

**HENRY WALKER ELTIN GROUP LIMITED
(ADMINISTRATORS APPOINTED) (ACN 007 710 483) & ORS****DEED OF COMPANY ARRANGEMENT PROPOSAL****DRAFT****A. THE GROUP DOCA PARTICIPANTS****1. INTRODUCTION**

1.1 The Corporations Act 2001 (Cth) ("**Act**") permits creditors of a company in voluntary administration to resolve that the company execute a *Deed of Company Arrangement* ("**DOCA**").

1.2 A Deed of Company Arrangement is proposed for each of the companies listed in Schedule 1 ("**the Group DOCA Participants**"). The Group DOCA Participants comprise the Companies listed in Schedule 2 ("**the Mining Pool Entities**") and the Companies listed in Schedule 3 ("**the Non Core Entities**").

1.3 Generally, the proposal envisages that:

- (a) All assets and undertaking of the Mining Pool Entities, including where relevant, shares in any company that is a Group DOCA Participant, will be sold or realised, or available for sale or realisation, and placed into a pooled fund to be shared by creditors of the Mining Pool Entities ("**Mining Pool Fund**");
- (b) All assets and undertaking of the Non Core Entities will be sold or realised, or available for sale or realisation, and placed into a pooled fund to be shared by creditors of the Non Core Entities ("**Non Core Fund**");
- (c) Certain creditors of certain companies which are Group DOCA Participants will, because of existing contractual rights under guarantees, be able to prove in both the Mining Pool Fund and the Non Core Fund.

1.4 A separate Deed of Company Arrangement ("**the Eltin DOCA**") is proposed for ACN 009 366 036 Pty Ltd (Voluntary Administrators Appointed) ("**Eltin**") in accordance with the provisions set out in Section B below.

2. THE GROUP DOCA ARRANGEMENTS**2.1 Documenting the Arrangements**

Subject to sub-clause 2.1A:

- (a) The arrangements proposed for each of the Mining Pool Entities and the Non Core Entities will be recorded in one document comprising a Deed of Company Arrangement within the meaning of, and for the purposes of, Part 5.3A of the Act to be executed by all the Group DOCA Participants ("**the Group DOCA**").
- (b) It is proposed that the Group DOCA will be conditional on the approval of creditors of each of the Mining Pool Entities. In the event that creditors of any Mining Pool Entity do not approve the

Group DOCA, the Group DOCA will not take effect, and all companies that are Group DOCA Participants will be placed into liquidation (subject to clause 2.1A (v) below).

- (c) It is envisaged that all creditors of companies that are Group DOCA Participants will approve the Group DOCA.

2.1A. If the creditors of the Mining Pool Entities resolve to adjourn the second meeting of creditors of those entities only a DOCA would be entered into by the Non Core Entities only (subject to the creditors of those entities so resolving). The DOCA for the Non Core Entities ("**Separate Non Core DOCA**") will be in accordance with this proposal, but with the following additional provisions:

- (i) The Separate Non Core DOCA will take effect when all parties to it sign the Separate Non Core DOCA.
- (ii) The Deed Administrators will be entitled to call for and adjudicate upon proofs of debt of creditors of the Non Core Entities;
- (iii) The Deed Administrators will not be entitled to make any distribution to any class of creditor until the Distribution Date has passed;
- (iv) "Distribution Date" will be defined to mean the date upon which the Mining Pool Entities execute the Group DOCA substantially in accordance with this proposal;
- (v) If the Distribution Date has not been reached within six (6) calendar months of the date the Separate Non Core DOCA is executed by the Non Core Entities, then the Deed Administrators shall convene a meeting of creditors of the Non Core Entities pursuant to section 445F of the Corporations Act; and
- (vi) If the Separate Non Core DOCA in respect of Non Core Entities is terminated and the Non Core Entities are wound up, then the rights of creditors and the Non Core Entities shall be that under the Corporations Act, as if the Non Core Entities had been placed into liquidation on 31 January 2005, and the assets of each of the Non Core Entities shall vest or remain vested in each of those respective entities in liquidation, and no assets, claims or rights, of creditors or otherwise, shall be or considered to be pooled.

2.2 Deed Administrators

- (a) The Group DOCA Participants and Eltin were placed into voluntary administration on 31 January 2005 ("**Commencement Date**").
- (b) The present voluntary administrators of the Group DOCA Participants, and Eltin, Anthony Gregory McGrath, Scott Bradley Kershaw, Joseph David Hayes and Shaun Robert Fraser, were appointed on 1 February 2005, pursuant to section 449C of the Act ("**Administrators**").

- (c) The Administrators will be the joint and several deed administrators to administer the Group DOCA and accordingly the Mining Pool Fund and the Non Core Fund (“**Deed Administrators**”).
- (d) The Deed Administrators will be agents of the Group DOCA Participants for the purposes of the Group DOCA, and as such, will have and be able to exercise all of the powers of the Group DOCA Participants.

