspection by the Trustee during normal business hours free of charge upon prior written request.

### **8.4 Audit**

- (a) The Trustee shall appoint an Auditor of the Trust.
- (b) The Trustee shall cause the books of account to be audited annually by the Auditor of the Trust.
- (c) The Trustee must ensure that the Auditor of the Trust has access to all papers, accounts and documents concerned with or relating to the Trust.

- (d) NIB Holdings agrees to provide the Auditor of the Trust with access to all registries and records concerned with or relating to the Trust to enable the Auditor to carry out its functions under this deed and any applicable law.

#### **8.5 NIB Holdings' responsibilities**

Subject to the Trustee providing access to all relevant information to NIB Holdings in a timely manner:

- (a) NIB Holdings must prepare the accounts and tax return for the Trust in accordance with applicable statutory requirements; and
- (b) NIB Holdings must procure that the Share Registry maintains details of all shareholdings held by the Trustee on trust for Overseas Policyholders and Unverified Policyholders, including with respect to dividends, Accretions and other entitlements.

#### **8.6 NIB Health's obligations: Power of Attorney**

- (a) NIB Health will give all appropriate directions to Computershare Investor Services Pty Limited pursuant to the Share Registry Agreement which are reasonably necessary to enable the Trustee fully to discharge its obligations under the Trust Deed.
- (b) Subject to clauses 8.6(c) and 8.6(d), NIB Health irrevocably appoints the Trustee as its attorney for the purposes of exercising NIB Health's powers under the Share Registry Agreement, in respect of matters concerning Unverified Policyholders and Overseas Policyholders only, to enable the Trustee fully to discharge its obligations under the Trust Deed in the event that NIB Health fails to give the directions referred to in clause 8.6(a).
- (c) If, in the opinion of the Trustee, NIB Health has failed to give appropriate directions pursuant to clause 8.6(a), the Trustee may give written notice to NIB Health specifying:
  - (i) the detailed nature of the directions which the Trustee requests NIB Health give to Computershare Investor Services Pty Limited; and
  - (ii) the reasons that the giving of those directions is reasonably necessary to enable the Trustee fully to discharge its obligations under the Trust Deed.
- (d) The Trustee:
  - (i) may only exercise its powers under the power of attorney granted in clause 8(b) if it has given notice to NIB Health pursuant to clause 8.6(c) and NIB Health has not give the direction specified in that notice to Computershare Investor Services Pty Limited within seven days of receipt of that notice; and
  - (ii) may only give a direction to Computershare Investor Services Pty Limited of which prior notice has been given to NIB Health pursuant to clause 8.6(b).
- (e) The power of attorney under clause 8.6(b):
  - (i) is granted in consideration of the Trustee's agreement to act as Trustee; and

- (ii) terminates once the Trust Property has been distributed in its entirety.

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## **9 Obligations and indemnity of the Trustee**

### **9.1 Indemnity**

Without derogating from the right of indemnity given by law to trustees, NIB Holdings and NIB Health hereby covenant with the Trustee that they will indemnify and keep indemnified the Trustee in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the Trust or any of the powers, authorities or discretions vested in the Trustee and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted other than a claim arising out of the Trustee's fraud, gross negligence or wilful default.

### **9.2 Indemnity - verification information**

Without limiting the indemnity under clause 9.1, NIB Holdings and NIB Health hereby covenant with the Trustee that they will indemnify and keep indemnified the Trustee in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the provisions of the Trust, and from and against all actions, proceedings, costs, claims and demands relating to:

- (a) any failure by NIB Holdings or NIB Health to verify Unverified Policyholders; or
- (b) any failure by NIB Holdings or NIB Health to communicate, or to arrange for the communication of:
  - (i) verification information to the Trustee relating to Unverified Policyholders; or
  - (ii) information necessary to enable the Trustee to carry out its duties under the terms of the Trust concerning Overseas Policyholders;
- (c) the provision to the Trustee by NIB Holdings or NIB Health or their employees, agents, or contractors of inaccurate information concerning Unverified Policyholders;

other than a claim arising out of the Trustee's fraud, gross negligence or wilful default.

