
Advisory Deed

Macquarie Infrastructure Bermuda Limited

Macquarie Investment Management (UK) Limited

**Macquarie European Infrastructure plc
Limited**

Consolidated version as at October 2008

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Date 12 January 2005

Parties **Macquarie Infrastructure Bermuda Limited** a mutual fund incorporated in Bermuda with registered number EC 35715 of Rosebank Centre, 11 Bermudiana Road, HM08, Bermuda (*MIBL*)

Macquarie Investment Management (UK) Limited a company registered in England and Wales with registered number 3976881 of Level 30 Citypoint, 1 Ropemaker Street, London, EC2Y 9HD, United Kingdom (*Advisor*)

Macquarie European Infrastructure plc a company registered in England and Wales with company number 03724230 whose registered office is at of Levels 29 and 30, Citypoint, 1 Ropemaker Street, London EC2Y 9HD, United Kingdom (*MEIP*)

Recitals

- A MIBL has agreed to appoint the Advisor to provide it with advice.
- B The Advisor has agreed to do so on the terms set out in this deed.
- C The parties wish to make certain arrangements in relation to the Management Agreement and the payment of fees under that agreement.

Operative provisions

1 Definitions and Interpretations

Definitions

- 1.1 In this deed, the following definitions apply unless the contrary intention appears or the context requires otherwise:

Actuary means any actuary or other person suitably qualified to calculate the daily closing combined accumulation indices in paragraph (b) or (c) of the definition of “Annual Return” as determined by the Advisor.

Advisor means the Advisor or any subsequent person appointed as the Advisor of MIBL from time to time.

Advisory Duties means the Adviser’s duties specified in paragraphs (a) to (o) (inclusive) of clause 3.1, paragraphs (a), (b) and (c) of clause 3.2 and paragraphs (a), (b), (c)(iii) and (d) of clause 3.3.

Annual Return means:

- (a) if Share Stapling applies (subject to paragraphs (b), and (c) below) in relation to a period (and Share Stapling will be deemed to apply for all periods prior to the Effective Date), the sum calculated as follows:

$$AR = A \times \frac{B - C}{C}$$

Where

AR = the Annual Return for the Financial Year;

A = in respect of each Financial Year is the average number of Share Stapled Securities or Stapled Securities (as the case requires) on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Share Stapled Securities or Stapled Securities traded on the ASX during that ten trading days period;

B = the average of the daily closing accumulation indices for the Share Stapled Securities and/or the daily closing accumulation indices for the Stapled Securities (as the case requires) over the last ten Business Days of the Financial Year as calculated by a person reasonably approved or selected by the Advisor and reported by Bloomberg;

C = the average of the daily closing accumulation indices for the Share Stapled Securities and/or the daily closing accumulation indices for the Stapled Securities (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Advisor and reported by Bloomberg;

- (b) if the Units of one or both Trusts are Stapled to Shares at any time during:
- (i) a Financial Year being a “Relevant Year” for the purposes of clause 7.1(d) but only the Units in one Trust or no Units in any Trust (as the case requires) are Stapled to Shares on the last Business Day of the Financial Year; or
 - (ii) a Financial Year which is a “Second Year” for a “Relevant Year” for the purposes of clause 7.1(d) but only the Units in one Trust or no Units in any Trust (as the case requires) are Stapled to Shares on the last Business Day of the Financial Year; or
 - (iii) a Financial Year which is a “Third Year” for a “Relevant Year” for the purposes of clause 7.1(d) but only the Units in one Trust or no Units in any Trust (as the case requires) are Stapled to Shares on the last Business Day of the Financial Year,

in relation to that Financial Year the sum calculated as follows:

$$AR = A \times \frac{B - C}{C}$$

Where

AR = the Annual Return for the Financial Year;

A = in respect of each Financial Year is the average number of Share Stapled Securities or Stapled Securities (as the case requires) on issue during the last ten ASX trading days in the previous Financial Year

multiplied by the weighted average trading price of all Share Stapled Securities or Stapled Securities traded on the ASX during that ten trading days period;

B = the average of the daily closing combined accumulation indices for the Stapled Securities and Shares and/or the daily closing accumulation indices for the Share Stapled Securities and/or the daily closing combined accumulation indices for the Share Stapled Securities and such Units and/or the daily closing combined accumulation indices for the Shares and such Units (as the case requires) over the last ten Business Days of the Financial Year as calculated by the Actuary and reported by the Pricing Service; and

C = the average of the daily closing accumulation indices for the Stapled Securities and/or the daily closing accumulation indices for the Share Stapled Securities (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by a person reasonably approved or selected by the Advisor and reported by Bloomberg;

- (c) if the Units of one or both Trusts are Stapled to Shares at any time during:
- (i) a Financial Year being a “Relevant Year” for the purposes of clause 7.1(d) but only the Units in one Trust or no Units in any Trust (as the case requires) are Stapled to Shares on the last Business Day of the Financial Year, for any “Second Year” or “Third Year” for that Relevant Year; or
 - (ii) a Financial Year which is a “Second Year” for a “Relevant Year” for the purposes of clause 7.1(d) but only the Units in one Trust or no Units in any Trust (as the case requires) are Stapled to Shares on the last Business Day of the Financial Year, for any “Third Year” relating to that “Second Year”,

in relation to that Financial Year the sum calculated as follows:

$$AR = A \times \frac{B - C}{C}$$

Where

AR = the Annual Return for the Financial Year;

A = in respect of each Financial Year is the average number of Stapled Securities or Share Stapled Securities and/or Shares on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities or Share Stapled Securities and/or Shares traded on the ASX during that ten trading days period;

B = the average of the daily closing combined accumulation indices for the Stapled Securities and the Shares and/or the average daily closing combined accumulation indices for the Share Stapled Securities and such Units and/or the daily closing combined accumulation indices for the Shares and such Units (as the case requires) over the last ten Business Days of the Financial Year as calculated by the Actuary and reported by the Pricing Service; and

C = the average of the daily closing combined accumulation indices for the Stapled Securities and the Shares and/or the daily closing accumulation indices for the Share Stapled Securities and/or the average daily closing combined accumulation indices for the Share Stapled Securities and such Units and/or the daily closing combined accumulation indices for the Shares and such Units (as the case requires) over the last ten Business Days of the previous Financial Year as calculated by the Actuary and reported by the Pricing Service.

Application Price means the price of the Share Stapled Securities calculated in accordance with the Trust Deeds and the Share Stapling Deed.

Assets means the assets of MIBL and its Controlled Entities from time to time, including any investments of MIBL and its Controlled Entities.

Associate of a body corporate means a subsidiary or holding company of the body corporate or a subsidiary of the holding company of the body corporate and *subsidiary* or *holding company* is to be construed in accordance with section 736 and 736A of the *Companies Act 1985*.

ASX means Australian Stock Exchange Limited or its successor as the principal exchange on which the Share Stapled Securities are listed.

Base Fee means the fee payable by MIBL to the Advisor pursuant to clause 7.1.

Benchmark Return means the amount calculated by the Advisor in respect of a Financial Year in accordance with the following formula:

$$BR = X \times \frac{Y - Z}{Z}$$

Where:

BR = the Benchmark Return for the Financial Year;

X = in respect of each Financial Year is the average number of Stapled Securities, Share Stapled Securities, or Shares (as used in the determination of "A" for the purposes of determining the Annual Return for the Financial Year) on issue during the last ten ASX trading days in the previous Financial Year multiplied by the weighted average trading price of all Stapled Securities, Share Stapled Securities, or Shares (as used in the determination of "A" for the purposes of determining the Annual Return for the Financial Year) traded on the ASX during that ten trading days period;

Y = the average of the daily closing S&P/ASX 300 Industrials Accumulation Indices over the last ten Business Days of the Financial Year as reported by Bloomberg;

Z = average of the daily closing S&P/ASX 300 Industrials Accumulation Indices over the last ten Business Days of the previous Financial Year as reported by Bloomberg.

Bloomberg means Bloomberg Financial Markets or if it ceases to publish or report the S&P/ASX 300 Industrials Accumulation Index or the accumulation index for the Stapled Securities or Share Stapled Securities listed on ASX such other person which publishes or reports that information as selected by the Advisor.

Board means the board of directors of MIBL.