2.3 When DOCA takes effect

- (a) The proposed Group DOCA will take effect when all parties to it sign the Group DOCA.
- (b) Once the Group DOCA takes effect, the present voluntary administration of the Group DOCA Participants will come to an end. In the event that clause 2.1A is operative and there is a Separate Non Core DOCA, then the voluntary administration of the Non Core Entities will come to an end on its execution, but the voluntary administration of the Mining Pool Entities will continue.
- (c) Whilst the Group DOCA will take effect from its execution, it will bind the claims of creditors of the Group DOCA Participants arising as at the Commencement Date, that are capable of admission to proof under the Act, in the circumstances set out in clause 2.4 below.

2.4 Binding Effect of the DOCA

- (a) The Group DOCA will bind all creditors, officers and shareholders of the Group DOCA Participants, although nothing in the Group DOCA will affect:
 - (i) The property rights of any owner or lessor of property in the use or possession of any of the Group DOCA Participants who does not vote in favour of the Group DOCA;
 - (ii) The rights of secured creditors; or
 - (iii) The priority afforded employees and priority creditors under the Act.
- (b) Control of the Group DOCA Participants will remain with the Deed Administrators until the Group DOCA terminates.
- (c) The officers of the Group DOCA Participants will continue in office but must not exercise any function or power as an officer of the any of the companies comprising the Group DOCA Participants unless authorised to do so by the Deed Administrators.
- (d) The Deed Administrators will have wide powers, including but not limited to, powers to conduct and administer the affairs of the Mining Pool Entities and the Non Core Entities, including their realisation, recapitalisation or sale and to administer the Group DOCA and the Mining Pool Fund and the Non Core Fund (“**Deed Funds**”).
- (e) The Group DOCA will provide the Deed Administrators with power to convert certain debts to equity, in any entity established by the

Deed Administrators, or in any of the Group DOCA Participants, in respect of, or for the purposes of, realising or recapitalising Mining Pool Entities or Non Core Entities.

2.5 Realisation of assets and creation of Deed Funds

The Proposal involves the Deed Administrators endeavouring to realise the property and assets of the Group DOCA Participants, including, as the case may require, shares of any company in the Group DOCA Participants, and applying them to the Deed Funds, whereby:

- (a) All assets and undertaking of the Mining Pool Entities, including where relevant, shares in any Group DOCA Participant company, will be sold or realised, or available for sale or realisation, and placed into a pooled fund to be shared by creditors of the Mining Pool Entities ("**Mining Pool Fund**");
- (b) All assets and undertaking of the Non Core Entities will be sold or realised, or available for sale or realisation, and placed into a pooled fund to be shared by creditors of the Non Core Entities ("**Non Core Fund**");
- (c) For the purposes of the Group DOCA and clauses 2.5(a) and (b), "realised" includes but is not limited to a sale (whether by auction, tender or private treaty), recapitalisation or restructure of, inter alia, the shares or issued capital in any Group DOCA Participant company, or in any entity established by the Deed Administrators and may include the conversion of certain debt to equity, in or as a consequence of that process.

3. THE DEED FUNDS

- 3.1 The Group DOCA will establish the Deed Funds to be administered by the Deed Administrators.
- 3.2 The Deed Administrators will hold the Deed Funds for the benefit of the creditors of all of the respective entities entitled to share in them, on the terms of the Group DOCA.

Mining Pool Fund

- 3.3 The Mining Pool Fund will comprise:
 - (a) The net proceeds of sale of the property and assets of the Mining Pool Entities including where relevant the proceeds of sale of shares in any Group DOCA Participant company;
 - (b) The cash assets of the Mining Pool Entities; and
 - (c) Interest earned on the Fund (net of tax and charges).

Non Core Fund

- 3.4 The Non Core Fund will comprise:
 - (a) The net proceeds of sale of the property and assets of the Non Core Entities;

- (b) The cash assets of the Non Core Entities; and
- (c) Interest earned on the Fund (net of tax and charges).

4. CREDITORS

4.1 Having regard to the business and operations of the Group DOCA Participants, and the existing rights of creditors, the Group DOCA will provide for classes of creditors to participate in the Group DOCA.