### **9.3 Trustee liability**

- (a) Subject to clause 9.3(e), the Trustee is not liable to any other party or to any Overseas Policyholder or Unverified Policyholder in any capacity other than as trustee of the Trust.
- (b) Subject to clause 9.3(e), a liability of the Trustee arising in connection with its power, duties, and obligations under this deed is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Trustee in any way connected with any warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party to this deed, and no Overseas Policyholder or Unverified Policyholder, may sue the Trustee in any capacity other than as trustee of the Trust, including

seeking the appointment of a receiver (except in relation to the Trust Property), a liquidator, an administrator or any other similar person to the Trustee or prove in any liquidation of or affecting the Trustee (except in relation to the Trust Property).

- (d) Each of the parties to this deed (and each Overseas Policyholder and Unverified Policyholder) waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this deed except to the extent to which the Trustee is actually indemnified for the liability.
- (e) The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, gross negligence or wilful default.
- (f) Each party to this deed acknowledges that it is responsible under this deed for performing a variety of obligations under this deed. No act or omission of the Trustee will be considered fraud, gross negligence or wilful default of the Trustee for the purposes of clause 9.3(e) to the extent to which (on a proportionate basis) the act or omission was caused or contributed to by any failure of any other party or person to fulfil its obligations relating to the Trust or by any other act or omission of any other party or any other person.
- (g) No attorney, agent or delegate appointed in accordance with this deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, gross negligence or wilful default of the Trustee for the purposes of clause 5.3(e).

#### **9.4 No indemnity from Overseas Policyholder or Unverified Policyholder**

For the avoidance of doubt:

- (a) nothing in clause 9.1 enables the Trustee to recover any liabilities, costs or expenses from any Overseas Policyholder or Unverified Policyholder; and
- (b) the Trustee will have no right of indemnity from an Overseas Policyholder or Unverified Policyholder personally.

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## **10 Termination of Trust**

### **10.1 Termination**

The Trust will terminate and be wound up as provided below upon the first to occur of the following events:

- (a) an order being made or an effective resolution being passed for the winding up of NIB Holdings (other than for the purpose of amalgamation or reconstruction);
- (b) the Board determining that the Trust is to be wound up;
- (c) the distribution of the entirety of the Trust Property in accordance with clauses 4, 5 and 10; and
- (d) the day before the 80th anniversary of the date of this deed.

## **10.2 Distribution**

Subject to complying with the Trustee Sole Activity test (if any) and ensuring that any action taken by the Trustee does not result in any breach by any entity in the NIB Holdings Group or by the Trustee of any relevant statute, rule of common law or equity, the Listing Rules or any breach of trust, the balance of the assets and income of the Trust not expressly dealt with by another provision of this deed will be applied in whole or in part for the benefit of the shareholders of NIB Holdings from time to time. To give effect to this provision the Trustee will as directed by the Board make payment to NIB Holdings or to the shareholders of NIB Holdings on such terms and in such manner as the Board may direct. For the avoidance of doubt, those terms may include payment to persons who are shareholders on a particular date specified by the Board. The Trustee shall act in accordance with the direction so given and must not act in accordance with any subsequent direction that is inconsistent with a previous direction.

## **10.3 Interest**

Any interest accrued on moneys held by the Trustee will form part of the fund of the Trust, may be used (in the absolute discretion of the Trustee) to pay any Expenses of the Trust and must be distributed in accordance with clause 10.2 on termination of the Trust.

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# **11 Trustee's warranties**

## **11.1 Trustee authorised**

The Trustee represents and warrants to NIB Holdings on the date of this deed and throughout the term of its appointment as trustee of the Trust that:

- (a) it is duly incorporated and validly exists under the law of its place of incorporation;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (c) it has full power to enter into and perform its obligations under this deed and can do so without the approval or consent of any other person; and
- (d) its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms.

## **11.2 Compliance with law**

The Trustee represents and warrants to NIB Holdings on the date of this deed and throughout the term of its appointment as trustee of the Trust that the execution, delivery and performance by it of its obligations under this deed and any other document to be executed by it pursuant to or in connection with this deed complies with:

- (a) each law, and each regulation, authorisation, ruling, judgment, order or decree of any government agency which is binding on it;
- (b) its constitution; and
- (c) any other document which is binding on it, and will not result in a breach of, or give any third party a right to terminate or modify, any agreement, licence or other instrument or result in a breach of any order, judgment or decree of any court, government agency or regulatory body to which it is a party or by which it is bound.

