

# Macquarie Bank Limited Subordinated Tier 2 Debt Instrument Programme: Deed of Covenant

Dated 20 December 2023

Macquarie Bank Limited (ABN 46 008 583 542) ("Issuer")

in relation to Subordinated Debt Instruments issued under the Programme

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# Macquarie Bank Limited Subordinated Tier 2 Debt Instrument Programme: Deed of Covenant Details

<b>Parties</b>	<b>Issuer</b>	
<b>Issuer</b>	Name	<b>Macquarie Bank Limited</b>
	ABN	46 008 583 542
	Address	50 Martin Place Sydney NSW 2000 Australia
	Email	debtinvestorrelations@macquarie.com
	Attention	Company Secretary
<b>In favour of</b>	The registered holders of the Subordinated Registered Debt Instruments and the Accountholders	
<b>Recitals</b>	<b>A</b>	The Issuer has established the Programme.
	<b>B</b>	The Issuer proposes to issue Subordinated Debt Instruments under the Programme from time to time.
	<b>C</b>	The provisions of this deed will apply only to Subordinated Debt Instruments (other than Subordinated Debt Instruments which are in the form of Australian Domestic Notes) issued by the Issuer under the Programme and on from the date of this deed.
	<b>D</b>	The Issuer wishes to constitute the Subordinated Registered Debt Instruments (other than Subordinated Registered Debt Instruments which are in the form of Australian Domestic Notes) by deed poll and to make arrangements for the protection of the interests of Accountholders in the event that any Subordinated Debt Instrument (other than Subordinated Debt Instruments which are in the form of Australian Domestic Notes) which is a Subordinated Global Debt Instrument becomes void in accordance with its terms.
<b>Date of Deed</b>	20 December 2023	

# Macquarie Bank Limited Subordinated Tier 2 Debt Instrument Programme: Deed of Covenant

## General terms

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### 1 Interpretation

#### 1.1 Definitions

Unless the contrary intention appears, terms used in this deed shall have the meaning set out below.

**Accountholder** means any accountholder with a Clearing System which at the Determination Time has credited to its securities account with such Clearing System one or more Entries in respect of a Subordinated Global Debt Instrument, except for any Clearing System in its capacity as an accountholder of another Clearing System.

**Conditions** means, in relation to the Subordinated Debt Instruments of any Series, the terms and conditions endorsed on or incorporated by reference into the Subordinated Debt Instruments constituting such Series, such terms and conditions being in or substantially in the form set out in the Euro Agency Agreement or in such other form, having regard to the terms of the Subordinated Debt Instruments of the relevant Series, as may be agreed between the Issuer and the I&P Agent, as in any case modified, supplemented and completed by the applicable Pricing Supplement.

**Determination Time** means, in relation to any Subordinated Global Debt Instrument, the time at which such Subordinated Global Debt Instrument becomes void in accordance with its terms.

**Direct Rights** shall have the meaning given in clause 3.1 ("Creation").

**Entry** means, in relation to a Subordinated Global Debt Instrument, any entry which is made in the securities account of any Accountholder with a Clearing System in respect of Subordinated Debt Instruments represented by such Subordinated Global Debt Instrument.

**Principal Amount** means, in respect of any Entry, the aggregate principal amount of Subordinated Debt Instruments to which such Entry relates.

**Proceedings** shall have the meaning given in clause 12.2 ("Submission to jurisdiction").

#### 1.2 Incorporation of defined terms

Unless the contrary intention appears, a term which has a defined meaning in the Conditions has the same meaning when used in this deed.

#### 1.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a document (including this deed) includes any variation or replacement of it;

- (b) a statute, any provision of the statute, a statutory instrument, order or regulation, shall be construed as a reference to such statute, provisions, statutory instrument, order or regulation as amended or re-enacted from time to time;
- (c) anything (including any amount) is a reference to the whole or each part of it; and
- (d) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

#### **1.4 Number**

The singular includes the plural and vice versa.

#### **1.5 Headings**

Headings (including those in brackets at the beginning of paragraphs) are inserted for convenience and do not affect the interpretation of this deed.

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## **2 Subordinated Registered Debt Instruments**

The Issuer hereby constitutes any Subordinated Registered Debt Instrument issued pursuant to and in accordance with the Euro Agency Agreement and covenants in favour of each registered holder of a Subordinated Registered Debt Instrument that it will:

- (a) pay, in respect of each Subordinated Registered Debt Instrument registered in the name of the holder, all amounts payable in accordance with the Conditions on the dates and in the manner specified in the Conditions; and
- (b) duly perform and comply with all other obligations expressed to be undertaken by it in each Subordinated Registered Debt Instrument and in the Conditions,

and for this purpose any reference in the Conditions to any obligation or payment under or in respect of a Subordinated Registered Debt Instrument shall be construed to include a reference to any obligation or payment under or pursuant to this provision.