4.2 The creditor classes and other definitions include:

- (a) **“Financial Creditors”**, means the Australian based financial institutions and Syndicated Lenders, and the US-based bondholders, being the largest class of creditors of the Group DOCA Participants.
- (b) **“Syndicated Loan Agreement”** means the Loan Agreement, as amended, between Henry Walker Eltin Group Limited and HWE Finance Pty Limited, as borrowers and others (as guarantors) and the Syndicated Lenders, dated 28 June 2000.
- (c) **“Syndicated Lenders”**, means the financial institutions defined as Participants in the Syndicated Loan Agreement, as amended.
- (d) **“Full Debts”** in respect of Syndicated Lenders, means the full amount of their Claims for principal and accrued interest owed by the Group DOCA Participants, as at the Commencement Date
- (e) **“Priority Mining Creditors”**, means those employees of Mining Pool Entities whose claims receive statutory priority under the Act.
- (f) **“Priority Non Core Creditors”**, means those employees of Non Core Entities whose claims receive statutory priority under the Act.
- (g) **“Mining Pool Trade Creditors”**, means the trade and other creditors of the Mining Pool Entities, other than the Financial Creditors.
- (h) **“Non Core Trade Creditors”**, means the trade and other unsecured creditors of all of the Non Core Entities, except HWE Finance Pty Limited, other than Financial Creditors.
- (i) **“Solvent Entity Creditors”**, means the trade and other unsecured creditors of Dover Investments Pty Limited and Northaust Auto Hire Pty Limited.
- (j) **“Guarantor Companies”** means those Group DOCA Participant companies that are borrowers or guarantors pursuant to the Syndicated Loan Agreement, as amended, and who are prohibited from proving or seeking to prove in the administration or winding up of any other such Guarantor Company, until the Syndicated Lenders are paid their Full Debts.
- (k) **“Guarantor Company Claims”** means the Claims of Guarantor Companies for any inter company debt owed by any Company that is a Group DOCA Participant.

- (l) “**HWE Finance Creditors**” means the trade and other unsecured creditors of HWE Finance Pty Limited, other than Financial Creditors.

4.3 Subject to adjudication of formal proofs:

- (a) the Guarantor Companies are prohibited from proving or seeking to prove in the administration or winding up of any other such Guarantor Company, under the Syndicated Loan Agreement, as amended.
- (b) Certain but not all of the Financial Creditors have the benefit of pre-existing contractual rights under bi-lateral guarantees as against the Mining Pool Entities and some of the Non Core Entities, including ACN 009 366 036 Pty Limited (Formerly Eltin Limited) (“**Eltin**”).
- (c) Eltin is not one of the Guarantor Companies.

4.4 The Group DOCA will provide that until the Syndicated Lenders are paid their Full Debts, (being those Claims for principal and accrued interest owed by the Group DOCA Participants, as at the Commencement Date) no Guarantor Companies will be entitled to prove or seek to prove in either the Mining Pool Fund or the Non Core Fund. In the event that the Guarantor Companies become entitled to prove, they will only be entitled to participate in either Deed Fund, to the extent they have a provable Claim.

5. RIGHTS TO CLAIM AGAINST FUNDS

5.1 For the purposes of each of the Deed Funds, “**Claim**” will be broadly defined in the Group DOCA as a debt owing by, or claim subsisting against, a Group DOCA Participant company (whether present or future, certain or contingent, ascertained or sounding only in damages), irrespective of whether the debt or claim arose by virtue of contract, at law (including by statute), in equity or otherwise, being a debt or claim which arose on or before the Commencement Date (31 January 2005), which would be admissible to proof against the respective Group DOCA Participant company, had that entity been wound up pursuant to Part 5.6 of the Act.

5.2 Any claim of any creditor of a Group DOCA Participant that:

- (a) arises after the Commencement Date, or
- (b) is otherwise not capable of admission to proof under the Act,

will not be caught or bound by the Group DOCA.

5.3 It is proposed that Priority Mining Creditors and Priority Non Core Creditors will be paid in full from the respective Deed Funds.

5.4 Solvent Entity Creditors will receive payment in full, together with such interest as they are entitled to at law from the date of appointment to the date of distribution from the Non Core Fund, and will have no right to prove in the Mining Pool Fund.

- 5.5 Non Core Trade Creditors with a Claim:
- (a) will be treated as creditors of the Non Core Fund as a whole, and be entitled to an initial distribution representing the lesser of:
 - (i) 10 cents in the dollar on admitted claims; and
 - (ii) a pro rata distribution, based upon admitted claims, from the fixed sum of AUD\$4,064,000.and,
 - (b) have no right to claim in the Mining Pool Fund. In the event that Syndicated Lenders receive their Full Debts, and that the Guarantor Companies become entitled to prove, to the extent that any Guarantor Company is a Non Core Entity, the Non Core Trade Creditors may be entitled to a further distribution, out of the Non Core Fund.
- 5.6 HWE Finance Creditors with a Claim:
- (a) will be treated as creditors of the Non Core Fund as a whole, and be entitled to an initial distribution representing the lesser of:
 - (i) 20 cents in the dollar on admitted claims; and
 - (ii) a pro rata distribution, based upon admitted claims, from the fixed sum of AUD\$241,400.and,
 - (b) have no right to claim in the Mining Pool Fund. In the event that Syndicated Lenders receive their Full Debts, and that the Guarantor Companies become entitled to prove, to the extent that any Guarantor Company is a Non Core Entity, the HWE Finance Creditors may be entitled to a further distribution, out of the Non Core Fund *pari passu* with the Non Core Trade Creditors in accordance with Clause 5.5(b).
- 5.7 Mining Pool Trade Creditors have no right to prove in the Non Core Fund, but will receive a pro rata distribution from the Mining Pool Fund, after payment of Priority Creditors, based upon the total admitted claims of Mining Pool Trade Creditors and Financial Creditors. In the event that Syndicated Lenders receive their Full Debts, and the Guarantor Companies become entitled to prove, to the extent that any Guarantor Company is a Mining Pool Entity, the Mining Pool Trade Creditors will be entitled to a further distribution, out of the Mining Pool Fund.
- 5.8 Financial Creditors will receive distributions from Deed Funds comprising:
- (a) Pro rata distributions from the Non Core Fund, after payment of Priority Non Core Creditors, the payment of Solvent Entity Creditors, the payment of statutory interest on the claims of Solvent Entity Creditors and the initial distribution to Non Core Trade Creditors; and
 - (b) Pro rata distributions from the Mining Pool Fund, after payment of Priority Mining Creditors, based upon total admitted claims of Financial Creditors and Mining Pool Trade Creditors; and