Business Day means:

- (a) while there is Share Stapling and, if Share Stapling does not apply, for the purposes of clause 7.1, a day which is a business day for the purposes of the Listing Rules; and
- (b) otherwise, a day on which banks are open for general business in London (not being a Saturday, Sunday or public holiday).

Bye-Laws means the bye-laws of MIBL from time to time.

Calendar Quarter means the period of three months ending on the last day of either June, September, December and March as the case may require.

Control means, in relation to an entity, the possession, directly or indirectly, of the power to direct or cause the direction of the financial and operating policies of that entity, whether through the ownership of equity interests in that entity, by contract or otherwise.

Controlled Entity means any entity which is under the control of another entity.

Costs includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of them or like amounts.

Custody Investments means Securities or Contractually Based-Investments as such two terms are defined in the *United Kingdom's Financial Services and Markets Act 2000 (Regulated Activities) Order 2001*, as amended.

Effective Date means the date on which the Scheme becomes effective in accordance with section 425(3) of the *UK Companies Act 1985*.

Financial Year means, in all circumstances, the 12 month period ending 30 June in each year.

FSA means the Financial Services Authority of the United Kingdom and any other body from time to time regulating the investment business activities of the Advisor.

Group means, in relation to any person, its holding company and each of its subsidiaries as such terms are defined in Sections 736 and 736A of the *UK Companies Act 1985*.

Information Memorandum means any information memorandum issued by MIBL from time to time in respect of the transfer or issue of Shares or units of Shares of MIBL or the listing of MIBL on any stock exchange.

Infrastructure Asset means an infrastructure asset including in the following areas:

- (a) road, rail, air and sea transportation;
- (b) generation, transmission and distribution of electricity;
- (c) telecommunications;
- (d) supply, treatment, distribution or disposal of water, sewerage, waste and other materials;
- (e) production and distribution of gas or oil;
- (f) pipelines for the transmission of oil, gas or other materials;
- (g) hospital and education services;
- (h) administration facilities.

Investment means an investment made or proposed to be made in accordance with clause 3.9.

Listing Rules means the listing rules of the ASX and any other applicable rules of the ASX.

Management Agreement means the Management Agreement dated 19 September 2000 between MEIP and the Advisor, as amended pursuant to the Supplemental Deed dated 22 November 2000 and the First Amendment Deed dated 27 November 2002.

Market Price of a Share Stapled Security on any Business Day means:

- (a) the last sale price per Share Stapled Security recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day), unless the Advisor believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Share Stapled Security on that Business Day, in which case Market Price of a Share Stapled Security on that Business Day means:
- (b) the mid-point of the bid and offer prices per Share Stapled Security (as the case requires) recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day), unless the Advisor believes that the calculation in paragraph (b) does not provide a fair reflection of the market price of a Share on that Business Day, in which case Market Price of a Share Stapled Security on that Business Day means:
- (c) the market price of a Share Stapled Security of the relevant class as determined by an independent expert and the Advisor whose identity and instructions will be determined by the Advisor.

Market Value of the Funds at the end of a Quarter means the aggregate of the market value of the Share Stapled Securities calculated on the basis of the average number of Share Stapled Securities in issue in each class during the last 10 trading days of the ASX in the relevant Quarter multiplied by the weighted average Market Price of all Share Stapled Securities over those 10 days plus the borrowings of each Share Stapled Trust and MIBL less the amount of assets (for each Share Stapled Trust and MIBL) representing cash or a cash equivalent as determined by the Advisor and the trustee of MIT(I) and the trustee of MIT(II) plus the aggregate of the amounts which are firmly committed for future investment by the trustee of MIT(I), the trustee of MIT(II) or MIBL in investments (other than cash or a cash equivalent).

MEIP Base Payment means an amount payable by MEIP as a base fee pursuant to the Management Agreement.

MEIP Group means MEIP and its Controlled Entities and any investments of MEIP and its Controlled Entities.

MEIP Performance Payment means an amount payable as a performance fee by MEIP pursuant to the Management Agreement.

Member has the same meaning as in each Trust Deed.

MIT(I) means the trust constituted under the MIT(I) Constitution.

MIT(I) Constitution means the trust deed entitled Constitution Macquarie Infrastructure Trust (I) dated 18 July 1996.

MIT(II) means the trust constituted under the MIT(II) Constitution.

MIT(II) Constitution means the trust deed entitled Constitution Macquarie Infrastructure Trust (II) dated 18 July 1996.

Old Share Stapled Securities means a CHES Unit of Foreign Security over a share in MEIP which is stapled to a unit in each of the Trusts under the Old Share Stapling Deed.

Old Share Stapling Deed means the Share Stapling Deed dated 19 September 2000 between MIT(I), MIT(II), MEIP and the Advisor.

Performance Fee to be calculated in respect of any given Financial Year means:

- (a) subject to paragraph (c), 15% of the amount (if any) by which the Annual Return for the Financial Year exceeds the Benchmark Return for the Financial Year; or
- (b) nil if the Annual Return for the Financial Year does not exceed the Benchmark Return for the Financial Year; but
- (c) subject to paragraph (d and (e), if the Annual Return in any prior Financial Year is less than the Benchmark Return for that Financial Year the deficit is to be carried forward on a cumulative basis until offset on a dollar for dollar basis against a surplus or surpluses of the Annual Return in any succeeding Financial Year or Financial Years over the Benchmark Return for that Financial Year or those Financial Years prior to the 15% being calculated pursuant to paragraph (a);
- (d) if under paragraph (c) of the definition of Performance Fee under the Management Agreement there was a deficit on 30 June 2004 which was required to be carried forward ("Existing Deficit") then that Existing Deficit shall be treated as "deficit" for the purposes of paragraph (c) of this definition of Performance Fee;
- (e) if:
 - (i) the Shares are Stapled to Units in one or both Trusts at any time during the Financial Year;
 - (ii) they are not stapled to such Units at the end of the Financial Year;
 - (iii) the Annual Return for that Financial Year is less than the Benchmark Return for that Financial Year or there is a carry forward deficit under paragraph (c) of this definition at the end of that Financial Year,

the Advisor must allocate the deficit (whether for that Financial Year or carved forward) between MIBL and the Share Stapled Trust (if any) on the one hand and the Trust (or Trusts, as the context requires) on the other hand based on the net assets of the Trust (or Trusts, as the context requires), the Share Stapled Trust (if any) and MIBL, where the value in each case of the net assets in the accounts is adjusted to reflect the net market value of the assets if such accounts do not already do so and the amount of the deficit for that Financial Year or the carried forward deficit at the end of the Financial Year will be reduced by the amount of such allocation. If the Advisor believes that allocation of the deficit on the basis of market value of the net assets is unfair, the Advisor must cause the allocation to be determined by an independent expert, chosen by the Advisor, in consultation with the Advisor.

Portfolio means all Assets notified to the Advisor in writing to be invested and dealt with by the Advisor in accordance with MIBL's instructions under this deed, and all income and accretions in respect of them or any part of them.

Qualifying Custodian means a person who:

- (a) is authorised by the FSA and has permission to conduct the regulated activity of safeguarding and administering investments or arranging for one or more other persons to conduct the same; or
- (b) is exempt from the requirement for FSA authorisation and who, in the course of his exempted business, safeguards and administers investments or arranges for one or more other persons to perform the same; and
- (c) is not in the same Group as the Advisor and does not remunerate the Advisor.

Pricing Service means any service which publishes or reports on prices of securities which the Advisor determines.

Relevant Law means any present or future law of Bermuda, England or Australia (as the context requires) with which MIBL or the Advisor must comply or which MIBL or Advisor must satisfy in order for MIBL or Advisor to avoid a relevant penalty, detriment or disadvantage.

S&P/ASX 300 Industrials Accumulation Index means the index with that name calculated by or on behalf of Standard & Poor's and reported by Bloomberg or if that index ceases to be calculated and published the nearest equivalent available index reasonably selected by the Advisor.

Scheme means the scheme of arrangement under section 425 of the Companies Act, 1985 (UK) between MEIP and the holders of the shares in MEIP approved by the High Court of Justice in England and Wales.

Share Stapled Security means:

- (a) while Unit Stapling applies, one Share which is stapled to a Unit in each Trust; and
- (b) if Unit Stapling does not apply, a Unit in a Trust which is Stapled to a Share.

Share Stapled Trust means each Trust the Units in which are Stapled to Shares.

Share Stapling means the linking together of all rights and obligations which attach to a Share Stapled Security.

