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SCHEDULE

Section 4.

SUBSTITUTED PROVISIONS OF EMPLOYEE BENEFIT TRUST DATED 7TH MARCH 1984

1 INTERPRETATION

(1.1) In this Deed the following expressions have the following meanings—

“Baxi Group” means BPL and its Subsidiaries;

“BPL” means Baxi Partnership Limited a company incorporated in England with registered number 367875;

“Beneficiary” means each of the following:—

- (a) an Employee;
- (b) a bona fide former employee of BPL or of any Subsidiary but excluding former employees who were employees of a company currently a Subsidiary only at a time when it was not a Subsidiary;
- (c) a wife, husband, widow, widower and, if under the age of 18, a child or step-child of an Employee or of such a former employee,

and “the Beneficiaries” bears meaning accordingly;

“Employee” means at any time a person who is at that time a bona fide employee of any company within Baxi Group and “Employees” bears meaning accordingly;

“Equity Share” means any share in BPL or a right to subscribe for or to convert into any share in BPL;

“the Founder” means Philip Stafford Baxendale;

“Future Employees” means at any time those persons who at a future time will or may become employees of any company which is at that future time within Baxi Group or who will or may be employed by a company which at that future time will or may come within Baxi Group;

“Participator” means in relation to any company a person so designated under Section 417 of the Income and Corporation Taxes Act 1988 but excluding a person who both—

- (a) is not beneficially entitled to or to rights entitling him to acquire 5% or more of or of any class of the shares comprised in the share capital of that company; and
- (b) would not on a winding up of that company be entitled to 5% or more of the assets of that company;

“Permitted Employee Trust” means a trust for the benefit of a class of persons who are the same as or included among the Beneficiaries being—

- (a) a trust whose property falls within Section 86 of the Inheritance Tax Act 1984; or
- (b) a trust whose trusts are those of a profit sharing scheme approved in accordance with Schedule 9 to the Income and Corporation Taxes Act 1988; or
- (c) a trust established for the purposes of any other scheme or arrangement for the holding of shares in BPL or any Subsidiary by or for the benefit of Employees, being a scheme or arrangement operating in accordance with any legislation encouraging or facilitating such schemes or arrangements and regulating the tax treatment of participants;

“Permitted Successor Company” means any company in which the Trustees hold shares or securities derived from their ownership of Equity

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Shares as the result of any scheme for the reconstruction of BPL as mentioned in Clause 6 of this Deed or of a sequence of such reconstructions and where the context so admits includes BPL and “Permitted Successor Companies” bears meaning accordingly;

“Subsidiary” means at any time a company which is at that time a subsidiary of BPL within the meaning of Section 736 of the Companies Act 1985 and “Subsidiaries” bears meaning accordingly;

“the Trust” means the trust established by this Deed;

“the Trust Fund” means the capital assets subject to the trusts of this Deed on the date upon which the Baxi Partnership Limited Trusts Act 2000 comes into operation and all property at any time added thereto by way of further settlement, accumulation of income capital accretion or otherwise and the money, investments and property from time to time representing the same; and

“the Trustees” means the trustees or trustee for the time being of this Deed and “Trustee” bears meaning accordingly.

- (1.2) A reference to any statutory provision includes a reference to that statutory provision as from time to time amended or re-enacted.
- (1.3) The Clause headings are included for ease of reference and do not affect the interpretation of this Deed.
- (1.4) References to this Deed or to any specified provision of this Deed are to this Deed or that provision as in force for the time being and as amended from time to time in accordance with the terms of this Deed.

2 THE MAIN PURPOSE OF THE TRUST

- (2.1) The main purpose of the Trust is to benefit Employees and Future Employees in the way set out in sub-clause 2.2 below.
- (2.2) The Trustees shall benefit Employees and Future Employees through—
 - (a) holding Equity Shares in accordance with Clause 5 of this Deed; and
 - (b) exercising the rights attaching to such shares in the manner which the Trustees consider will secure the continuation forever of Baxi Group as a successful and professionally managed trading enterprise with a Partnership Culture.
- (2.3) “Partnership Culture” means the application of the following principles—
 - (a) that the widespread ownership of shares in BPL or in any one or more Subsidiaries by individual Employees is promoted;
 - (b) that regard is had to the interests of Employees in general;
 - (c) that Employees are encouraged to assume responsibility for maximising their contribution to Baxi Group having regard to the interests of future as well as present beneficiaries of the Trust;
 - (d) that Employees receive information concerning the major policies and actions of BPL; and
 - (e) that opportunities are afforded to Employees whether individually or through representatives to influence the major policies of BPL,

and for the purposes of this sub-clause 2.3 the reference to “shares in BPL or in any one or more Subsidiaries” shall include such other securities of or interests in BPL

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or any such Subsidiary as confer rights on the holders thereof which the Trustees consider are equivalent or similar to those conferred by shares.