- (c) Any further distribution available from either the Non Core Fund or the Mining Pool Fund, as a result of the Guarantor Companies being admitted to prove, consequent upon the Syndicated Lenders receiving their Full Debts.

5.9 The distributions set out above are subject to the priorities and indemnities afforded the Administrators and Deed Administrators in respect of remuneration, costs and expenses incurred, in accordance with the Act.

5.10 Provision will be made in the Group DOCA for creditors who would otherwise be bound by the Group DOCA, such as Priority Creditors, certain creditors with contracts, and ongoing lease creditors to be removed from the Group DOCA to become "**Excluded Creditors**", by operation of a transfer mechanism, which may become operable depending upon whether shares of the Group DOCA Participant companies, and in particular, Mining Pool Entities, are sold, such that such Excluded Creditors, and their Claims, are transferred to a purchaser or other interested party.

6. RELEASE OF CLAIMS

6.1 A Mining Pool Entity will be released from all Claims (other than Excluded Claims) against it on the date on which the Deed Administrators make a final distribution from the Mining Pool Fund. However, if the shares in a Mining Pool Entity are sold instead of its assets, Claims (other than Excluded Claims) against that Mining Pool Entity will be released at the time of completion of that sale.

6.2 The release of the Claims of creditors of a Mining Pool Entity, in the event of a sale of shares in the circumstances set out in clause 6.1, will not affect the rights of those creditors, and such creditors will still be able to seek to prove as a creditor in the Mining Pool Fund.

6.3 A Non Core Entity will be released from all Claims (other than Excluded Claims) against it on the date on which the Deed Administrators make a final distribution from the Non Core Fund. However, if the shares in a Non Core Entity are sold instead of its assets, Claims (other than Excluded Claims) against that Non Core Entity will be released at the time of completion of that sale.

6.4 The release of the Claims of creditors of a Non Core Entity, in the event of a sale of shares in the circumstances set out in clause 6.3, will not affect the rights of those creditors, and such creditors will still be able to seek to prove as a creditor in the Non Core Fund.

7. DISTRIBUTION OF THE DEED FUNDS

Mining Pool Fund

7.1 The Deed Administrators will distribute the *Mining Pool Fund* as follows, subject to clause 7.2:

- (a) First, in payment of:
- (i) The costs, expenses and other liabilities relating to the voluntary administration of the Mining Pool Entities and relating to the Group DOCA; and
 - (ii) The Administrators' and the Deed Administrators' fees,

(for the period from the Commencement Date until termination of the Group DOCA for the relevant Group DOCA Participant company), (“**Administrators’ Mining Remuneration**”);

- (b) Secondly, in payment to Priority Mining Creditors, being employees of the Mining Pool Entities that would have had priority if the relevant Mining Pool Entity had been wound up pursuant to Part 5.6 of the Act, unless those creditors having such Claims become Excluded Creditors;
- (c) Thirdly, in payment of the Claims of Financial Creditors and Mining Pool Trade Creditors (other than the Claims of the Guarantor Companies) on a pro rata basis.
- (d) Fourthly, in the event that the Syndicated Lenders receive their Full Debts, any balance shall be distributed on a pro rata basis as between the Financial Creditors (other than the Syndicated Lenders), Mining Pool Trade Creditors and Guarantor Companies (in respect of Guarantor Company Claims against Mining Pool Entities).
- (e) In respect of any distribution pursuant to clause 7.1(d) to Guarantor Companies:
 - (i) if any Mining Pool Entity receives a distribution, those moneys shall be applied to the Mining Pool Fund; and
 - (ii) if any Non Core Entity receives a distribution, those moneys shall be applied to the Non Core Fund.
- (f) Finally, a distribution of any further balance of the Mining Pool Fund, created by sub-clause 7.1(d) and 7.1(e)(i) (and clause 7.4(g)(i)), to Financial Creditors (other than the Syndicated Lenders) and to Mining Pool Trade Creditors, pro rata on their admitted claims.