Share Stapling Deed means the deed dated on or about the date of this deed between the parties, the trustee of MIT(I) and the trustee of MIT(II).

Shareholder means a person registered as the holder of a Share, including any persons jointly registered.

Shares means the ordinary shares of par value \$0.01 in MIBL.

Stapled means the state that results from Share Stapling.

Stapled Securities means a Unit in each Trust which are Unit Stapled together and registered in the name of the Member.

Taxes means all taxes of whatever nature lawfully imposed including:

- (a) income tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, capital gains tax, profit tax, interest tax, property tax, undistributed profits tax; withholding tax; and
- (b) municipal rates, financial institutions duty, bank account debits tax and stamp duties,

and other taxes (including any goods and services or value added tax), charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest or fee imposed in connection with any tax, rate, duty, charge or levy.

Trust Deeds means:

- (a) the MIT(I) Constitution; and
- (b) the MIT(II) Constitution.

Trusts means:

- (a) MIT(I); and
- (b) MIT(II).

Unit means, as the context requires:

- (a) while Unit Stapling applies, a Unit (as defined in each Trust Deed) in each of the Trusts; and
- (b) if Unit Stapling does not apply, a Unit in either of the Trusts.

Unit Stapling means the linking of a Unit in each Trust together under each Trust Deed so that one may not be dealt with without the other.

Unit Stapled means the state that results from Unit Stapling.

VAT means any goods or services tax, consumption tax, value added tax or similar impost or duty which is or may be levied or become payable in connection with the supply or receipt of.

Interpretation

1.2 In this deed, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes a body corporate;
- (d) where a word or phrase is defined, its other grammatical terms have a corresponding meaning;
- (e) a reference to a statute, ordinance, code or other law or rule includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (f) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) a reference to any liability includes a reference to all losses, claims, demands, damages, liabilities, costs, charges or expenses;
- (i) unless the contrary intention appears, a word or phrase used in this deed has the same meaning as a word or phrase defined in the Trust Deed of each Trust in respect of

which Share Stapling applies. However, if there is a change to a relevant definition in such Trust Deed, the change has no application to this deed unless MIBL and Macquarie agree;

- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed;
- (k) unless the contrary intention appears, a word or phrase used in this deed has the same meaning as a word or phrase defined in the *UK Companies Act 1985*;
- (l) a reference to a right to appoint up to (but no more than) 50% of the directors of MIBL means where there are four or five directors a right to appoint two directors, where there are six or seven directors a right to appoint three directors, where there are eight or nine directors a right to appoint four directors, and so on.

Performance Fee

- 1.3 Clause 1.4 will have effect from the date on which the Trust Deeds or, if Unit Stapling does not apply, the Trust Deed of the Trust to which Share Stapling does apply, are amended so that the determination of “Annual Return” and “Benchmark Return” for the purposes of each of those deeds is made in a manner consistent with clause 1.4.
- 1.4 In determining the aggregate Annual Return and the aggregate Benchmark Return for the purposes of clause 7.1(d) for a period greater than one “Financial Year” the definition of each of those terms will be applied as if the determination was for that period and not for the “Financial Year” and in making the determination the period was substituted for the “Financial Year” and the “Financial Year immediately preceding the period” was substituted for the “previous Financial Year” in each of those definitions.
- 1.5 If in the calculation of Performance Fees, or any instalment payment of a Performance Fee, it is necessary to refer or include in that calculation any period including or which ends earlier than the Effective Date, then the term Share Stapled Securities shall include Old Share Stapled Securities.

Agents

- 1.6 For the purpose of determining whether:
 - (a) there is a liability to MIBL; or
 - (b) the Advisor has properly performed its duties under this deed,the Advisor is taken to have done or (or failed to do) anything that any agent or delegate appointed or engaged by it has done (or failed to do), even if it acted fraudulently or outside the scope of its authority or engagement.

Construction while Unit Stapling applies

- 1.7 The parties acknowledge that the Trust Deeds make provision for the stapling of additional securities to the Units in each Trust and it is hereby acknowledged and agreed that where and so far as the context requires all references in this deed to a Unit in a Trust, includes a reference to any additional security to which the Unit is stapled or linked together as provided for in the relevant Trust Deed and the constitution of the underlying Entity (as defined in the relevant Trust Deed) and where the context requires, includes a reference to the underlying share or unit or unit of a share or unit.

2 Appointment of the Advisor and Consideration

2.1 Appointment

MIBL appoints the Advisor as Advisor of MIBL on the terms contained in this deed and the Advisor accepts the appointment for a term which will commence on the Effective Date and continue until the Advisor is removed or resigns in accordance with clause 10.

2.2 Management Agreement

- (a) The parties agree that for so long as the Management Agreement is not terminated, MEIP and the Advisor will continue to perform their obligations under the Management Agreement in respect of the MEIP Group subject to the terms of this clause 2.2.
- (b) The Advisor acknowledges that in respect of any allocation of fees payable by MIBL in accordance with clause 7.1(b), MIBL and MEIP have the absolute discretion to allocate such fees between themselves and:
 - (i) any payment of such fees by MEIP based on that allocation shall be a full and final discharge of MEIP's obligation to pay fees for the corresponding period under the Management Agreement; and
 - (ii) any payment of such fees by MEIP based on that allocation shall operate to reduce MIBL's obligation to pay fees for the corresponding period under this deed.

Unless agreed in writing to the contrary, the allocation of fees between MIBL and MEIP is as set out in Schedule 1, and the Advisor acknowledges and agrees to this allocation. MEIP and MIBL may only vary this allocation by agreement in writing.

- (c) Subject to paragraph (d), as and from the Effective Date, MEIP's liability to pay fees under the Management Agreement shall be determined solely in accordance with this clause 2.2. For the avoidance of doubt:
 - (i) any acceleration of the payment of fees under the Management Agreement (including under clause 7.1(g) of the Management Agreement) shall not apply if Share Stapling (as defined under the Old Share Stapling Deed) ceases to apply as a consequence of the implementation of the Scheme; and
 - (ii) nothing in this deed or the Management Agreement will require MIBL and MEIP to pay any fee which in aggregate would exceed an amount payable by MIBL under this Deed.
- (d) Nothing in this deed affects MEIP's obligations to pay any instalment of performance fee payable under the Management Agreement and referable to a Financial Year ending prior to the date of this deed.
- (e) To the extent that the Advisor performs its obligations under the Management Agreement in respect of the MEIP Group, it will be deemed to have performed its obligations under this deed to MIBL in respect of the MEIP Group.
- (f) MIBL may at any time by written notice to each of MEIP and the Advisor require the Advisor to give notice of resignation as Manager under the Management Agreement in accordance with clause 9.1 thereof, and MEIP and the Advisor agree that any such notice shall be effective to immediately terminate the Management Agreement without

giving rise to an obligation to pay a termination fee. Subject to MEIP remaining liable to pay any amounts calculated as base fees and performance fees under the Management Agreement and which relate to the performance of services prior to the date of termination. MEIP will also remain liable for any expenses properly payable under the Management Agreement.

- (g) MEIP and MIMUK acknowledge that MIMUK's activities under the Management Agreement may be subject to authorisation and regulation under the *Financial Services and Markets Act 2000*, as amended. To the extent that the Management Agreement requires MIMUK to carry out or perform any activity which it is not authorised by the FSA to carry out or perform (**Restricted Activity**), then:
- (i) the Management Agreement is amended so that MIMUK is no longer obliged to carry out or perform that Restricted Activity;
 - (ii) to the extent that MIMUK is required to carry out or perform an activity under this deed which is similar to or related to the Restricted Activity (**Permitted Activity**), then MIMUK agrees that to the extent it is authorised by the FSA to do so, it will carry out and perform that Permitted Activity for MEIP under the Management Agreement; and
 - (iii) the Management Agreement shall be read and construed accordingly.
- (h) If there is any inconsistency between the terms of this deed and the Management Agreement, the terms of this deed shall prevail.