### **11.3 Licences obtained**

The Trustee represents and warrants to NIB Holdings on the date of this deed and throughout the term of its appointment as trustee of the Trust that:

- (a) it has all statutory licences, consents and authorisations required to execute, deliver and perform its obligations under this deed and any other documents to be executed by it pursuant to or in connection with this deed ("Licence");
- (b) all conditions which apply to any such Licence have been (or will be) complied with in all material respects;
- (c) no Licences have been breached by it or are likely to be suspended, cancelled, refused, materially altered, not renewed, or revoked and
- (d) in particular, it warrants that it will comply with its obligations under Part 7 of the Corporations Act with respect to its role as trustee of the Trust and its obligations under this deed.

### **11.4 Solvency of Trustee**

The Trustee represents and warrants to NIB Holdings on the date of this deed and throughout the term of its appointment as trustee of the Trust that it is not insolvent, in liquidation or administration and no proceedings have been brought or threatened for the purpose of winding it up or placing it in administration. No petition or other process for winding-up has been presented or threatened against it and there are no circumstances justifying such a petition or other process. No writ of execution has issued against it and is outstanding. No receiver, receiver and manager or other controller, administrator or similar official has been appointed over any part of its undertaking or assets and there are no circumstances (including execution of this deed) justifying an appointment.

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## **12 General**

### **12.1 Governing law**

This deed is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

### **12.2 Amendment**

NIB Holdings may at any time, by written instrument or by resolution of the Board, amend all or any of the provisions of this deed (including this clause 12), provided that the amendment is made in accordance with and in the manner (if any) stipulated by the Listing Rules. Any amendment may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made.

### **12.3 Notices**

Any notice to be given by the parties shall be deemed to have been duly given if:

- (a) sent by electronic mail or delivered; or
- (b) sent by ordinary prepaid mail,

to the address specified in the Details (or to such other address as specified by the relevant party to the other party) and shall be deemed to have been served:

- (c) if sent by electronic mail or delivered, at the time of delivery or sending;
- (d) if posted, three days after the date of posting, excluding Saturdays, Sundays and public holidays.

## 12.4 Share Registry Agreement

- (a) NIB Health hereby covenants with the Trustee that it will not agree to any amendment to the Share Registry Agreement which directly or indirectly would cause inconsistency with the duties and obligations of NIB Health or NIB Holdings under this deed or which would hinder (whether directly or indirectly) the Trustee in the discharge of its obligations under this deed.
- (b) NIB Holdings hereby covenants with the Trustee that it will procure the adherence by NIB Health to the covenant in clause 12.4(a).
- (c) NIB Health will consult with the Trustee in relation to the exercise of the rights of NIB Health under the Share Registry Agreement including, without limitation, its rights to amend the Share Registry Agreement.

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## 13 Definitions and interpretation

### 13.1 Definitions

The following words and phrases have these meanings in this deed unless the contrary intention appears:

**Accretion** means any accretion, dividend, distribution, entitlement, benefit or right of whatever kind whether cash or otherwise which is issued, declared, paid, made, arises or accrues directly or indirectly to or in respect of a NIB Holdings Share including, without limitation, any such entitlement relating to a subdivision, consolidation or other reconstruction, any rights issue, bonus issue, entitlements offer, or distribution from any reserve of NIB Holdings and any reduction of capital.

**ASX** means Australian Securities Exchange Limited.

**Auditor** means any person registered as an auditor under the Corporations Act.

**Board** means all or some of the Directors acting as the board of NIB Holdings or, if the relevant powers or discretions have been delegated by the Board, the committee or individuals acting as delegates of the Board.

**Capital Reduction Meeting** means the extraordinary general meeting of NIB Health Funds to consider the Capital Reduction Resolution.

**Capital Reduction Resolution** means the resolution of NIB Health Funds to selectively reduce its capital as set out in schedule 7 of the Demutualisation Implementation Deed.

**Conversion Date** has the meaning given in the Eligible Policyholders Scheme.

**Corporations Act** means the Corporations Act 2001 (Cwlth)

**Court** means the Federal Court of Australia.

**Demutualisation Date** has the meaning given in the Eligible Policyholders' Scheme.

**Director** means a director of NIB Holdings.

**Eligible Policyholder** has the meaning given in the Eligible Policyholders' Scheme.

**Eligible Policyholders' Scheme** means the scheme of arrangement to be entered into between NIB Holdings and the Eligible Policyholders set out in a schedule to the Explanatory Statement approved by the Court on 6 June 2007.