7.2 In the event of any Claim by a shareholder of a Mining Pool Entity, in their capacity as a member of that entity, as against any Group DOCA Participant, the Group DOCA will provide that such Claims will be postponed until all Claims by persons made other than as members of the relevant Mining Pool Entity have been satisfied.

7.3 The Deed Administrators may make interim distributions as well as a final distribution.

Non Core Fund

7.4 The Deed Administrators will distribute the *Non Core Fund* as follows, subject to clause 7.5:

- (a) First, in payment of:
 - (i) The costs, expenses and other liabilities relating to the voluntary administration of the Non Core Entities and relating to the Group DOCA; and
 - (ii) The Administrators’ and the Deed Administrators’ fees,

(for the period from The Commencement Date until termination of the Group DOCA for the relevant Non Core Entity), (“**Administrators’ Non Core Remuneration**”);

- (b) Secondly, in payment to the Priority Non Core Creditors that would have had priority if the relevant Non Core Entity had been wound up pursuant to Part 5.6 of the Act, (unless such claims have become Excluded Claims);
- (c) Thirdly, a payment of 100 cents in the dollar on admitted Claims to Solvent Entity Creditors;
- (d) Fourthly, a payment of such interest on the claims of Solvent Entity Creditors accruing from the date of appointment to the date of distribution as they are entitled to at law;
- (d) Fifthly, an initial payment to Non Core Trade Creditors and to HWE Finance Creditors, representing:
 - (i) In the case of Non Core Trade Creditors the lesser of:
 - (A) 10 cents in the dollar on admitted claims; and
 - (B) a pro rata distribution, based upon admitted claims, from the fixed sum of AUD\$4,064,000;
 - and
 - (ii) In the case of HWE Finance Creditors, the lesser of:
 - (A) 20 cents in the dollar on admitted claims; and
 - (B) a pro rata distribution, based upon admitted claims, from the fixed sum of AUD\$241,400.
- (e) Sixthly, a pro rata payment in respect of the Claims of Financial Creditors;
- (f) Seventhly, in the event that the Syndicated Lenders receive their Full Debts, any balance shall be distributed on a pro rata basis as between the remaining Financial Creditors (other than the Syndicated Lenders),
- (g) Finally, a distribution of any further balance of the Non Core Fund to Non Core Trade Creditors and to HWE Finance Creditors, pro rata on their admitted claims.

7.5 In the event of any Claim by a shareholder of a Non Core Entity, in their capacity as a member of that entity, as against any Group DOCA Participant, the Group DOCA will provide that such Claims will be postponed until all Claims by persons made other than as members of the relevant Non Core Entity have been satisfied.

7.6 The Deed Administrators may make interim distributions as well as a final distribution, subject to the Separate Non Core DOCA.

7.7 Provision will be made in the Group DOCA to permit the Deed Administrators to take such steps as may be necessary in the interests of obtaining the best return from the realisation of the assets of the Mining Pool Entities to do such things as are necessary to resolve any claims against assets of any of the Mining Pool Entities which claims are not capable of being barred by the Group DOCA. If any payment must be made from the Mining Pool Fund to achieve this purpose, such payment shall be an expense of administering the Group DOCA in accordance with Clause 7.1 of this proposal.

8. ADJUDICATION OF PROOFS

8.1 Creditors seeking to share in the Deed Funds will be required to lodge proofs of debt or claim with the Deed Administrators so as to establish their entitlement to a Claim and a distribution out of the Deed Funds, or one of them.

8.2 The Deed Administrators will adjudicate on proofs of debt applying the rules prescribed in the Corporations Regulations (with such modifications as are necessary) that apply to the adjudication of proofs of debt in a liquidation, subject to any provision of the Group DOCA.

8.3 It is proposed that the Group DOCA will require that Financial Creditors, and in particular Syndicated Lenders, provide the Deed Administrators with such documents or information as they may reasonably require, from time to time, in order to assess when and whether the Syndicated Lenders will or may receive their Full Debts, so as to permit the Guarantor Companies to prove in the respective Deed Funds.

9. DOCA TERMINATES

9.1 If the Deed Administrators effect a sale of the shares in any company that is a Group DOCA Participant, the Group DOCA will terminate in respect of that particular Group DOCA Participant company on completion of the sale of those shares.

9.2 Subject to Clause 2.1A, the Group DOCA in respect of the Group DOCA Participants will otherwise terminate, on the first occurring of:

- (a) the distribution by the Deed Administrators of the respective Deed Fund or Deed Funds;
- (b) the Court so orders under section 445D of the Act;
- (c) the creditors of each Group DOCA Participant resolving, at a meeting convened under section 445F of the Act, to so terminate the Group DOCA.