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## **3 Direct Rights**

### **3.1 Creation**

If any Subordinated Global Debt Instrument representing all or part of a Tranche of Subordinated Debt Instruments becomes void in accordance with its terms, each registered holder of Subordinated Registered Debt Instruments and Accountholder shall automatically acquire at the Determination Time, against the Issuer all rights ("**Direct Rights**") which such registered holder of Subordinated Registered Debt Instruments or Accountholder would have had in respect of the Subordinated Debt Instruments if, immediately before the Determination Time in relation to that Subordinated Global Debt Instrument, it had held and beneficially owned, executed and authenticated Subordinated Definitive Debt Instruments of that Tranche, in an aggregate principal amount equal to the Principal Amount of such registered holder of Subordinated Registered Debt Instruments or Accountholder's Entries relating to such Subordinated Global Debt Instrument,

including the right to receive all payments due at any time in respect of such Subordinated Definitive Debt Instruments as if such Subordinated Definitive Debt Instruments had (where required by the Conditions) been duly presented and (where required by the Conditions) surrendered on the due date in accordance with the Conditions.

### **3.2 Termination**

The Direct Rights of an Accountholder in relation to an Entry shall terminate when the subsequent Accountholder to whose securities account a corresponding Entry has been credited acquired Direct Rights in relation to such Entry in accordance with clause 3.1.

### **3.3 Separate and independent obligation**

The Issuer's obligation under this deed shall be a separate and independent obligation by reference to each Subordinated Global Debt Instrument which an Accountholder has credited to its securities account with the relevant Clearing System or by each registered holder of Subordinated Registered Debt Instruments from time to time.

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## **4 Subordination, Exchange and Write-Off**

The rights of the registered holder and an Accountholder in respect of this deed (including all rights to payment in respect of the Subordinated Debt Instruments) are qualified by and subject to the subordination provisions set forth in Condition 4 and the provisions of Conditions 7 and 8 of the Conditions.

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## **5 No further action**

No further action is required on the part of the Issuer or any other person:

- (a) **(Direct Rights)** for the Accountholders and registered holders of Subordinated Registered Debt Instruments to enjoy the Direct Rights; or
- (b) **(benefit of the Conditions)** for each Accountholder and each holder of Subordinated Registered Debt Instruments to have the benefit of the Conditions as if they had been incorporated *mutatis mutandis* into this deed,

provided, however, that nothing in this deed entitles any Accountholder or holder of Subordinated Registered Debt Instrument to receive any payment in respect of any Subordinated Global Debt Instrument which has already been made.

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## **6 Evidence**

### **6.1 Records**

The records of the Clearing Systems, in the absence of manifest error, are conclusive as to the identity of the Accountholders and the respective amounts of Subordinated Debt Instruments credited to their securities accounts. A statement issued by a Clearing System setting out:

- (a) **(name)** the name of the Accountholder in respect of which it is issued; and

- (b) **(Principal Amount)** the Principal Amount of any Entry credited to the securities account of such Accountholder with such Clearing System on any date,

is conclusive evidence for all purposes of this deed.

## **6.2 Determination Time**

If a Clearing System determines the Determination Time, such determination is (in the absence of manifest error) binding on all Accountholders with such Clearing System.

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# **7 Deposit of Deed of Covenant**

## **7.1 Continuing obligation**

This deed must be deposited with and held by the I&P Agent to the exclusion of the Issuer, for so long as the Programme remains in effect and thereafter until the date on which all the obligations of the Issuer under or in respect of the Subordinated Debt Instruments (including, without limitation, its obligations under this deed) have been discharged in full and/or have been prescribed in accordance with the Conditions.

## **7.2 Production**

The Issuer acknowledges the right of every holder of Subordinated Registered Debt Instruments and every Accountholder to the production of, and the right of every holder of Subordinated Registered Debt Instruments and every Accountholder to obtain (upon payment of a reasonable charge) a copy of, this deed.

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# **8 Stamp duties, taxes and indemnity**

## **8.1 Stamp duty and taxes**

The Issuer agrees to pay all stamp, registration and other taxes and duties (including any interest and penalties thereon or in connection therewith) in the Commonwealth of Australia or the country of any currency in which the Subordinated Debt Instruments may be denominated which may be payable upon or in connection with the execution and delivery of this deed.