3 Duties of the Advisor and MIBL

3.1 Advisors obligations

The Advisor must advise MIBL so as to enable MIBL to carry out its activities in a manner consistent with the provisions of any offering document, prospectus, information memorandum or other disclosure documents, its Investment Policy as set out in clause 3.9 (provided that the Advisor is not obliged to (i) advise MIBL on commodity futures, commodity options, options on a commodity future, spread bets and any future or contract for difference concerning a rolling spot foreign exchange contract; (ii) arrange deals on MIBL's behalf in commodity futures, commodity options, options on a commodity future, spread bets and any future or contract for difference concerning a rolling spot foreign exchange contract; or (iii) making arrangements with a view to MIBL's participation in transactions in collective investment scheme units, futures, options, contracts for difference or rights to or interests in investment linked insurance policies, options, futures or contracts for differences) and its Bye-Laws, any share subscription deed entered into by MIBL and, while Share Stapling applies, the Share Stapling Deed and exercising due diligence and care and for that purpose must:

- (a) advise on proposed investments and divestments and on the implementation of investment and divestment instructions given by the Board;
- (b) recommend to MIBL the arrangements for the holding and safe custody of the Assets and either:
 - (i) introduce MIBL to a Qualifying Custodian who will provide in the United Kingdom MIBL with either the service of safeguarding and administering of such of the Assets that are Custody Investments or the service of arranging the same; or

- (ii) introduce MIBL to one or more persons for the purposes of those persons providing MIBL with custody services in respect of the Assets that do not, or would not if they were performed in the United Kingdom, amount to the regulated activity of safeguarding and administering Custody Investments or the regulated activity of arranging the same;
- (c) make recommendations to MIBL in relation to borrowings required to provide the funding requirements for any activity entered into by MIBL, make recommendations on the timing of capital calls from Shareholders;
- (d) make recommendations to MIBL in relation to the exercise of voting rights to which MIBL is entitled;
- (e) make recommendations to MIBL as to MIBL's acceptance of transferees of Shares;
- (f) make recommendations to MIBL in relation to the policy regarding payment of dividends, interim dividends and other distributions to the Shareholders;
- (g) make recommendations to MIBL in relation to changes to the Bye-Laws;
- (h) make recommendations to MIBL in relation to capital raisings and capital reductions including buy-backs of Shares;
- (i) as requested by the Board, advise on the preparation and the implementation of, and assist with the preparation of, budgets of MIBL and business and financial plans for companies or entities in which MIBL invests;
- (j) as requested by the Board, prepare reports relating to events which have a material effect on an Investment or the acquisition or disposal of an Investment by MIBL;
- (k) continue to employ staff with sufficient Infrastructure Asset expertise to enable the Advisor to competently fulfil its duties under this deed;
- (l) make recommendations to the Board in relation to a suitable person or persons (being employees of Macquarie Group Limited or any of its Controlled Entities) to be selected by the Board as the Chief Executive Officer and Chief Financial Officer in accordance with clause 3.1A;
- (m) provide MIBL with any information in relation to the performance of the Advisor's obligations under this deed as the Board may reasonably request;
- (n) use reasonable endeavours to provide all such other advisory services as may from time to time be requested by MIBL;
- (o) as requested by the Board, carry out or cause to be carried out half yearly valuations of the Assets or arrange for such valuations to occur;
- (p) advise the Board on appropriate strategies and actions to take to maintain and enhance the value, performance and profitability of MIBL's investments;
- (q) make recommendations to the Board on the identity of a person or persons (who may be employees of Macquarie Group Limited or any of its Controlled Entities) to be directors and senior officers of companies or entities in which MIBL has invested, and if the Board rejects such person or persons, to make alternate recommendations; and
- (r) monitor the insurances that are in place in respect of the Assets and other risks, including directors' and officers' insurance, that relate to MIBL.

3.1A Chief Executive Officer and Chief Financial Officer

In fulfilling its obligations under clause 3.1(1), the Adviser must nominate “suitably qualified personnel” for the roles of Chief Executive Officer and Chief Financial Officer of the fund for the approval of the Board. For the purposes of this clause 3.1A, “suitably qualified personnel” means persons who have investment banking or funds management experience in a relevant sector or appropriate industry, commercial or general management experience in order to fulfil the job descriptions of Chief Executive Officer and Chief Financial Officer.

The Board must approve any person nominated by the Adviser for the role of Chief Executive Officer or Chief Financial Officer unless, in the Board’s opinion, the nominated person is not “suitably qualified” and does not meet the needs of the Board.

If the Board rejects any nomination by the Adviser, the Adviser must nominate another person for the position of Chief Executive Officer or Chief Financial Officer as the case may be and the Board may similarly reject any such nominated person but only on the basis that the nominated person is not suitably qualified applying the criteria set out in this clause 3.1A and does not meet the needs of the Board.

If the Board consecutively rejects three persons nominated by the Adviser as not being suitably qualified for the position of Chief Executive Officer or Chief Financial Officer and does not meet the needs of the Board, then the Board may appoint a person of the Board’s choosing to that position.

3.2 Accounting and Board papers

If instructed by the Board, the adviser shall advise upon and assist with the preparation of:

- (a) audited annual (and, if requested, audited or unaudited semi-annual) reports and accounts, including the valuation of Assets, within such period as required by law and if none is specified, within 90 days of the end of the relevant reporting period;
- (b) detailed papers and agendas for scheduled meetings of the Board which, where applicable, must contain such information as is reasonably available to the Advisor upon which to enable the directors to base their decision; and
- (c) detailed reports to be considered by the Board on the Advisor’s investment and divestment recommendations and otherwise in respect of the performance of the Advisor’s obligations under this deed.

3.3 Administrative duties

The Advisor must use all reasonable endeavours, if instructed by the Board, to advise the Board or any administrator of MIBL appointed by the Board, to the extent possible, so that the Board or any administrator may carry out all necessary or desirable day to day administrative functions and operations of MIBL. Without limitation, the Advisor shall advise on:

- (a) the preparation of notices of meetings of Shareholders, papers, reports and agendas for scheduled meetings of Shareholders ;
- (b) the resolution of complaints of and disputes with Shareholders received by MIBL and litigation in which MIBL is sued by or commences litigation against a third party other than the Advisor or any Associate of the Advisor;
- (c) all other day to day, secretarial, accounting, administrative, liaison, representative and reporting functions and obligations of MIBL to ensure that MIBL complies with all

applicable laws and requirements and any contractual obligations by which MIBL is bound including :

- (i) information requested by the administrator of MIBL to ensure all relevant statutory filings are made by MIBL;
- (ii) the engagement and supervision of professional and technical Advisors on behalf of MIBL;
- (iii) the engagement and supervision on behalf of MIBL of all necessary accountants, legal advisors, auditors and other accounting, financial or legal advisors and technical, business management, commercial, marketing or other independent experts and resources;
- (d) the opening and closing of all necessary bank accounts.

3.4 Compliance with Relevant Law

The Advisor must comply with any Relevant Law including compliance of this deed with FSA rules as amended from time to time to the extent that it concerns the functions, powers and duties of the Advisor under this deed. However, MIBL acknowledges that:

- (a) the Advisor may act on specific instructions given by the Board without investigating whether the act will comply with the Relevant Law, but must not comply with any direction which it is aware will cause a breach of the Relevant Law; and
- (b) the Advisor has no obligation to ensure that it complies with any Relevant Law applicable to MIBL or any constitutional documents or legislation regulating MIBL to the extent it does not directly concern the functions, powers and duties of the Advisor under this deed.

3.5 Advisors' Obligations

In addition, the Advisor must:

- (a) effect and maintain professional indemnity insurance, fraud and other insurance as are reasonable having regard to the nature and extent of the Advisor's obligations under this Deed;
- (b) exercise all due care, skill and diligence in carrying out its duties under this Deed;
- (c) provide MIBL with any information in relation to the performance of the Advisor's obligations under this deed, as MIBL may reasonably request;
- (d) that it will, at all times during the term of this deed, be the holder of all relevant licences, regulatory approvals or consents required to be held under all applicable laws governing the activities of the Advisor in relation to MIBL;
- (e) that it will cooperate with MIBL and its agents whenever requested to reconcile reports within an agreed timetable;
- (f) that it will at all times perform its obligations under this deed; and
- (g) that it will promptly give MIBL notice of any correspondence with any regulatory authority (including the FSA and the Australian Prudential Regulatory Authority) which refers to the occurrence of any matters which may result in termination of this deed.

3.6 MIBL's Obligations

- (a) MIBL must do all things reasonably necessary on its part or as requested by the Advisor to enable the Advisor to fulfil its obligations under this deed.
- (b) MIBL must ensure that:
 - (i) each of its officers and employees, each of its subsidiaries and each of its subsidiaries' officers and employees act in accordance with this deed and the reasonable directions of the Advisor in fulfilling its obligations and exercising its powers under this deed; and
 - (ii) MIBL and its subsidiaries provide to the Advisor all reports (including monthly management reports and all reports received from entities which MIBL and its subsidiaries have an interest in) which the Advisor may reasonably require and on such dates as the Advisor may require.