9.3 If the Group DOCA terminates in respect of a Group DOCA Participant in the circumstances envisaged under clause 9.1, then:

- (a) The rights of creditors of that particular Group DOCA Participant, or Participants, to prove in and receive a distribution from the relevant Deed Fund remain unaffected, and the provisions of the Group DOCA will apply to the adjudication of proofs of debt accordingly; and

- (b) the Group DOCA in respect of each other Group DOCA Participant will not terminate and the remaining Group DOCA Participants will continue to be subject to their continuing Group DOCA, notwithstanding that the one Group DOCA governs and applies to each Group DOCA Participant.

10. OTHER PROVISIONS

10.1 No inconsistent act

Between the date that the creditors vote in favour of the Group DOCA and execution of the Instrument, creditors must not do anything that would be inconsistent with the proposed Group DOCA.

10.2 No proceedings

During the currency of the Group DOCA, except with the leave of the court no creditor bound by it may commence any court proceedings or enforcement action against a Group DOCA Participant, including proceedings to recover any part of its debt or claim or to wind up a Group DOCA Participant.

10.3 Administrators

- (a) The Deed Administrators will act as agents of the Group DOCA Participant and, subject to any relevant provisions of the Act, will not be personally liable for any debt, liability or other obligation incurred or any loss or damage caused by any act, default or omission by the Deed Administrators in the performance of their functions, powers and duties under the Group DOCA, other than loss or damage caused by the dishonesty, negligence, breach of trust or wilful default of the Deed Administrators.
- (b) The Administrators and Deed Administrators will be entitled to be indemnified out of the assets of the Mining Pool Entities and the Non Core Entities, and the Deed Funds, for the Administrators' Mining Remuneration and Administrators' Non Core Remuneration.
- (c) The Deed Administrators, in addition to having statutory powers and those granted under paragraphs 1 and 2 of Schedule 8A of the Corporations Regulations, will have broad powers to conduct and administer the affairs of the Group DOCA Participants, with a view to maximising the realisation of the assets and undertakings of the respective Mining Pool Entities and Non Core Entities, and hence the Mining Pool Fund and the Non Core Fund.
- (d) The Deed Administrators will have all power to convene meetings of Committee of Creditors or of creditors of Group DOCA Participants to vary, as may be required, a provision of the Group DOCA, or to approve Administrators' Mining Remuneration or Administrators' Non Core Remuneration, in order that the spirit and intent of the Group DOCA be complied with.

11. COMMITTEES OF CREDITORS AND REMUNERATION

11.1 At the second meetings of creditors, the creditors may resolve to appoint committees of creditors to any or all of the Group DOCA Participants for the purposes of the Group DOCA. The committees of creditors will consult with the Deed Administrators and receive and consider reports by the Deed Administrators.

11.2 Given the nature of the Group DOCA and the two Deed Funds, the Administrators recommend that two Committees of Creditors be formed, one in respect of the Mining Pool Entities and another in respect of the Non Core Entities.

In accordance with Corporations Regulation 5.3A.06 and paragraph 11(a) of Schedule 8A, each of the two committees of creditors shall consist of at least 3 and not more than 5 members, being representatives of creditors of each of the Mining Pool Entities and the Non Core Entities. It is proposed that the respective appointees to those committees shall be those nominees, who consent to act, and receive the greatest value of votes of creditors.

11.3 The Group DOCA will provide that the Deed Administrators may table before the Committees of Creditors, documents and information concerning tasks done and time spent by the Deed Administrators and their staff in respect of Administrators' Mining Remuneration and Administrators' Non Core Remuneration sought by the Deed Administrators, for approval. Subject to the right of the Deed Administrators to apply to the Court, or any variation of this provision, the Committees of Creditors shall be authorised to fix the Administrators' Mining Remuneration and Administrators' Non Core Remuneration, for the purposes of section 449E of the Act.

11.4 The Deed Administrators shall be entitled to draw Administrators' Mining Remuneration, approved in accordance with clause 11.4, from the Mining Pool Fund, from time to time.

11.5 The Deed Administrators shall be entitled to draw Administrators' Non Core Remuneration, approved in accordance with clause 11.4, from the Non Core Fund, from time to time.

12. PRESCRIBED PROVISIONS

12.1 Paragraphs 1 and 2 of Schedule 8A of the Corporations Regulations (**Schedule 4**) will apply, and the Deed Administrators will have all powers necessary to give effect to the Group DOCA. Otherwise the balance of Schedule 8A shall not apply to the Group DOCA except as expressly included in the Group DOCA.

12.2 For the purpose of creditors proving their debts or claims so that they can share in the Fund, subdivisions A, B, C and E of Division 6 of Part 5.6 of the Act (other than sections 553(1A) and 554F) and Corporations Regulations 5.6.39 to 5.6.57 will apply with such modifications as are necessary to adapt them to claims against the Fund in administration as opposed to a liquidation context.

12.3 Corporations Regulations 5.6.12 to 5.6.36A with such modifications as are necessary will apply to meetings of creditors held pursuant to the Group DOCA.