- (2.4) The provisions of sub-clause 2.2(b) above and the principles stated in sub-clause 2.3 above shall be read as a whole and in any given circumstances the Trustees shall determine the most appropriate balance between such principles (even to the exclusion of any of them) having regard to the anticipated consequences of the emphasis placed on each in determining that balance.
- (2.5) For the purposes of the foregoing provisions of this Clause 2 the Trustees shall have regard to all the consequences for the achievement of the main purpose of the Trust as stated in sub-clause 2.1 above of any proposed action or inaction anticipated by the Trustees including but without limitation—
- (a) any applicable legal or regulatory requirements or any difficulties or costs arising as a consequence of such requirements;
 - (b) the incidence of any taxation, duties or imposts or the like of any jurisdiction; and
 - (c) the actual and anticipated resources of Baxi Group.
- (2.6) Sub-clause 2.2 above shall not be construed as imposing any obligation upon the Trustees actually to exercise their voting and other rights as shareholders or to be more active in exercising those rights than they shall in their absolute discretion from time to time think appropriate.
- (2.7) Subject to sub-clause 2.8 below, nothing in the foregoing provisions of this Clause 2 shall require the Trustees to prevent or inhibit the adoption and implementation of policies or the taking of actions by BPL which result or are intended to result or might result in BPL or any other company within Baxi Group—
- (a) forming any joint venture or other association which is not a Subsidiary or making any investment or acquiring any interest in any body corporate which is not as a result a Subsidiary or in any other body or business organisation or association of any type which does not result in its holding an investment or interest in a subsidiary undertaking (as defined in Section 228 of the Companies Act 1985); or
 - (b) disposing of all or any part of its interest in any Subsidiary or any other body corporate or of its investment or interest in any other body or business organisation or association; or
 - (c) permitting any person, firm or company to acquire an interest in any Subsidiary or any other body corporate in which it is interested; or
 - (d) taking any action to wind up liquidate or dissolve any Subsidiary or any other body corporate in which it is interested or allowing any such Subsidiary or other body corporate to be wound up liquidated or dissolved or otherwise reconstructing reorganising or making changes to any such Subsidiary or other body corporate; or
 - (e) disposing of all or any part of its interest in any business or undertaking or in any assets associated therewith; or
 - (f) permitting any person, firm or company to acquire an interest in any business or undertaking in which it is interested or in any assets associated therewith; or
 - (g) terminating the operation of or reducing the size and scale of any business or undertaking in which it is interested or otherwise making changes thereto; or

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- (h) acquiring or establishing or maintaining any business, undertaking, body corporate, venture or association of any type whether or not the same creates employment or creates or enhances employment prospects for Employees or Future Employees; or
- (i) reducing the number of Employees and/or the remuneration and other benefits and rewards payable or afforded to Employees; or
- (j) carrying on any business or undertaking at a loss; or
- (k) creating or permitting to be created any mortgage, charge, lien or other security interest over all or any part of its assets,

so far as the Trustees consider that the adoption and implementation of such policies or the taking of such actions is in the interests of BPL and is in the view of the Trustees designed in the short term or in the long term or in both the short term and the long term to assist in the overall achievement of the main purpose of the Trust set out in sub-clause 2.1 above in accordance with sub-clause 2.2 above.

- (2.8) In carrying out their functions under sub-clause 2.7 above, the Trustees may enter into such arrangements with BPL or its Board of Directors as the Trustees in their absolute discretion think fit for identifying which matters (if any) falling within any of paragraphs (a) to (k) of sub-clause 2.7 above should be referred to the Trustees for their consideration in accordance with the closing paragraph of that sub-clause. The Trustees shall not be liable in any way in respect of any policy or action by BPL (or any other member of Baxi Group) in relation to any matter which in accordance with such arrangements does not need to be referred to the Trustees. Further, in making any decision in respect of any matter which the Trustees consider pursuant to sub-clause 2.7 above, the Trustees may rely on the Board of Directors of BPL (or of any other member of Baxi Group) for information or advice without the need to seek any further information or take any other advice.
- (2.9) The arrangements referred to in sub-clause 2.8 above may (but need not necessarily) be limited to the appointment of one or more of the Trustees as a Director or Directors of BPL.

3 TRUSTS OF CAPITAL

Subject to Clause 5 of this Deed, the Trustees shall hold the assets comprised in the Trust Fund upon trust either to retain them or—

- (a) in the case of shares in or other securities of a company within Baxi Group, to transfer the same to the trustees of another Permitted Employee Trust on such terms whether or not for consideration as the Trustees shall think fit or to any Employee at a price to be determined in accordance with Clause 22 of this Deed;
- (b) in the case of money, either to invest it in shares in or securities of a company within Baxi Group or in any other manner authorised by this Deed;
- (c) in the case of other assets, to sell them at such time and upon such terms as the Trustees shall decide.

4 Trusts of income

- (4.1) The Trustees shall hold the income of the Trust Fund upon trust to pay or apply it to or for the benefit of all or any one or more exclusively of the others or other of the Beneficiaries for the time being living in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion think fit.

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(4.2) Provided that the Trustees may if they shall in their absolute discretion from time to time think fit instead of paying or applying any income of the Trust Fund in accordance with sub-clause 4.1 above accumulate such income by investing it in shares in or other securities of a company within Baxi Group or in any manner authorised by this Deed as an addition to the capital of the Trust Fund but so that the Trustees may apply the proceeds of the realisation of any investments representing such accumulated income as if they were income of the then current year.

5 EMPLOYEE OWNERSHIP THROUGH THE TRUSTEES RETAINING A CONTROLLING INTEREST IN BPL

(5.1) Subject to Clause 6 of this Deed, the Trustees shall retain as trustees of this Deed—

- (a) Equity Shares which represent 51% or more of the issued shares of each class in BPL and which would still represent 51% or more of the issued shares of each class in BPL if all rights to subscribe for or convert into shares of that class were exercised;
- (b) such Equity Shares and other rights in BPL as shall entitle them to not less than 51% of all profits and other assets of BPL available for distribution by way of dividend or to members of BPL on a winding up of BPL; and
- (c) such Equity Shares and other rights in BPL which confer the right to attend and vote on all questions at any general meeting of BPL and which if exercised would carry a majority of the votes capable of being cast at any such general meeting.

(5.2) The Trustees shall not grant any charge or other right over any Equity Shares or other rights in BPL the enforcement of which would or might prevent the Trustees from fulfilling the requirements of sub-clause 5.1 above.