3.7 Acknowledgment

MIBL acknowledges that neither the Advisor nor any Associate guarantees the repayment of capital or the performance of the Portfolio or MIBL or makes any representation concerning any of these matters.

3.8 Board's Powers

Subject to the provisions of the Companies Act 1981 (Bermuda) and the Bye-Laws, the Advisor acknowledges that the Board has the sole power to:

- (a) manage the business of MIBL;
- (b) pay all Costs incurred in promoting and incorporating MIBL; and
- (c) exercise all the powers of MIBL which are not by the Companies Act 1981 (Bermuda) or the Bye-Laws required to be exercised by MIBL in general meeting,

and the Advisor undertakes not to do any of the above .

3.9 Investment Policy

The Advisor acknowledges that the principal investment policy of MIBL is to invest either directly or indirectly (for example through the purchase of interests in a managed investment scheme, equities or debentures) in both existing and proposed Infrastructure Assets and the making of such other investments of surplus assets or cash which are not from time to time required for that purpose.

4 Powers of the Advisor

4.1 Powers of the Advisor

Notwithstanding anything to the contrary contained in this deed, but without limiting any of MIBL's rights as may otherwise be specified in this deed:

- (a) the Advisor shall be subject to the Board's supervision with respect to the Advisor's activities pursuant to this deed; and

- (b) for the avoidance of doubt, the Advisor shall have no power of management or agency for MIBL, and the Advisor undertakes not to hold itself out as, or take actions as if it were, an agent or attorney for MIBL.

The Advisor must not enter into any contract in the name of MIBL for the making of any Investment or divestment.

4.2 Gearing

The Advisor must make recommendations to the Board in relation to borrowings required to provide the funding requirements for any activity entered into by MIBL pursuant to this deed or otherwise.

4.3 Delegation

- (a) The Advisor may only delegate or appoint an agent (which may be an Associate) in respect of all or any of its Advisory Duties if the Board first approves the particular delegation or appointment and (provided that the Advisor acknowledges that the provisions of clause 4.3(c) will apply at all times) and such delegation or appointment is on the basis that such delegate or agent will act as agent for the Advisor and not MIBL.
- (b) No delegation or appointment of an agent under this clause 4.3 shall relieve the Advisor of its obligations under this deed and, without limiting clause 4.3(a), the terms of all delegations and appointments (other than delegations to or appointment of Associates) must be in writing.
- (c) MIBL acknowledges that it proposes to appoint an administrator to MIBL to perform administrative functions under an administration agreement (the **Administration Agreement**). MIBL will authorise the Advisor to give (and the Advisor must give) all necessary advice to the administrator to enable the proper performance by the administrator of its obligations and functions under the Administration Agreement.

4.4 Pledging of Assets

The Advisor must not pledge any asset of MIBL as security for any future investments of MIBL.

4.5 Advisor's Duties Not Exclusive

The Advisor acknowledges that during the term of this deed the Advisor's appointment is not exclusive and MIBL may, through the exercise of the powers of its employees, Board or its Shareholders in general meeting or otherwise, perform the functions to be performed by the Advisor and/or appoint an additional advisor.

5 Inspection of Records

At all reasonable times and on reasonable notice, any person authorised by MIBL may inspect and audit the records and books of the Advisor kept pursuant to this deed.

6 Representations and Warranties

- (a) MIBL hereby represents, warrants and undertakes to the Advisor that:

- (i) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
 - (ii) this deed is legal, valid and binding on MIBL;
 - (iii) the entry into and performance of this deed by MIBL does not constitute:
 - (A) a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
 - (B) default under any agreement or undertaking, by which MIBL is bound; and
 - (iv) it has the power to enter into and perform this deed and has obtained all necessary consents to enable it to do so.
- (b) The Advisor hereby represents, warrants and undertakes to MIBL that:
- (i) it is duly incorporated and has the corporate power to own its property and to carry out its duties under this deed;
 - (ii) this deed is legal, valid and binding on the Advisor;
 - (iii) the entry into and (with effect from the Effective Date) performance of this deed by the Advisor does not constitute:
 - (A) a breach of any obligations (including but not limited to any statutory, contractual or fiduciary obligations); or
 - (B) default under any agreement or undertaking, by which the Advisor is bound;
 - (iv) it has the power to enter into and (with effect from the Effective Date) perform this deed and has obtained (or will by that date obtain) all necessary consents to enable it to do so;
 - (v) it will, on or from the Effective Date hold and will continue to hold at all times, such licences and authorities as are necessary to lawfully perform its obligations under this deed;
 - (vi) it has the skills, staff and resources necessary to properly perform its duties under this deed; and
 - (vii) it will not hold itself out as agent or attorney for MIBL.

7 Advisory Fees

7.1 Fees

- (a) Subject to clauses 2.2(b) and 7.1(b), in consideration of the Advisor carrying out its obligations in accordance with this deed, the Advisor is entitled to the following fees to be paid in accordance with this clause 7:
 - (A) a fee calculated at the rate of 1.25% per annum of the Market Value of the Funds (**Base Fee**); and

(B) the Performance Fee.

The parties acknowledge (for the purposes of this deed and the Management Agreement) that the Advisor and MIBL may agree from time to time to a Base Fee which is less than the amount determined in accordance with paragraph (A). At the date of this deed, the Advisor and MIBL have agreed to a Base Fee calculated as 1.25% of the Market Value of the Funds at the end of each Calendar Quarter up to a Market Value of \$A3 billion. For a Market Value in excess of \$A3 billion, the fee is calculated as 1.25% of the Market Value of the Funds at the end of each Calendar Quarter up to a Market Value of \$A3 billion and 1% per annum of the Market Value in excess of \$A3 billion at the end of the relevant Calendar Quarter.

- (b) The Advisor acknowledges that in respect of the fees determined under clause 7.1(a) hereof for the relevant period while Share Stapling applies:
- (i) if Unit Stapling applies:
- (A) the amount of the fee payable to MIIML under clause 19.1(a) of each of the MIT(I) Constitution and the MIT(II) Constitution and the fees determined under clause 7.1(a) are representative of the aggregate fees payable to the MIIML and the Advisor in respect of MIT(I), MIT(II) and MIBL;
- (B) MIIML and the Advisor have absolute discretion as to the allocation of such fees;
- (ii) If Unit Stapling does not apply:
- (A) the amount of the fee payable to MIIML under clause 19.1(a) of the constitution of the Share Stapled Trust and the fees determined under clause 7.1(a) are representative of the aggregate fees payable to MIIML and the Advisor in respect of the Share Stapled Trust and MIBL;
- (B) the trustee of the Share Stapled Trust and the Advisor have absolute discretion as to the allocation of such fees;
- (iii) all determinations in respect of the fees payable to the Advisor under clause 7.1(a) are to be made in Australian dollars; and
- (iv) unless the fees are to be applied to subscribe for Share Stapled Securities under clauses 7.1(h) or (i) the fees are payable in pounds sterling at the exchange rate determined by Macquarie Group Limited as applying at the close of business in Sydney on the last day of the relevant period.
- (c) The Base Fee is payable to the Advisor at the end of each Calendar Quarter and is to be paid, subject to clause 7.1(j), promptly after determination of the Base Fee for that Calendar Quarter. If at the end of a Calendar Quarter the Advisor has not yet commenced to provide services under clause 2.2, the accrued fee will be paid as soon as the Advisor commences to provide services (or, if earlier, on the date that this deed terminates).
- (d) The Performance Fee, which is calculated on the basis of the financial performance for a Financial Year (Relevant Year), is to be divided into three equal amounts (called respectively the First Instalment, Second Instalment and Third Instalment). The First Instalment is payable as at the last day of the Relevant Year. The Second Instalment accrues and is payable as at the last day of the next succeeding Financial Year (Second

Year), only if the aggregate Annual Return for the period comprising the Relevant Year and the Second Year equals or exceeds the aggregate Benchmark Return for that period. The Third Instalment accrues and is payable as at the last day of the Second Financial Year after the Relevant Year (Third Year), only if the aggregate Annual Return for the period comprising the Relevant Year, the Second Year and the Third Year equals or exceeds the aggregate Benchmark Return for that period. If the Advisor ceases to be the Advisor of MIBL (other than due to voluntary retirement) prior to the date upon which a Second Instalment or Third Instalment becomes payable the Advisor will be entitled to receive that or those payments on the date of its retirement notwithstanding that performance requirements for the Second Year or Third Year may not be satisfied. In determining Aggregate Annual Return for a Relevant Year, Second Year or Third Year which ended prior to the Financial Year in which the Scheme was implemented, for all purposes the Annual Return for that Relevant Year, Second Year or Third Year (as the case may be) shall be the Annual Return determined for that year under the Management Agreement.