B. ELTIN**13.**

- 13.1 The proposal for the Eltin DOCA is that:
- (a) There will be a separate stand alone Deed of Company Arrangement entered into by Eltin under which a separate Deed Fund will be established (“**Eltin Deed Fund**”).
 - (b) The Eltin Deed Fund will comprise:
 - (i) The net proceeds of sale of any property and assets of Eltin;
 - (ii) The realisation of all inter company loans owing to Eltin by any company in the HWE Administration Group;
 - (iii) The cash assets of Eltin; and
 - (iv) Interest earned on the fund (net of tax and charges).
- 13.2 The Eltin Deed Fund will be available to meet the claims of creditors of Eltin only. Those creditors include some, but not all, of the Financial Creditors.
- 13.3 The Eltin Deed Fund will be distributed as follows:
- (a) First in payment of:
 - (i) The cost, expenses and other liabilities relating to the voluntary administration of Eltin; and
 - (ii) The Eltin Administrators and the Deed Administrator’s feesfor the period from the Commencement Date until termination of the DOCA (“**Administrators Eltin Remuneration**”);
 - (b) Secondly in payment to any creditors of Eltin that would have had priority if Eltin had been wound up pursuant to Part 5.6 of the Act;
 - (c) Thirdly in payment of the claims of creditors of Eltin as at the Commencement Date on a pro rata basis;
 - (d) Fourthly in the event that the creditors of Eltin receive payment in full of all claims they have against Eltin as at the Commencement Date in payment of interest pursuant to Section 563B of the Act as if the company had been wound up pursuant to Part 5.6 of the Act;
 - (e) Fifthly in payment of any other claims Creditors may have as a matter of law;
 - (f) Sixthly in payment of any surplus to the Mining Pool Fund.
- 13.4 The following provisions will apply to the Eltin DOCA:
- (a) The Eltin DOCA will take effect when all parties to it sign it;
 - (b) The Deed Administrators will be entitled to call for and adjudicate upon proofs of debt of creditors;

- (c) The Deed Administrators will not be entitled to make any distribution to any creditor until the Distribution Date has passed;
- (d) "Distribution Date" will be defined to mean the date upon which the Mining Pool Entities execute the Group DOCA substantially in accordance with the proposal set out in Section A;
- (e) If the Distribution Date has not been reached within six (6) calendar months of the date of the Eltin DOCA then the Deed Administrators shall convene a meeting of creditors pursuant to Section 445F of the Corporations Act.

13.5 The provisions of the Group DOCA proposal for the Group DOCA Participants relating to the identity of the Deed Administrators and their powers, the binding effect of the Group DOCA, the release of claims, the adjudication of proofs, committees of creditors, remuneration and the application of the prescribed provisions shall apply to the Eltin DOCA as if references to the "Group DOCA Participants" and the "Group DOCA" were references to respectively Eltin and the Eltin DOCA.

SCHEDULE 1

GROUP DOCA PARTICIPANTS

(ALL IN ADMINISTRATION)

COMPANY	ACN
Henry Walker Eltin Group Limited	007 710 483
Bulumba Pty Limited	008 060 240
Capnorth Developments Pty Limited	009 640 251
Castlemaine Wastewater Treatment Pty Limited	081 417 030
HWE Civil Pty Limited	106 551 302
HWE Finance Pty Limited	009 593 668
HWE Land Pty Limited	009 614 788
HWGL Services Pty Limited	009 615 436
HWIO Pty Limited	072 445 179
Inventive Pty Limited	009 639 310
LSM Projects Pty Limited	106 580 134
Northaust Auto Hire Pty Limited	009 639 490
Simon Engineering (Australia) Holdings Pty Ltd	000 142 165
Simon Engineering (Australia) Pty Limited	000 117 000
Bridge Autos Pty Limited	009 625 816
Dover Investments Pty Limited	009 637 914
Castleton Pty Limited	009 210 664
Eltin International Pty Limited	009 211 456
Eltin Open Pit Operations Pty Limited	008 918 278
Eltin Surface Mining Pty Limited	062 450 113
Eltin Underground Operations Pty Limited	008 906 849
Henry Walker Eltin Contracting Pty Limited	
Henry Walker Environmental Pty Limited	009 625 138
Henry Walker Underground Pty Limited	009 627 490
HWE Cockatoo Pty Limited	007 649 274
	009 639 285

SCHEDULE 2

**MINING POOL ENTITIES
(ALL IN ADMINISTRATION)**

Eltin Surface Mining Pty Limited	062 450 113
Eltin Underground Operations Pty Limited	008 906 849
HWE Cockatoo Pty Limited	009 639 285
Henry Walker Eltin Group Limited	007 710 483
HWIO Pty Limited	072 445 179
Henry Walker Eltin Contracting Pty Limited	009 625 138
Henry Walker Environmental Pty Limited	009 627 490
Henry Walker Underground Pty Limited	007 649 274

SCHEDULE 3

NON CORE ENTITIES

(ALL IN ADMINISTRATION)