(5.3) Subject to sub-clause 6.10 below, the Trustees shall exercise the rights attached to the Equity Shares and other rights in BPL owned by the Trustees as trustees of this Deed so as to ensure that each issued share in the capital of BPL is held by—

- (a) the Trustees as trustees of this Deed; or
- (b) an Employee beneficially; or
- (c) the trustees of another Permitted Employee Trust upon the terms of that trust, but without precluding the temporary retention of any such shares acquired beneficially by an Employee by him or his personal representatives after his ceasing to be an Employee or the acquisition and temporary retention of any such shares by a former Employee or by the personal representatives of a deceased former Employee where such acquisition is made pursuant to a right granted to such former or deceased Employee whilst he was an Employee for such period as the Trustees may consider necessary or desirable and consistent with the promotion of the main purpose of the Trust as stated in sub-clause 2.1 above, having regard to all the consequences for the achievement of such purpose of allowing or not allowing any such retention to continue including but without limitation—
 - (i) any applicable legal or regulatory requirements or any difficulties or costs arising as a consequence of such requirements;
 - (ii) the incidence of any taxation, duties or imposts or the like of any jurisdiction; and
 - (iii) the actual and anticipated resources of Baxi Group.

6 RECONSTRUCTIONS

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- (6.1) Notwithstanding anything in Clause 5 of this Deed, the Trustees may agree to and carry into effect any scheme for the reconstruction of BPL (a “Corporate Reconstruction”) whether or not involving the winding up of BPL resulting in the Trustees holding issued shares in one or more companies in respect of which all the conditions set out in sub-clause 6.3 below are satisfied (each a “Permitted Successor Company”) whether or not the Trustees retain shares in BPL.
- (6.2) Without prejudice to the generality of sub-clause 6.1 above, a Corporate Reconstruction may take the form of any of the following—
- (a) reconstruction pursuant to Section 110 of the Insolvency Act 1986 upon the members' voluntary liquidation of BPL;
 - (b) the acquisition by any company of the whole of the issued share capital of BPL in exchange for the issue of shares in the acquiring company;
 - (c) a scheme of arrangement with or without liquidation of BPL pursuant to Section 425 of the Companies Act 1985; and
 - (d) a demerger of any part of the undertaking of BPL by way of an exempt distribution within the meaning of Section 218 of the Income and Corporation Taxes Act 1988.
- (6.3) The conditions referred to in sub-clause 6.1 above are that in relation to each such company immediately following the Corporate Reconstruction—
- (a) shares in such company which represent 51% or more of the issued shares of each class in such company and which would still represent 51% or more of the issued shares of each class in such company if all rights to subscribe for or to convert into shares of that class were exercised are owned by the Trustees as trustees of this Deed;
 - (b) the shares and other rights so owned entitle the Trustees to not less than 51% of all profits and other assets of such company available for distribution by way of dividend or available to members of such company on a winding-up of such company;
 - (c) the shares and other rights so owned confer on the Trustees the right to attend and vote on all questions at any general meeting of such company which if exercised would carry a majority of the votes capable of being cast at any such general meeting; and
 - (d) each issued share in the capital of such company is owned by—
 - (i) the Trustees as trustees of this Deed; or
 - (ii) an Employee or a person formerly an Employee beneficially or the personal representatives of such a person; or
 - (iii) a bona fide employee or former employee of such company or any company which is at that time a subsidiary (within the meaning of Section 736 of the Companies Act 1985) of such company beneficially or the personal representatives of such a former employee; or
 - (iv) the trustees of any Permitted Employee Trust upon the terms of that trust; or
 - (v) any person or persons as trustee or trustees of any trust for the benefit of all or any of—
 - (aa) the bona fide employees and former employees of such company and any companies which are at that time

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- subsidiaries (within the meaning of Section 736 of the Companies Act 1985) of such company; and
- (bb) the wives, husbands, widows, widowers and, if under the age of 18, the children and step-children of such employees or former employees,
- being a trust which would fall within the definition of “Permitted Employee Trust” in sub-clause 1.1 above if in that definition reference to the above mentioned persons were substituted for the reference to “the Beneficiaries”.
- (6.4) Where as a result of a Corporate Reconstruction BPL is neither liquidated nor becomes the subsidiary (within the meaning of Section 736 of the Companies Act 1985) of a Permitted Successor Company but remains owner of part of its undertaking the expression “Permitted Successor Company” shall extend to and include BPL.
- (6.5) If as a result of a Corporate Reconstruction there are two or more Permitted Successor Companies the Trustees shall divide the Trust Fund so that there are distinct portions of the Trust Fund (each a “Separate Fund”) each of which relates exclusively to one Permitted Successor Company and its subsidiaries (within the meaning of Section 736 of the Companies Act 1985).
- (6.6) The portions of the Trust Fund held in each Separate Fund shall continue to be held upon the trusts and with and subject to the powers and provisions declared and contained in this Deed.
- (6.7) The Trustees shall allocate to the relevant Separate Fund all shares in and securities of the relevant Permitted Successor Company which they own but otherwise shall effect such division in such manner as they shall in their absolute discretion decide.
- (6.8) With effect from a Corporate Reconstruction this Deed shall have effect as if—
- (a) in relation to each Permitted Successor Company and its Separate Fund each reference to BPL or to the Trust Fund in the definitions of Baxi Group, Beneficiary, Equity Share, Permitted Employee Trust, Permitted Successor Company and Subsidiary in Clause 1 of this Deed, in Clauses 2, 3, 4 and 5 of this Deed, this Clause 6, sub-clauses 7.2 and 7.3, Clauses 8 (except sub-clauses 8(c) and 8(e)), 9, 10, 11, 12, 13, 17, 18, 19, 22 and 24 of this Deed and sub-clause 27.4 below was replaced by a reference to such Permitted Successor Company or to the relevant Separate Fund;
 - (b) references in Clauses 14 and 15 of this Deed to companies within Baxi Group and company within Baxi Group were references to all Permitted Successor Companies and all other companies which are subsidiaries (within the meaning of Section 736 of the Companies Act 1985) of a Permitted Successor Company; and
 - (c) references in Clauses 14 and 15 of this Deed to Employee had effect as if in the definition of Employee in Clause 1 of this Deed references to any company within Baxi Group were construed as provided in sub-clause 6.8(b) above.
- (6.9) Sub-clause 6.8(a) above shall have effect subject to sub-clauses 6.8(b) and 6.8(c) above and shall not apply for the purposes of construing, in relation only to a Corporate Reconstruction, the expressions “Employee” and “Permitted Employee Trust” in sub-clause 6.3(d) above.