- (e) The Base Fee payable under clause 7.1(a) accrues from, but excluding, the Effective Date until the earlier of the termination of this deed and Share Stapling ceasing to apply. The amount of the Base Fee payable for the first quarter must be determined as at the last day of the quarter and on the basis of the ratio that the number of days in the quarter that the Base Fee accrues bears to the number of days in the quarter. The amount of the Base Fee payable for the last quarter must be determined as if the last day of the quarter was the last day the Base Fee accrues and on the basis of the ratio that the number of days in the quarter that the Base Fee accrues bears to the number of days in the quarter (without regard to this sentence).
- (f) The Performance Fee payable under clause 7.1(a) accrues from 1 July 2004 until the earlier of the first day of the Financial Year commencing after the Financial Year in which this deed terminates and Share Stapling ceases to apply. This clause 7.1(f) is to be disregarded for the purposes of determining whether any Second Instalment or Third Instalment is payable for a Relevant Year.
- (g) If Share Stapling ceases to apply, the parties must agree the method of determining the fees payable to the Advisor, when they must be paid and if the fees so determined (or any part of them) are to be applied to subscribe for Shares, the amendments necessary to clause 7.1(h) of this deed to achieve that purpose. Such fees must be payable in pounds sterling and comprise two components, being a “base fee” and a “performance fee”. Clause 23 will apply if the parties are unable to agree on a new fee on or before the first day of the Financial Year commencing after the Financial Year in which Share Stapling ceases to apply, however, for the avoidance of doubt, clause 23 will not apply to determine the amendments necessary to this deed if fees are to be applied to subscribe for Shares. In making a determination the auditor must be instructed that the fees must not be less than the fee which would have applied under clause 7.1(a) if the Share Stapled Securities were listed on the London Stock Exchange in the Financial Year that Share Stapling ceased to apply, the fees are payable in pounds sterling and disregarding clause 7.1(b).
- (h) Whilst Share Stapling applies, if an instalment of the Performance Fee is payable as at the last day of a Financial Year in accordance with clause 7.1(d) then, subject to the Corporations Act 2001 (Commonwealth of Australia), the Listing Rules and the legislation (if any) regulating the issuance of shares in the jurisdiction of incorporation of MIBL the Advisor and its associates (which term shall include, without prejudice to the generality of the foregoing, any holding company, sister company or subsidiary of the Advisor or subsidiary of such holding company), if approved by the non-executive

directors of the MIT (I) and MIT(II) Trustee acting in the interest of the Members, shall be entitled to subscribe for that number of Share Stapled Securities equal to the amount of the instalment of the Performance Fee divided by the volume weighted average trading price of all Share Stapled Securities traded on the ASX during the last 10 Business Days of that Financial Year, taking into account any relevant historical security price adjustment made by the ASX for the purposes of its price information service, and apply the instalment of the Performance Fee in payment of the Application Price of those Share Stapled Securities. The Share Stapled Securities relating to an instalment of the Performance Fee must be issued as soon as reasonably practicable after the instalment of the Performance Fee becomes payable in accordance with clause 7.1(d). To the extent that any instalment of the Performance Fee to which the Advisor is entitled under this clause is not applied in the purchase of Share Stapled Securities, it must be paid in cash to the Advisor. It is recognised that the Advisor and its associates (which term shall include, without prejudice to the generality of the foregoing, any holding company, sister company or subsidiary of the Advisor or subsidiary of such holding company) may receive part of the Performance Fee from a Share Stapled Trust and may aggregate the instalment of the Performance Fee payable by a Share Stapled Trust for the purpose of applying that instalment of the Performance Fee to acquire Share Stapled Securities in accordance with this clause 7.1(h).

- (i) Whilst Share Stapling applies and subject to the Corporations Act 2001 (Commonwealth of Australia), the Listing Rules and the legislation (if any) regulating the issuance of shares in the jurisdiction of incorporation of MIGIL, the Advisor and its associates (which term shall include, without prejudice to the generality of the foregoing, any holding company, sister company or subsidiary of the Advisor or subsidiary of such holding company), if approved by the non-executive directors of MIT(I) and MIT(II) Trustee acting in the interest of the Members, shall be entitled to subscribe for that number of Share Stapled Securities equal to the amount of the Base Fee divided by the volume weighted average trading price of all Share Stapled Securities traded on the ASX during the last 10 Business Days of the Calendar Quarter in respect of which the Base Fee is payable, taking into account any relevant historical security price adjustment made by the ASX for the purposes of its price information service, and apply the Base Fee in payment of the Application Price of those Share Stapled Securities. The Share Stapled Securities subscribed for must be issued as soon as reasonably practicable after the Base Fee becomes payable in accordance with clause 7.1(c). To the extent that the Base Fee to which the Advisor is entitled under this clause is not applied in the purchase of Share Stapled Securities, it must be paid in cash to the Advisor. It is recognised that the Advisor and its associates (which term shall include, without prejudice to the generality of the foregoing, any holding company, sister company or subsidiary of the Advisor or subsidiary of such holding company) may receive part of the Base Fee from a Stapled Trust and may aggregate the Base Fee payable by a Share Stapled Trust for the purpose of applying the Base Fee to acquire Share Stapled Securities in accordance with this clause 7.1(i).
- (j) The parties acknowledge that whilst the Management Agreement continues, reference in clause 7.1(h) to a Performance Fee will include a reference to any MEIP Performance Payment and a reference in clause 7.1(i) to a Base Fee will include a reference to any MEIP Base Payment.

7.2 Waiver of Fees

The Advisor may accept lower fees than it is entitled to receive under this deed, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

8 Expenses

8.1 MIBL Expenses

In addition to any other right of indemnity which it may have under this deed or at law, the Advisor is indemnified and entitled to be reimbursed for, or have paid by MIBL on demand, all Costs incurred in relation to the proper performance of its duties under this deed or in relation to the provision of advice to MIBL. This includes Costs connected with:

- (a) this deed;
- (b) advice on the preparation, review, distribution and promotion of any prospectus, offering memorandum or Information Memorandum in respect of Shares, options in respect of Shares and/or Share Stapled Securities;
- (c) advice on the acquisition, disposal, insurance, custody and any other dealing with assets of MIBL;
- (d) advice on any proposed acquisition, disposal or other dealing with an investment;
- (e) advice on the administration of MIBL or its assets and liabilities, including travel and accommodation expenses and expenses in connection with any register or the valuation of any asset or MIBL as a whole;
- (f) advice on borrowing arrangements on behalf of MIBL or guarantees in connection with MIBL, including hedging costs;
- (g) advice on the admission of MIBL to the official list of any stock exchange and compliance with the listing rules of any stock exchange;
- (h) advice on underwriting of any subscription or purchase of Shares, options in respect of Shares or Share Stapled Securities;
- (i) advice on convening and holding meetings of Shareholders or option holders, the implementation of any resolutions and communications with Shareholders or option holders and attending any meetings of MIT(I) or MIT(II);
- (j) Taxes (including any amount charged by a supplier of goods or services or both to the Advisor by way of or as a reimbursement for VAT) and financial institution fees;
- (k) the engagement of agents (including real estate agents and managing agents), valuers, contractors and Advisors (including accounting, financial, tax and legal Advisors) whether or not the agents, valuers, contractors or Advisors are Associates of the Advisor;
- (l) advice on preparation and audit of the taxation returns and accounts of MIBL;
- (m) termination of this deed and the retirement or removal of the Advisor and the appointment of a replacement;
- (n) any court proceedings, arbitration or other dispute concerning MIBL including proceedings against the Advisor, except to the extent that the Advisor is found by a court to be in breach of duty or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 8.1(n) must be repaid;
- (o) all damages, expenses, payments, legal and other costs and disbursements incurred by the Advisor in relation to or in connection with any claim, dispute or litigation

(“claim”) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by MIBL including any project document in connection with investment in any infrastructure asset and any offering document for any bond issue or other borrowing except where the claim arises out of the fraud or wilful default of the Advisor;

- (p) the promotion of MIBL generally;
- (q) advice on the preparation, implementation, amendment and audit of any compliance plan of the Advisor in respect of MIBL’s activities; and
- (r) complying with any law or regulation, and any request, guidance or requirement of the FSA.