**Explanatory Statement** means the explanatory statement dated on or about 6 June 2007 issued by NIB Health.

**Expenses** means all costs, charges and expenses incurred by the Trustee, NIB Holdings or a related body corporate of NIB Holdings in relation to the Trust.

**Know your customer checks** means any 'know your customer' or any other identification checks or procedures in connection with any law.

**Net Proceeds of Sale** means the proceeds of sale of all the NIB Holdings Shares held by the Trustee on Trust, plus any Accretion referable to those NIB Holdings Shares, less any Tax and Expenses.

**NIB Health Shares** means fully paid ordinary shares in the capital of NIB Health.

**NIB Holdings Shares** means fully paid ordinary shares in the capital of NIB Holdings.

**NIB Holdings Group** means NIB Holdings and each body corporate that is a subsidiary of NIB Holdings under Division 6 of Part 1.2 of the Corporations Act

**Listing Date** means the date on which NIB Holdings lists on ASX.

**Listing Rules** means the Listing Rules of ASX as published from time to time, as amended.

**Overseas Policyholder** has the meaning given in the Eligible Policyholders' Scheme.

**Unverified Policyholder** has the meaning given in the Eligible Policyholders' Scheme.

**Share Registry** means the share registry appointed by NIB Holdings from time to time.

**Share Registry Agreement** means the agreement between NIB Health and Computershare Investor Services Pty Limited dated 8 May 2007.

**Shares** means NIB Health Shares and/or NIB Holdings Shares, as the context requires.

**Takeover Bid** means a takeover bid under Chapter 6 of the Corporations Act for the Shares in the Company.

**Tax** means all kinds of taxes, duties, imposts, deductions, charges and withholdings imposed by a government, together with interest and charges.

**Trust** means the trust established by and on the terms and conditions contained in this deed.

**Trust Property** means property vested or to be vested from time to time in the Trustee in its capacity as Trustee of the Trust.

**Trustee** means the initial trustee party to this deed and thereafter means the trustee from time to time of the Trust.

**Trustee Sole Activity test** means the requirements to satisfy paragraph (hb) of the definition of “fringe benefit” in section 136(1) of the *Fringe Benefits Tax Assessment Act 1986* or any other test prescribed by the Board from time to time in its absolute discretion (and for the avoidance of any doubt, the Board can determine that there is no Trustee Sole Activity test).

### **13.2 Interpretation**

In this deed, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a recital, this deed or a clause means the recital, this deed or the clause as amended from time to time in accordance with this deed;
- (c) a reference to a rule, statute, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to a person includes a reference to the person's legal personal representatives, executors, administrators and successors, a firm or a body corporate.

### **13.3 Headings**

Headings are inserted for convenience and do not affect the interpretation of this deed.

**EXECUTED** as a deed

# Signing page

**DATED:** 2007

**EXECUTED** by **NIB HOLDINGS** )  
**LIMITED** in accordance with section )  
127(1) of the Corporations Act 2001 )  
(Cwlth) by authority of its directors: )

..... )  
Signature of director )

..... )  
Name of director (block letters) )

..... )  
Signature of director/company )  
secretary\* )

\*delete whichever is not applicable

..... )  
Name of director/company secretary\* )  
(block letters) )

\*delete whichever is not applicable

**EXECUTED** by **NIB HEALTH** )  
**FUNDS LIMITED** in accordance )  
with section 127(1) of the )  
Corporations Act 2001 (Cwlth) by )  
authority of its directors: )

..... )  
Signature of director )

..... )  
Name of director (block letters) )

..... )  
Signature of director/company )  
secretary\* )

\*delete whichever is not applicable

..... )  
Name of director/company secretary\* )  
(block letters) )

\*delete whichever is not applicable

**THE COMMON SEAL** of )  
**AUSTRALIAN EXECUTOR** )  
**TRUSTEES LIMITED** is duly )  
affixed by authority of its directors in )  
the presence of: )

..... )  
Signature of authorised person )

..... )  
Office held )

..... )  
Name of authorised person (block )  
letters) )

..... )  
Signature of authorised person )

..... )  
Office held )

..... )  
Name of authorised person (block )  
letters) )