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- (6.10) Sub-clause 6.8 above shall not operate to bring within the definition of Beneficiary in Clause 1 of this Deed a former employee of a company that becomes a Permitted Successor Company as a result of a Corporate Reconstruction (not having previously been a member of Baxi Group) who had left employment with such company before such Corporate Reconstruction but nothing in Clause 5 of this Deed shall require the Trustees to prevent the continued holding of shares in a Permitted Successor Company by any person falling within sub-clause 6.3(d) above who held shares in such company immediately following such Corporate Reconstruction so long as the Trustees consider that the retention by any such person of such shares is not inconsistent with the promotion of the main purposes of the Trust as set out in Clause 2 of this Deed.
- (6.11) With effect from a Corporate Reconstruction Clauses 23 to 28 of this Deed shall if there are two or more Permitted Successor Companies apply separately to each Permitted Successor Company and its Separate Fund and the powers of alteration and addition in Clauses 23 to 28 of this Deed may be exercised separately and to different effect in relation to each Permitted Successor Company and its Separate Fund.

7 PROVISIONS TO TAKE EFFECT ON THE INSOLVENT LIQUIDATION OF BPL

- (7.1) (a) In the event of BPL or following a reconstruction permitted by Clause 6 of this Deed one or all of the Permitted Successor Companies being wound up because of its insolvency the main purpose of the Trust as set out in Clause 2 of this Deed shall be deemed to have failed in whole or where sub-clause 7.1(b) below applies in part and the following provisions of this Clause 7 shall take effect.
- (b) In the event of there being more than one Permitted Successor Company and of one (or more) but not all being wound up because of their insolvency this Clause 7 shall apply in relation only to such insolvent company or companies and the Separate Fund or Funds relating to such insolvent company or companies.
- (c) Where this Clause 7 applies in relation to more than one Permitted Successor Company it shall apply separately in relation to each of them.
- (7.2) The Trustees shall have power to set aside or to treat as set aside such part (if any) not exceeding one tenth of the Trust Fund as they shall in their absolute discretion decide and shall distribute such part of the Trust Fund amongst all or such one or more as they shall in their absolute discretion decide of the Beneficiaries in such shares and in such manner as the Trustees shall in their absolute discretion decide.
- (7.3) The Trustees shall hold the balance of the Trust Fund not set aside nor treated as set aside in accordance with sub-clause 7.2 above (“the Charitable Fund”) upon trust to apply the income and if they so decide the capital towards all or any of the following exclusively charitable objects—
- (a) the relief of poverty amongst the Beneficiaries in any manner that is exclusively charitable;
- (b) the promotion of employee share ownership and of industrial democracy in any manner that is exclusively charitable;
- (c) any other purpose that is exclusively charitable in accordance with the laws of England and Wales.

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- (7.4) For the avoidance of doubt the Trustees shall have power to apply the whole or any part of the capital or income of the Charitable Fund towards the promotion of such charitable objects by transferring such capital or income to any other charity.
- (7.5) The provisions of this Deed (other than those contained in this Clause 7 and applicable to the Charitable Fund) shall not apply to the Charitable Fund except insofar as they are consistent with the promotion of such exclusively charitable objects.
- (7.6) Clauses 23 to 28 of this Deed shall cease to apply but the Trustees shall have power by deed to make such amendments or additions to the provisions of this Deed other than this Clause 7 as they shall from time to time think necessary or desirable for the promotion of the exclusively charitable objects set out in sub-clause 7.3 above.
- (7.7) The Trustees shall also have power by written resolution to make regulations consistent with this Deed for the management of the charity that would come into being in accordance with this Clause 7 and for the conduct of their business as Trustees of such charity including the calling of meetings.

8 EXCLUSION OF CERTAIN PERSONS FROM BENEFIT UNDER THE TRUST

Notwithstanding anything else contained in or implied by this Deed, the Trustees shall not pay or apply any part of the capital or income of the Trust Fund to or so as to benefit any of the following persons whether directly or indirectly and whether by way of gift loan or otherwise (except through a payment which is a fair reward for work done and will form part of the taxable income of the payee and excluding the indirect benefit which a Participator who was an Employee would derive in common with all the Employees through the retention by the Trustees of a controlling interest in BPL and its use to promote the main purpose of the Trust as set out in Clause 2 of this Deed)—

- (a) the Founder;
- (b) any person who has directly or indirectly provided any of the settled property otherwise than by additions not exceeding a value of ONE THOUSAND POUNDS (£1,000) in any one year;
- (c) any person who is a Participator in BPL or in any Permitted Successor Company;
- (d) any person who is a Participator in any company that has at any time made a disposition whereby property has become held on the trusts of this Deed unless such disposition was for full market value;
- (e) any other person who has been a Participator in any such company or in BPL or in any Permitted Successor Company at any time after or during the ten years before any such disposition by any such company;
- (f) any person who is connected within the meaning of Section 270 of the Inheritance Tax Act 1984 with any person comprised in sub-clauses (a) to (e) above.

9 THE TRUSTEES TO HAVE POWER TO ACQUIRE FURTHER SHARES IN OR SECURITIES OF BPL

The Trustees shall have power to apply for and take up any shares in or securities of BPL and to purchase or acquire on such terms as the Trustees think fit or receive as gifts upon terms consistent with the promotion of the main purpose of the trust as set out in Clause 2 of this Deed any such shares or securities from any existing holder.