8.2 Advisor not indemnified for certain Expenses

- (a) The Advisor is not indemnified for and is not entitled to be reimbursed for, or to have paid, by MIBL:
 - (i) in-house administration costs of the Advisor (in the nature of rent for Advisor’s premises, computer charges, salaries, research costs and like overhead and general operating expenses); and
 - (ii) costs, commissions, charges, fees, expenses and Taxes arising as a result of any negligence, fraud, wilful misconduct, dishonesty, breach of duty or breach of this deed by the Advisor or any officer, employee, delegate, agent or contractor of the Advisor.
- (b) The Advisor is not entitled to recover Costs from MIBL to the extent that such Costs are paid by any of the companies or entities in which MIBL invests.

8.3 Regulatory Costs

MIBL must bear any Costs associated with the provision of information and other assistance required in relation to MIBL under any applicable law or regulation.

8.4 VAT

All amounts payable under this deed by MIBL are exclusive of any VAT which, where payable, must be borne by MIBL in addition to the basic amount payable.

9 Reports

9.1 Reports and Instructions

The Advisor must provide MIBL with the reports and papers specified in clauses 3.1(m) and 3.2(b) and to assist in the provision to MIBL of the reports and papers specified in clauses 3.2(a) and 3.3(a) and must take reasonable steps to ensure that those reports are complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Advisor. The Advisor will also provide, upon reasonable request by MIBL, additional information which is complete and accurate in all material respects to the extent the necessary information is within the reasonable control of the Advisor.

9.2 Instructions

Instructions from MIBL will be acknowledged by the Advisor acting upon them unless MIBL is promptly advised that the Advisor believes such action may not be practicable or might involve any party in a breach of any law, rule or regulation.

10 Resignation and removal of the Advisor

10.1 Resignation by the Advisor

The Advisor may by written notice given to MIBL resign from its appointment as Advisor.

10.2 Removal of the Advisor

- (a) Subject to clause 10.2(d), the Advisor's appointment may only be terminated by the directors of MIBL if:
- (i) a resolution has been passed that the Advisor's appointment be terminated, by at least 50% of the total votes cast by Shareholders entitled to vote on the resolution;
 - (ii) except under sub-paragraph (iii) hereof, the Advisor ceases to carry on business;
 - (iii) the Advisor ceases to hold any authorisation necessary to lawfully perform its obligations under this deed;
 - (iv) the Advisor is placed in liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or is wound up or dissolved; or
 - (v) a manager, official manager, liquidator, provisional liquidator, administrator or similar official (other than a receiver) is appointed to the Advisor, or any of its assets.
- (b) If the Advisor's appointment is terminated pursuant to clause 10.2(a), all directors, executives, employees, representatives, assignees and delegates of the Advisor and its related bodies corporate will cease work at the date of the Advisor's termination or at any other time as determined by the Advisor.
- (c) If the Advisor's appointment is terminated in accordance with this clause 10.2, the Advisor must at MIBL's expense immediately deliver to the new Advisor any books or records held by the Advisor under this deed and must execute and deliver such instruments and do such things as may reasonably be required to more fully and effectually vest in any new Advisor all rights, duties, responsibilities, obligations and liabilities of the Advisor under this deed.
- (d) So long as Macquarie Infrastructure Investment Management Limited (ACN 072 609 271) or any of its related bodies corporate is the trustee and responsible entity of Macquarie Infrastructure Trust I (ARSN 092 863 780) or Macquarie Infrastructure Trust II (ARSN 092 863 548) (the "**Trusts**"), MIBL must not, prior to the time Units in the Trusts are no longer Stapled to a Share in MIBL, exercise its powers to terminate the Adviser under this clause 10.2.

10.3 Directions

After giving a written notice of termination, MIBL may direct the Advisor to undertake any actions necessary to bring the appointment of the Advisor to an end and the Advisor will comply with all such reasonable directions.

10.4 Claims and Transactions

The termination of this deed does not affect any:

- (a) transaction properly entered into prior to termination;
- (b) claim by the Advisor in respect of accrued fees and expenses incurred in respect of the period to termination;
- (c) other claim which either party may have against the other; or
- (d) clauses 10.3, 11(c) and 27 which survive the termination of this deed together with such other clauses specifically identified in this deed as surviving its termination.

11 Indemnity

- (a) MIBL will indemnify the Advisor against any loss or liability incurred by the Advisor in the performance of the Advisor's functions under this deed except to the extent that any loss or liability is caused by the failure of the Advisor to properly perform its duties or from the Advisor's fraud, negligence, wilful misconduct or dishonesty.
- (b) Except where the Advisor has failed to properly perform its duties under this deed, the indemnity under clause 11(a) includes any liability incurred as a result of any act or omission of any delegate or agent.
- (c) The indemnities referred to in this clause 11 survive the termination of this deed.

12 Exclusion of liability of the Advisor

12.1 Liability of Advisor

Without prejudice to clause 3.6(a), neither the Advisor nor any of its officers, employees, delegates, agents or contractors will be liable to MIBL for any loss or liability incurred by MIBL as a result of the Advisor's or any of its officers, employees, delegates, agents or contractors exercise or performance (or failure of the Advisor or any of its officers, employees, delegates, agents or contractors to exercise or perform or any error of judgement in respect thereof) of any of the obligations under this deed, or loss of opportunity as a result of which the value of MIBL would have increased, or for any decline in value of MIBL, howsoever arising, except to the extent that such liability is caused by the negligence, fraud wilful misconduct or dishonesty or breach of duty or breach of this deed by the Advisor or any officer, employee, delegate, agent or contractor of the Advisor.

12.2 Advisor may rely

The Advisor may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Advisor, in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally in connection with MIBL;
- (b) advice, opinions, statements or information from bankers, accountants, auditors, valuers and other persons consulted by the Advisor who are in each case believed by the Advisor in good faith to be expert in relation to the matters upon which they are consulted;

- (c) a document which the Advisor believes in good faith to be the original or a copy of an appointment by a shareholder or the holder of an option in respect of a Share of a person to act as their agent for any purpose connected with MIBL; and
- (d) any other document provided to the Advisor in connection with MIBL upon which it is reasonable for the Advisor to rely,

and the Advisor will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

12.3 Compliance with Regulatory Regime

Nothing in this clause 12 or elsewhere in this deed will exclude any liability of the Advisor to MIBL under the *UK Financial Services and Markets Act 2000*, as amended or any rules or regulations made under it or under the rules of the FSA.

13 Legal Actions

13.1 Third Party Claims

- (a) The Advisor will notify MIBL promptly of any claim made by any third party in relation to the assets of MIBL and will send to MIBL any notice, claim, summons or writ served on the Advisor concerning MIBL.
- (b) The Advisor will not without the express written consent of the Board purport to accept any claims or liabilities of which it receives notification pursuant to clause 13.1(a) on behalf of MIBL or make any settlement or compromise with any third party in respect of MIBL.

13.2 Litigation

If legal action is initiated against the Advisor by any third party in respect of any matter connected with this deed and in respect of which the Advisor has the benefit of an indemnity from MIBL under this deed, MIBL shall be entitled at its election to take over from the Advisor the conduct and the defence of any such action or to prosecute any claim for indemnity or damages or other entitlement against any third party in the name of the Advisor.

14 Obligation of Good Faith and Compliance with Law

14.1 Good Faith

The Advisor must perform its duties under this deed in good faith and for the benefit of MIBL.

14.2 Compliance

- (a) The Advisor must (and must ensure that each of its officers, employees and agents) comply with any law and the terms of this deed to the extent that it concerns the functions of the Advisor under this deed or the exercise of those functions by any such person.
- (b) The Advisor must maintain management systems, policies, procedures and internal contracts that reasonably ensures that the Advisor observes its duties and obligations under this deed.