## **8.2 Indemnity**

The Issuer agrees to indemnify each holder of Subordinated Registered Debt Instruments and each Accountholder against any claim, demand, action, liability, damages, cost, loss or expense (including legal fees and any applicable stamp, registration or other taxes and duties) which it may properly incur or which may be made against it as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

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# **9 Benefit of Deed of Covenant**

## **9.1 Deed poll**

This deed takes effect as a deed poll for the benefit of the registered holders of Subordinated Registered Debt Instruments and the Accountholders from time to time.

## **9.2 Benefit**

This deed enures to the benefit of each registered holder of Subordinated Registered Debt Instruments and each Accountholder and its (and any subsequent) successors and assigns, each of which are entitled severally to enforce this deed against the Issuer.

## **9.3 Registered holders and Accountholders bound**

Each registered holder of Subordinated Registered Debt Instruments and each Accountholder and any person claiming through or under such a person (including a person to whom MGL Ordinary Shares are issued on Exchange of a Subordinated Debt Instrument) is bound by this deed, the relevant Conditions, the applicable Pricing Supplement and the Euro Agency Agreement. The Subordinated Debt Instruments are issued subject to and on the basis that each registered holder of Subordinated Registered Debt Instruments and each Accountholder is taken to have notice of, and be bound by, all the provisions of this deed, the relevant Conditions, the applicable Pricing Supplement and the Euro Agency Agreement.

## **9.4 Fundamental conditions to receipt of rights and benefits**

It is a fundamental and inseparable condition of receiving any of the rights or benefits under this deed that a registered holder of Subordinated Registered Debt Instruments or an Accountholder (as applicable) undertakes to perform all of the obligations and to comply with all restrictions and limitations applicable to it under this deed and the Conditions.

## **9.5 Conditions to enforcement**

No registered holder of Subordinated Registered Debt Instruments or Accountholder may take any action to enforce any obligation of the Issuer under this deed or the Conditions unless the enforcement of that obligation is permitted in accordance with this deed and the Conditions.

## **9.6 Assignment**

The Issuer is not entitled to assign or transfer all or any of its rights, benefits and obligations under this deed. Each registered holder of Subordinated Registered Debt Instruments and each Accountholder is entitled to assign all or any of its rights and benefits under this deed, subject to and in accordance with the relevant Conditions.

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## **10 Partial invalidity**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor the legality, validity or enforceability of such provision under the laws of any other jurisdiction are in any way affected or impaired by such event or occurrence.

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## **11 Notices**

All notices and other communications to the Issuer under this deed must be made in writing (by letter) and sent to the Issuer in the manner prescribed for the giving of notices in connection with the Subordinated Debt Instruments pursuant to the relevant Conditions.

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## **12 Governing law, submission to jurisdiction and service of process**

### **12.1 Governing law**

This deed is governed by the laws in force in the state of New South Wales.

### **12.2 Submission to jurisdiction**

In relation to any legal action or proceedings arising out of or in connection with this deed (“**Proceedings**”) the Issuer irrevocably submits to the jurisdiction of the courts of New South Wales and waives any objection to Proceedings in such courts whether on the grounds that the Proceedings have been brought in an inconvenient forum or otherwise. This submission is made for the benefit of each of the registered holders of Subordinated Registered Debt Instruments and the Accountholders and shall not affect the right of any of them to take Proceedings in any court of competent jurisdiction nor shall the taking of Proceedings in any court of competent jurisdiction preclude any of them from taking Proceedings in any other court of competent jurisdiction (whether concurrently or not).

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## **13 Modification**

The Euro Agency Agreement contains provisions for convening meetings of the relevant Subordinated Debt Instrument Holders to consider matters relating to the relevant Subordinated Debt Instruments, including the modification of any provision of this deed. Any such modification may be made by supplemental deed poll sanctioned by an Extraordinary Resolution (where so required by the Conditions) and is binding on all registered holders of Registered Subordinated Registered Debt Instruments and all Accountholders.

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## **14 Disapplication**

This deed shall not apply to any Subordinated Debt Instruments issued before the date of this deed, nor to any Subordinated Debt Instruments which are in the form of Australian Domestic Notes.

**EXECUTED** as a deed poll

# Macquarie Bank Limited Subordinated Tier 2 Debt Instrument Programme: Deed of Covenant

Signing page

Issuer

SIGNED, SEALED AND DELIVERED )

by )

..... MORAG HOME ..... )

and )

..... ANTHONY LEWIS ..... )

as attorneys for **MACQUARIE BANK** )  
**LIMITED** under power of attorney )  
dated )

..... 14 DECEMBER 2023 ..... )

in accordance with section 126(1) of )  
the Corporations Act 2001 (Cth) )

.....  
By executing this deed the attorney )  
states that the attorney has received )  
no notice of revocation of the power of )  
attorney )

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states that the attorney has received )  
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attorney )