10 THE TRUSTEES TO HAVE POWER TO BORROW

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The Trustees shall have power to borrow money to enable the acquisition of shares in or securities of BPL or for any other purpose of this Deed upon such terms as they think fit (but subject always to sub-clause 5.2 above).

11 **THE TRUSTEES TO HAVE POWER TO EXERCISE THEIR RIGHTS AS HOLDERS OF SHARES IN OR SECURITIES OF BPL**

Save as otherwise expressly herein provided, the Trustees may exercise or refrain from exercising their voting rights and other rights as holders of shares in or securities of BPL as they think fit but shall not exercise any such right in a manner inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed.

12 **DIVIDENDS**

(12.1) The Trustees shall not be under any duty to compel the payment or non-payment of dividends or the making of any other distribution by BPL or by any other company shares in or securities of which they hold or own and may either accept or waive or disclaim any dividend or other distribution that becomes payable to them or to which in the future they might otherwise become entitled.

(12.2) For the avoidance of doubt, the Trustees shall be entitled to take into account when deciding whether to compel the payment of any dividend or the making of any other distribution by BPL or to accept or to waive or disclaim any such dividend or other distribution which becomes payable to them or to which in the future they might otherwise become entitled the benefit to the Trust Fund through the retention by such company of the resources otherwise needed to pay such dividend or make such other distribution.

13 **THE TRUSTEES NOT TO BE OBLIGED TO INTERFERE IN THE MANAGEMENT OF BAXI GROUP**

Save as required by Clause 2 of this Deed, the Trustees shall not be under any duty to interfere in the management of the business of BPL or of any other company within Baxi Group or of any other company shares in or securities of which they hold or own but in the absence of actual notice of circumstances requiring their intervention the Trustees may leave the conduct of the affairs of BPL or any other company within Baxi Group or any such other company wholly to its directors.

14 **COMPOSITION OF THE TRUSTEE BODY**

(14.1) The statutory power of appointing new or additional Trustees shall apply and shall be exercisable by the Trustees in accordance with sub-clauses 14.2 to 14.11 below.

(14.2) The number of the Trustees shall be maintained as at least three and not more than seven.

(14.3) One or more of the Trustees may (but need not be) Employees or paid officers of companies within Baxi Group.

(14.4) One at least of the Trustees shall be a person who is not an Employee or a paid officer of a company within Baxi Group.

(14.5) At the first meeting of the Trustees in each year one third of the Trustees or if their number is not three or a multiple of three the number nearest to one third shall retire as trustees of this Deed, provided that the retiring Trustee or Trustees shall be counted as forming part of the number of the Trustees for the purposes of sub-clause 14.2 above and shall retain jointly with the other Trustee or Trustees the power of appointment

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for the purposes of sub-clause 14.1 above until such time as he or they have been formally discharged by deed from these trusts.

- (14.6) Those of the Trustees to retire by rotation as aforesaid shall be those who have been longest in office since their last appointment but as between persons who became or were last appointed Trustees on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (14.7) At the first meeting of the Trustees in each year any Trustee who is aged seventy years or above shall retire as a Trustee of this Deed and shall not be eligible for reappointment.
- (14.8) Any Trustee who is obliged to retire under sub-clause 14.7 above at any meeting of the Trustees shall be ignored in calculating the number of Trustees to retire under sub-clause 14.5 above at that meeting.
- (14.9) Any Trustee retiring by rotation under sub-clause 14.5 above may be reappointed as Trustee if he offers himself for reappointment, provided that he shall not be eligible for reappointment upon service on him of notice to that effect signed by the majority of the Trustees (excluding the Trustee offering himself for reappointment).
- (14.10) A Trustee retiring by rotation at any meeting of the Trustees under sub-clause 14.5 above shall if he offers himself for reappointment be deemed to have been reappointed unless notice has been given to him in accordance with the proviso to sub-clause 14.9 above or at the meeting it is resolved not to fill the vacancy or a resolution for his reappointment is put to the meeting and lost.
- (14.11) Any Trustee who retires under sub-clause 14.5 above or otherwise at any meeting of the Trustees may sign a notice given under the proviso to sub-clause 14.9 above in respect of the reappointment of any of the Trustees retiring under sub-clause 14.5 above at that meeting other than himself and in determining whether any such notice has been signed by a majority of the Trustees or whether any resolution put to the Trustees at that meeting under sub-clause 14.10 above has been passed all the Trustees shall be counted including those retiring at that meeting but excluding the Trustee whose re-appointment is in question.
- 15 TRUSTEES WHO ARE EMPLOYEES OR ARE OFFICERS OF A COMPANY WITHIN BAXI GROUP OR WHO HAVE CONFLICTS OF INTEREST
- (15.1) Any Trustee may be or become or act as an Employee or as an officer or director of any company within Baxi Group and may retain for his own use and benefit any remuneration or other benefits or rewards which he may receive as an Employee or such officer or director and notwithstanding that any votes or other rights attached to shares in or securities of such company comprised in the Trust Fund may have been instrumental either alone or in conjunction with any other matter or by reason of their non-exercise in procuring or continuing for him his position as an Employee or such officer or director of such company or that his qualification for any such position may be constituted in part or in whole by the holding of such shares or securities.
- (15.2) Any Trustee who is an Employee shall not be prevented from exercising the powers vested in him in any manner merely because their exercise in that manner benefits or may benefit him as an Employee.
- (15.3) A Trustee who is a Beneficiary shall not be prevented from exercising the powers vested in him in any manner merely because their exercise in that manner benefits or may benefit him in common with the Beneficiaries generally.