Bulumba Pty Limited	008 060 240
Capnorth Developments Pty Limited	009 640 251
Castlemaine Wastewater Treatment Pty Limited	081 417 030
HWE Civil Pty Limited	106 551 302
HWE Finance Pty Limited	009 593 668
HWE Land Pty Limited	009 614 788
HWGL Services Pty Limited	009 615 436
Inventive Pty Limited	009 639 310
LSM Projects Pty Limited	106 580 134
Northaut Auto Hire Pty Limited	009 639 490
Simon Engineering (Australia) Holdings Pty Ltd	000 142 165
Simon Engineering (Australia) Pty Limited	000 117 000
Bridge Autos Pty Limited	009 625 816
Dover Investments Pty Limited	009 637 914
Castleton Pty Limited	009 210 664
Eltin International Pty Limited	009 211 456
Eltin Open Pit Operations Pty Limited	008 918 278

SCHEDULE 4**PRESCRIBED PROVISIONS - SCHEDULE 8A****DEED OF COMPANY ARRANGEMENT - PRESCRIBED PROVISIONS****Deed Administrators Deemed Agent of Company**

1. In exercising the powers conferred by this Deed and carrying out the duties arising under this Deed, the Deed Administrators are taken to act as agent for and on behalf of the Company.

Powers of Deed Administrators

2. For the purpose only of administering this Deed, the Deed Administrators have the following powers:
 - (a) to enter upon or take possession of the property of the Company;
 - (b) to lease or let on hire property of the Company;
 - (c) to grant options over property of the Company on such conditions as the Administrators think fit;
 - (d) to insure property of the Company;
 - (e) to repair, renew or enlarge property of the Company;
 - (f) to call in, collect or convert into money the property of the Company;
 - (g) to administer the assets available for the payment of claims of Creditors in accordance with the provisions of this Deed;
 - (h) to purchase, hire, lease or otherwise acquire any property, or interest in property from any person or corporation;
 - (i) to borrow or raise money, whether secured upon any or all of the assets of the Company or unsecured, for any period on such terms as the Administrators think fit and whether in substitution for any existing security or otherwise;
 - (j) to bring, prosecute and defend in the name and on behalf of the Company or in the name of the Administrators any action, suits or proceedings;
 - (k) to refer to arbitration any question affecting the Company;
 - (l) to make payments to any secured creditor of the Company and any person who is the owner or lessor of property possessed, used or occupied by the Company;
 - (m) to convene and hold meetings of the members or creditors of the Company for any purpose the Administrators think fit;

- (n) to make interim or other distributions of the proceeds of the realisation of the assets available for the payment of claims of creditors as provided in this Deed;
- (o) to appoint agents to do any business or to attend to any matter of affairs of the Company that the Administrators are unable to do, or that it is unreasonable to expect the Administrators to do in person;
- (p) to engage or discharge employees on behalf of the Company;
- (q) to appoint a solicitor, accountant or other professionally qualified person to assist the Administrators;
- (r) to permit any person authorised by the Administrators to operate any account in the name of the Company;
- (s) to sell, call in or convert into money any of the property of the Company, to apply the money in accordance with this Deed and otherwise effectively and properly to carry out his or her duties as Administrators;
- (t) to do all acts and execute in the name and on behalf of the Company all deeds, receipts and other documents, using the Company's common or official seal when necessary;
- (u) subject to the Bankruptcy Act 1966, to prove in the bankruptcy of any contributory or debtor of the Company or under any deed executed under that Act;
- (v) subject to the Corporations Act, to prove in the winding up of any contributory or debtor of the Company or under any scheme or arrangement entered into, or deed or Company arrangement executed, under the Corporations Act;
- (w) to draw, accept, make or endorse any bill of exchange or promissory note in the name and on behalf of the Company;
- (x) to take out letters of administration of estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or the estate of a contributory or debtor, that cannot be conveniently done in the name of the Company;
- (y) to bring or defend an application for the winding up of the Company;
- (z) to carry on the business of the Company on such terms and conditions and for such purposes and times and in such manner as the Administrators think fit subject only to the limitations imposed by this Deed;
- (za) to sell any or all of the property of the Company including the whole of the business or undertaking of the Company at any time the Administrators think fit, either by public auction or by private contract and either for a lump sum payable by instalments or for a sum on account and to obtain a mortgage or encumbrance for the balance or otherwise;

- (zb) to close down the whole or any part of any business of the Company;
- (zc) to enter into and complete any contract for the sale of shares in the Company;
- (zd) to compromise any debts or claims brought by or against the Company on such terms as the Administrators think fit and to take security for the discharge of any debt forming part of the property of the Company;
- (ze) to pay any class of creditors in full, subject to Subdivision D of Division 6 of Part 5.6 of the Corporations Act;
- (zf) to do anything that is incidental to exercising a power set out in this clause;
- (zg) to do anything else that is necessary or convenient for the purpose of administering this Deed.