14.3 A Special Share

So long as Share Stapling applies and the Advisor holds the A Special Share (as such term is defined in the Bye-Laws), the Advisor agrees to exercise all rights conferred by its holding of that share in the interests of MIBL and the Shareholders of MIBL as a whole.

15 Conflicts of Interest and Restriction

15.1 Conflicts of Interest

- (a) Nothing in this deed restricts the Advisor (or its Associates) from:
 - (i) dealing with the trustee of MIT(I), the trustee of MIT(II) or any holder of Shares, or any option in respect of Shares ;
 - (ii) being interested in any contract or transaction with MIBL, the trustee of MIT(I) or the trustee of MIT(II) or any holder of Shares, or any option in respect of Shares; or
 - (iii) acting in the same or similar capacity in relation to any other corporation.
- (b) The Advisor or any Associate may be or become interested in any business promoted by MIBL or in which MIBL may be interested as a shareholder or otherwise and is not accountable to MIBL for any remuneration, commission or other benefits received from its interest in that business provided that the Advisor discloses the nature of its interest to MIBL.
- (c) No contract or transaction referred to in this clause 15.1 which the Advisor or any Associate is interested in any way, whether directly or indirectly, will be avoided and the Advisor nor any Associate is not liable, by reason of the Advisor's appointment as Advisor under this deed or the fiduciary relationships established by such appointment, to account to MIBL or any other person for any profit or benefits arising from such contracts or transactions and it may retain such profits or benefits. Any fees paid or payable in relation to such contracts or transactions are to be retained by the person to whom those fees are paid or payable.

15.2 Non-exclusivity

The Advisor may from time to time perform services for itself and other persons the same as or similar to services performed for MIBL under this deed. MIBL acknowledges that:

- (a) the Advisor has no obligation to recommend for purchase or sale, for the account of MIBL, any investment which the Advisor purchases or sells for its own account or for the account of any other client of the Advisor; and
- (b) the Advisor may give advice and take action in the performance of its duties for other clients which differ from advice given and action taken in relation to the Portfolio.

15.3 Holding Shares

The Advisor and its Associates may hold Shares in any capacity.

16 General

- (a) As from the Effective Date the Advisor will be authorised and regulated by the FSA.
- (b) MIBL's investment policy is that specified in clause 3.9.
- (c) MIBL has been classified by the Advisor as a an intermediate customer for the purposes of the rules of the FSA for the conduct of regulated activities in the United Kingdom.
- (d) The investments acquired by MIBL will often not be dealt with on an exchange nor, for the purposes of the rules of the FSA, constitute readily realisable investments.
- (e) The Advisor does not accept any responsibility for the defaults of any custodian of MIBL which is not an Associate of the Advisor.
- (f) The Advisor's services under this deed are not covered by a compensation scheme.

17 Notices

- (a) Any notice or other communication to or by any party to this deed:
 - (i) must be in legible writing and in English addressed as shown below:
 - (A) if to MIBL:

Address: C/- Butterfield Fund Services (Bermuda) Limited
Rosebank Centre
11 Bermudiana Road
Pembroke HM08
Bermuda

Attention: Roslyn O'Brien, Company Secretary

Facsimile: +1 441 295 6739; and
 - (B) if to the Advisor:

Address: Level 30, Citypoint
1 Ropemaker Street
London EC2Y 9HD
United Kingdom

Attention: James Brasher/Annabelle Helps

Facsimile: +44 (20) 7065 2041,
- (ii) must be signed by an officer, or under the common seal, of the sender;
- (iii) must also be sent to the address of each of the directors of MIBL;
- (iv) is regarded as being given by the sender and received by the addressee;
- (v) if by delivery in person, when delivered to the addressee;

- (vi) if by post, 3 Business Days from and including the date of postage or 10 Business Days if addressed to an address outside Australia; or
- (vii) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and

- (viii) Can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 17(a)(vii) and informs the sender that it is not legible.
- (c) In this clause 17 a reference to an addressee includes a reference to an addressee's officers, agents or employees.

18 No Waiver

- (a) No failure to exercise and no delay in exercising any right, power or remedy under this deed will operate as a waiver.
- (b) A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that or any other right, power or remedy.

19 Assignment

A party may not assign its rights or obligations under this deed without the prior written consent of the other party.

20 Further Assurances

Each party must do all things and execute all further documents reasonably necessary give full effect to this deed.

21 Entire Agreement

This deed contains the entire agreement between the parties with respect to its subject matter. It supersedes all earlier conduct by the parties or prior agreement between the parties with respect to its subject matter.

22 Amendment

A variation of this deed is valid only if:

- (a) it is in writing and signed by or on behalf of each party to this deed; or
- (b) to the extent that it is necessary to comply with the *UK Financial Services and Markets Act 2000*, as amended, or any regulation issued by the FSA (or any legislation or authority which replaces them).

23 Dispute Resolution

- (a) If a dispute arises under this deed, the parties will use their best endeavours to resolve the dispute promptly and amicably and, if through their own efforts such resolution cannot be reached, the parties will seek to resolve the dispute in accordance with the provisions of this clause 23.
- (b) if the dispute relates to the construction or interpretation of the terms and conditions of this deed or if either party is seeking urgent interlocutory relief, the dispute must be dealt with by a court.
- (c) If the provisions of clause 23(b) do not apply and if the dispute arises from or involves a technical matter, the valuation of investments or the calculation of fees payable to the Advisor, the parties must refer the dispute for determination by the auditor of MIBL or to such other independent expert as the parties may agree. The decision of the auditor or such other independent expert in relation to the dispute will be deemed to be the decision of an expert, not an arbitrator, and the decision will be final and binding on both parties. The parties must share equally the costs of such expert determination of a technical dispute unless the auditor or the other independent expert determining the dispute decides otherwise.
- (d) The parties agree that, unless a court or the auditor or other independent expert appointed to determine the dispute determines otherwise, each party shall, throughout the dispute resolution process, continue to perform its obligations under this deed.

24 Prohibition or Enforceability

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this deed in that or any other jurisdiction.
- (c) The application of this clause 24 is not limited by any other provision of this deed in relation to severability, prohibition or enforceability.

25 Governing Law and Jurisdiction

- (a) This deed is governed by the laws of England.
- (b) The parties submit to the non-exclusive jurisdiction of the Courts of England.

- (c) Each party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.
- (d) MIBL appoints the Advisor as its authorised agent solely for the purpose of accepting service of process for all purposes in connection with this deed.
- (e) This clause 25 shall survive termination of this deed.

26 Counterparts

- (a) This document may be executed in any number of counterparts.
- (b) All counterparts, when taken together, constitute 1 instrument.
- (c) A party may execute this deed by signing any counterpart.

27 Confidentiality

All information exchanged between the parties, in connection with MIBL or under, or as a consequence of, this deed, or during the negotiations preceding this deed is confidential to them and may not be disclosed to any person except:

- (a) to employees, legal Advisors, auditors and other consultants of the party or its Associates requiring the information for the purposes of this deed;
- (b) with the consent of the party who supplied the information;
- (c) if the information is, at the date of this deed, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information or a person acting on its behalf;
- (d) if required by law (including under the Listing Rules and regulations of the ASX), or if required by any regulatory authority;
- (e) if strictly and necessarily required in connection with legal proceedings relating to this deed;
- (f) if the information is generally and publicly available other than as a result of breach of confidence or confidentiality by the person receiving the information; or
- (g) any disclosure by MIBL to its Shareholders (and if any Shareholder is a collective investment scheme or managed investment scheme, to its investors) as is envisaged by this deed.

This clause 27 shall survive termination of this deed.

28 Privity

A person who is not a party to this deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed except that:

- (a) clause 8.1 shall be enforceable against MIBL by the employees, officers, delegates, agents and contractors of the Advisor; and
- (b) this provision shall not affect any right or remedy of a third party which exists or is available apart from that Act.

Schedule 1

Allocation Methodology

The allocation of the Base Fee and the Performance Fee between MIBL and MEIP is to be at the ratio of that amount of the aggregate net assets (adjusted for the net market value of its investments) of MIBL (excluding the MEIP Group) at the end of the relevant period bears to the amount of the aggregate net assets of the MEIP Group (adjusted for the net market value of its investments) at the end of the relevant period and on the basis that in respect of the Performance Fee, the allocation made in respect of the "First Instalment" will then apply to the "Second Instalment" and "Third Instalment" in the same ratio, and whether or not that "Second Instalment" or "Third Instalment" is payable after the termination of this deed.