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- (15.4) A Trustee shall not be prohibited merely because he is a Trustee from benefiting from any exercise of the powers vested in the Trustees beyond benefits he may receive as an Employee or in common with the Beneficiaries generally but shall make full disclosure of the conflict of interest to the other Trustees in office who alone shall take the decision whether or not to exercise such powers in such manner that that Trustee may benefit.

16 PROCEEDINGS OF THE TRUSTEES

- (16.1) The Trustees shall meet together as may be necessary for the purposes hereof but shall meet at least twice in each year.
- (16.2) A written minute of a decision of the Trustees reached without any meeting shall if signed by all the Trustees be as effective for all purposes as if such decision had been reached in a duly convened meeting of the Trustees.
- (16.3) Any Trustee may validly participate in a meeting of the Trustees through the medium of conference telephone, video conferencing equipment or other electronic or other communication equipment, provided that each of the Trustees taking part in the meeting is able to communicate with all others taking part. A Trustee so participating shall be deemed to be present at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Such a meeting shall be deemed to take place where the chairman of the meeting then is.
- (16.4) While there is more than one Trustee in office the Trustees may act by a majority so that decisions of the majority shall bind the minority, provided that—
- (a) the minority shall not be liable for any act or default of the majority; and
 - (b) all acts necessary for giving effect to any decision of the majority shall be performed by all the Trustees.
- (16.5) For the avoidance of doubt, sub-clause 16.4 above extends to any opinion to be formed or judgment to be made by the Trustees.
- (16.6) The Trustees shall appoint a secretary who may be one of themselves.

17 FURTHER POWERS OF THE TRUSTEES

The Trustees shall have the following further powers and discretions—

- (a) power by resolution to authorise the manner in which cheques and other documents shall be signed and endorsed on their behalf;
- (b) power with the authority of a resolution of the Trustees for the Trustees in whose names any shares or securities are at any time registered jointly by deed to appoint an attorney or attorneys for the purpose of executing for them or on their behalf any transfers of any such shares or securities for the purposes of the trusts of this Deed and with such authority to revoke such appointments, provided that in no case shall any power of attorney by the Trustees authorise the execution of any such transfer by less than two persons;
- (c) power to settle, compromise or submit to arbitration any claims, matters or disputes arising in the course of or in connection with the administration of the trusts of this Deed;
- (d) power to act on the advice of any lawyer, broker, actuary, accountant or other professional or business adviser whether such advice was obtained by the Trustees or by BPL and the Trustees shall not be responsible for any loss occasioned by their so acting.

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18 FURTHER ADMINISTRATIVE POWERS OF THE TRUSTEES

- (18.1) Insofar as no express provision is made above, the Trustees shall have all the powers of an absolute owner in the investment management and administration of the Trust Fund and its income but the Trustees shall not exercise any of their powers in a manner inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed.
- (18.2) (a) The Trustees may delegate all or any of their powers in the investment, management or administration of the whole or any part of the Trust Fund and its income including without limitation the power to dispose of any property for full consideration to such persons, for such periods and upon such terms as they shall in their absolute discretion think fit;
- (b) The Trustees shall not be liable for the acts or omissions of any such delegate and the provisions of Clauses 19 and 21 of this Deed shall apply in relation to any such delegation;
- (c) Provided that no such delegation shall be made in relation to any shares in or securities of any company within Baxi Group nor shall any such delegation extend to any powers of the Trustees to distribute (as opposed to administering) any property.

19 LIMITATION OF THE TRUSTEES' LIABILITY

- (19.1) No Trustee shall be liable for any damage or loss which may happen to any property or monies subject to the trusts hereof or the income thereof at any time or from any cause whatsoever unless such damage or loss shall be caused by his own actual fraud.
- (19.2) Without limiting sub-clause 19.1 above or limiting any other provision of this Deed—
- (a) the Trustees shall not be liable for any loss arising as a result of their retaining shares in or securities of BPL or any company within Baxi Group so long as they shall think fit so to do; and
- (b) the Trustees shall be under no obligation to diversify the investment of the Trust Fund in a manner inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed.

20 TRUSTEE REMUNERATION

- (20.1) Any Trustee being a solicitor, accountant or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner or employee of his in connection with the trusts of this Deed including acts which a Trustee not being in any profession or business could have done personally.
- (20.2) Any Trustee who is not a solicitor or accountant or other person entitled to be paid under sub-clause 20.1 above may if his fellow Trustees so decide be paid for his time spent in undertaking his duties as a Trustee at a rate not exceeding that which his fellow Trustees consider after taking whatever advice they consider appropriate would be paid to a director of BPL who was not an employee of BPL or if the Trustee is trustee of a Separate Fund following one or more reconstructions permitted by Clause 6 of this Deed to a director of the relevant Permitted Successor Company who was not an employee of the relevant Permitted Successor Company if BPL or the relevant Permitted Successor Company was listed on the London Stock Exchange or if the London Stock Exchange no longer exists such other recognised investment exchange as the Trustees consider appropriate.

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(20.3) Provided that—

- (a) no such payment shall be made under sub-clause 20.1 or sub-clause 20.2 above to any of the persons listed in Clause 8 of this Deed unless it is a fair reward for work done and will form part of the taxable income of the payee;
- (b) no such payment shall be made under sub-clause 20.2 above to any person who is a Trustee on the date upon which the Baxi Partnership Limited Trusts Act 2000 comes into operation or who had been a Trustee at any time prior to that date;
- (c) any decision of the Trustees concerning the remuneration of a Trustee under sub-clause 20.1 or sub-clause 20.2 above shall be taken by the other Trustees, the Trustee whose remuneration is in question taking no part in such decision or in the deliberations of the other Trustees in connection therewith.

21 BPL TO BEAR THE COST OF ADMINISTERING THE TRUST AND TO INDEMNIFY THE TRUSTEES

(21.1) BPL shall indemnify and keep indemnified the Trustees from and against all costs and expenses whatsoever in administering the trusts of this Deed save to the extent that the Trustees determine that any such costs and expenses are to be discharged by the Trustees out of the Trust Fund or its income.

(21.2) Save as aforesaid, BPL shall indemnify and keep indemnified the Trustees against all claims and demands whatsoever which may arise out of or in connection with the trusts of this Deed including negligence on the part of any Trustee but not so as to indemnify any of the Trustees against the consequences of his own actual fraud.

(21.3) In the event of a reconstruction permitted by Clause 6 of this Deed the Trustees shall require any Permitted Successor Company (other than BPL) to agree to be bound by this Deed so that sub-clauses 21.1 and 21.2 above shall apply to such Permitted Successor Company in relation to the Separate Fund of such Permitted Successor Company as it applies (or applied) to BPL and if BPL shall be one of the Permitted Successor Companies this Clause 21 shall apply to BPL thereafter solely in relation to the Separate Fund of BPL (but not so as to release BPL from any pre-existing liability).

22 THE PRICE AT WHICH SHARES ARE TO BE SOLD BY THE TRUSTEES TO EMPLOYEES

(22.1) The sale at any time by the Trustees of any shares in or securities of BPL to an Employee in accordance with Clause 3 of this Deed shall be at a price determined at that time in accordance with sub-clause 22.2 below.

(22.2) The price at any time shall be—

- (a) where the market value at that time of a share or security of the same class has been agreed between BPL and the Shares Valuation Division of the Inland Revenue for the purposes of any profit sharing scheme or share option scheme approved in accordance with Schedule 9 to the Income and Corporation Taxes Act 1988, or for the purposes of the acquisition or appropriation of, or the grant of rights to acquire, any such share or security pursuant to any other employees' share scheme (within the meaning of Section 743 of the Companies Act 1985) that market value; and
- (b) in any other case, the market value at that time of a single share or security of the same class fixed by the auditors of BPL or by other appropriate

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independent experts appointed by the Trustees, such auditors or independent experts to act as experts and not arbitrators and their decision to be final.

23 POWER OF THE TRUSTEES TO AMEND THE PROVISIONS OF THIS DEED OTHER THAN CERTAIN CORE PROVISIONS

(23.1) Subject as provided in sub-clauses 23.2 and 26.1 below, the Trustees shall have power at any time by deed to alter or add to all or any of the provisions of this Deed in any respect including without limitation the powers and discretions conferred upon them.

(23.2) Sub-clause 23.1 above does not give any power to alter or to add to any of the following provisions of this Deed—

- (a) Clause 2 (main purpose of the Trust);
- (b) Clause 5 (Employee Ownership through the Trustees retaining a controlling interest in BPL);
- (c) Clause 7 (provisions to take effect on the insolvent liquidation of BPL);
- (d) this Clause 23;
- (e) Clauses 24, 25, 26, 27 and 28 (amendment powers); and
- (f) the definitions set out in Clause 1 insofar as they apply for the purposes of the above mentioned Clauses.

24 THE TRUSTEES TO HAVE POWER TO MAKE MINOR AMENDMENTS TO THE CORE PROVISIONS OF THIS DEED TO REFLECT CHANGES IN LEGISLATION ETC.

Subject as provided in sub-clause 26.2 below, the Trustees shall have power at any time by deed to make such alterations or additions to any of the provisions of this Deed referred to in sub-clause 23.2 above as the Trustees may consider to be minor and necessary or desirable to take account of any changes in legislation or to obtain or maintain favourable tax, legislative or regulatory treatment for the Trustees or any Beneficiary or for any payment or prospective payment to the Trustees by BPL or by any company within Baxi Group.

25 THE TRUSTEES TO HAVE POWER TO AMEND THIS DEED TO REFLECT AMENDMENTS TO SECTION 86 OF THE INHERITANCE TAX ACT 1984

In the event of any modification, repeal or replacement of Section 86 of the Inheritance Tax Act 1984 being enacted the Trustees may subject as provided in sub-clause 26.3 below make such alterations and additions to any of the provisions of this Deed as the Trustees consider necessary or desirable to take account of such modification, repeal or replacement.

26 RESTRICTIONS ON THE AMENDMENT POWERS CONTAINED IN CLAUSES 23, 24 AND 25 OF THIS DEED

(26.1) The power of alteration or addition given to the Trustees by Clause 23 of this Deed does not give the Trustees power—

- (a) to make any alteration or addition which would or might prevent the provisions of Section 86 of the Inheritance Tax Act 1984 (trusts for the benefit of employees) from applying to the Trust Fund or to any part of the Trust Fund; or
- (b) to make any alteration or addition unless—
 - (i) in the opinion of the Trustees the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed; and

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- (ii) the Trustees have obtained a written Opinion of Counsel of at least ten years' call (not being a Trustee) that the opinion of the Trustees that the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed is in his opinion not unreasonable in all the circumstances.

(26.2) The power of alteration or addition given to the Trustees by Clause 24 of this Deed does not give the Trustees power—

- (a) to make any alteration or addition which would or might prevent the provisions of Section 86 of the Inheritance Tax Act 1984 (trusts for the benefit of employees) from applying to the Trust Fund or to any part of the Trust Fund; or
- (b) to make any alteration or addition unless—
 - (i) in the opinion of the Trustees the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed; and
 - (ii) the Trustees have obtained a written Opinion of Counsel of at least ten years' call (not being a Trustee) that—
 - (aa) the opinion of the Trustees that the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed; and
 - (bb) the opinion of the Trustees that the proposed alteration or addition is minor and necessary or desirable for the purposes stated in Clause 24 of this Deed,

are in his opinion not unreasonable in all the circumstances.

(26.3) The power of alteration or addition given to the Trustees by Clause 25 of this Deed does not give the Trustees power to make any alteration or addition unless—

- (a) in the opinion of the Trustees the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed; and
- (b) the Trustees have obtained a written Opinion of Counsel of at least ten years' call (not being a Trustee) that—
 - (i) the opinion of the Trustees that the proposed alteration or addition is not inconsistent with the promotion of the main purpose of the Trust as set out in Clause 2 of this Deed; and
 - (ii) the opinion of the Trustees that the proposed alteration or addition is necessary or desirable for the purposes stated in Clause 25 of this Deed,

are in his opinion not unreasonable in all the circumstances.

27 **THE TRUSTEES TO HAVE POWER TO AMEND THE CORE PROVISIONS OF THIS DEED IF NECESSARY OR DESIRABLE TO ACHIEVE THE INTENTIONS UNDERLYING THE ESTABLISHMENT OF THE TRUST**

(27.1) Subject to the following provisions of this Clause 27, the Trustees shall have power at any time by deed to alter or add to all or any of the provisions of this Deed as they may consider necessary or desirable for the better implementation of the spirit and intentment of the Founder and other relevant individuals in causing the trust of which this Trust is the successor to be established by BPL on 3rd March 1983.

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- (27.2) Sub-clause 27.1 above does not give the Trustees any power to make any alteration or addition to any of the provisions of this Deed unless they are satisfied that—
- (a) since the coming into force of the Baxi Partnership Limited Trusts Act 2000 or the date of any previous exercise of such power having had effect there has been a change in legislation or a social commercial or economic change;
 - (b) the effect of such change is of such significance that there is real and substantial cause to re-state all or any of the provisions of Clause 2 of this Deed and (or alternatively) to alter or add to all or any of the other provisions of this Deed (including those referred to in sub-clause 23.2 above) given the nature, extent and effects of the legislative, social, commercial or economic change (or any or all of them); and
 - (c) the proposed alteration or amendment fairly reflects such real and substantial cause.
- (27.3) In arriving at a decision in accordance with sub-clause 27.2 above the Trustees shall have regard to—
- (a) the main purpose of the Trust as set out in Clause 2 of this Deed as so set out at the date the Baxi Partnership Limited Trusts Act 2000 comes into force and as interpreted in the light of the legislative, social, commercial and economic environment at that date;
 - (b) such written or other permanent or semi-permanent record in any medium as is available of the spirit and intendment of the Founder and such others as are referred to in sub-clause 27.1 above; and
 - (c) such other evidence and information as they consider relevant (including during the lifetime of the Founder oral and written evidence and information from the Founder); and
- shall ensure that a written minute of their decision is contemporaneously made which fairly summarises each of the matters to which they had regard and the reasons for their decision and which also records whether the decision was unanimous and if not the names of those of the Trustees who dissented and a summary of their reasons for dissenting and a copy of which is delivered to the approving authority appointed in accordance with sub-clause 27.6 below.
- (27.4) No exercise of the power of alteration or addition given by this Clause 27 shall take effect unless and until it is approved—
- (a) by instrument in writing executed by BPL as a Deed; and
 - (b) by the approving authority in writing.
- (27.5) In reaching his decision whether or not to approve any such exercise the approving authority shall have regard to—
- (a) each of the matters to which the Trustees had regard as disclosed in the copy minute delivered to him in accordance with sub-clause 27.3 above; and
 - (b) such other evidence and information (if any) as he considers relevant.
- (27.6) The approving authority in relation to any exercise of the power given to the Trustees by sub-clause 27.1 above shall be—
- (a) if he is willing to act, the Attorney General; or
 - (b) if the office of Attorney General no longer exists or if the holder of such office is unwilling or unable to act, such person of good professional standing and repute whose skills and experience qualify him to act quasi-judicially and who is appointed in relation thereto by (or by any person to whom the

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power to make appointments of such kind may for the time being have been delegated by)—

- (i) the Attorney General; or
- (ii) if the office of Attorney General no longer exists or if the holder of such office is unwilling or unable to make an appointment, a person chosen by the Trustees who is the holder for the time being of one of the offices of (or of an office which in the reasonable opinion of the Trustees is then equivalent to the office of) Chairman of the Bar Council or President of the Law Society or President of the Institute of Chartered Accountants in England and Wales.

(27.7) The Trustees shall have power to—

- (a) pay all such fees and expenses as they think fit for or in connection with the appointment of a person as the approving authority or for or in connection with the discharge of the functions of the approving authority; and
- (b) agree to such terms of appointment of the approving authority as they consider reasonable including (without prejudice to the generality of the foregoing) terms granting to the person appointed as approving authority—
 - (i) any exclusion from all or any liability of any kind whatsoever arising from or in connection with his appointment or the discharge of his functions as approving authority other than any liability flowing directly and exclusively from a wilful failure to perform or to exercise reasonable professional care and skill in the performance of any of his functions as approving authority and (or alternatively);
 - (ii) any indemnity against any such liability save as aforesaid.

28 THE TRUSTEES TO HAVE POWER TO MODIFY THE FORMAL REQUIREMENTS FOR MAKING AN AMENDMENT TO THE EXTENT THAT THE FORMAL REQUIREMENTS SET OUT IN CLAUSES 26 AND 27 OF THIS DEED ARE IMPOSSIBLE TO FOLLOW

If the Trustees wish to exercise any of the powers of alteration or addition set out in Clauses 23, 24, 25 and 27 of this Deed but are incapable of complying with any of the formal requirements for the exercise of the relevant power set out in Clauses 26 and 27 of this Deed by reason of a change in the general law or the disappearance of an office referred to therein or for any other reason then they may alter or add to any of the provisions of Clauses 26 and 27 of this Deed but only to the extent necessary to substitute for the formal requirements therein set out with which they are incapable of complying alternative formal requirements which in the reasonable opinion of the Trustees are equivalent thereto and capable of being complied with.