

Dated 20TH DECEMBER 2018

THE VICTORIAN BAR INCORPORATED

and

BARRISTERS' CHAMBERS LIMITED (ACN 004 454 004)

MEMORANDUM OF UNDERSTANDING

THE VICTORIAN BAR INCORPORATED (an incorporated association with the registration number **A0034304S**) of Owen Dixon Chambers East, Level 5, 205 William Street, Melbourne, Victoria, 3000 (**VicBar**)

AND

BARRISTERS' CHAMBERS LIMITED (ACN 004 454 004) of Isaacs Chambers, Level 8, 555 Lonsdale Street, Melbourne, Victoria, 3000 (**BCL**)

RECITALS

- A. VicBar is an incorporated professional association of barristers who practise in Victoria. Vicbar is BCL's Ultimate Holding Company.
- B. BCL was established in 1959, for the purpose of providing chambers accommodation for barristers through the acquisition and retention of freehold and leasehold properties.
- C. VicBar is governed under its constitution by the Bar Council. BCL is governed by an independent Board pursuant to a constitution which provides that the directors may act in the best interests of VicBar, as contemplated by s187 of the *Corporations Act 2001* (Cth).
- D. This Memorandum of Understanding sets out the framework under which VicBar and BCL will work together to achieve their strategic goals, exercise good governance, manage risk, maintain good shareholder relations, promote communication and engagement, and to develop procedures for reporting and consultation.

AND THE PARTIES HAVE AGREED AS FOLLOWS:

1. DEFINITIONS

In this MoU:

"Bar Council" means the Committee of 21 counsel whose names are included in either Part I, Part II, or Part IV of Division A of the Bar Roll and which manages and administers the business and affairs of VicBar.

"BCL Board" means the BCL Board of Directors.

"BCL CEO" means the Chief Executive Officer of BCL.

"BCL Chairman" means the Chairman of the BCL Board.

"BCL Constitution" means the BCL Constitution adopted by members of BCL by resolution dated 18 October 2010.

"BCL Strategic Plan" means the strategic plan of BCL as approved by the BCL Board from time to time.

"Business Plan" means the annual business plan of BCL as approved by the BCL Board from time to time.

"Consideration" bears the meaning attributed it in the *A New Tax System (Goods and Services Tax) Act 1999*.

"Consolidated Group" means a consolidated group as described in Section 703-5 of the *Income*

Tax Assessment Act 1997 and 1936, comprising of a head company and one or more subsidiary companies.

"Director" means a director of BCL.

"GST Law" means *A New Tax System (Goods and Services Tax) Act 1999* and any substantially similar legislation when it is passed into law and which may operate at any time during the term of this MOU.

"KPIs" means the key performance indicators for BCL as agreed by BCL and VicBar.

"MOU" means this Memorandum of Understanding.

"Parties" means the parties to this MOU and **"Party"** means either of them.

"Recipient" means a person that has received a Supply.

"Reporting Requirements" means the content of the report produced by BCL in accordance with Clause 8.2, which shall include but not be limited to:

- a) performance against the BCL strategic plan, including:
 - i. significant matters that may adversely impact upon BCL's strategic plan, and BCL's risk profile;
 - ii. changes to prioritisation of goals and objectives, which may adversely impact VicBar or its members; and
 - iii. progress of strategic initiatives and proposals.
- b) performance against BCL internal KPIs; and
- c) updates as to financial performance.

"Services" means various in-kind benefits and services that may be provided from time to time, including but not limited to accounting, financial services, rent subsidies, readers' discount, and refurbishment costs.

"Supplier" means a person that has made or provided a Supply.

"Supply" bears the meaning attributed to that term in the GST Law.

"Tax Sharing and Funding Agreement" means the Tax Sharing and Funding Agreement entered between the Parties on 21 May 2009.

"VicBar CEO" means the Chief Executive Officer of VicBar.

"VicBar Strategic Plan" means the strategic plan of VicBar as approved by the Bar Council from time to time.

2. APPOINTMENT OF BCL DIRECTORS

2.1 The BCL Constitution provides that BCL must have no less than three and no more than ten Directors.

2.2 Article 2.2 and 2.5 of the BCL Constitution respectively state VicBar may appoint and remove Directors of BCL. In order to assist VicBar in the exercise of its discretion under the BCL Constitution, the BCL Board shall consult with VicBar and VicBar may nominate a member of Bar Council with whom the BCL Board will consult with in making recommendations to the VicBar as to:

- a) the size and composition of the BCL Board;

- b) plans for BCL Board succession;
- c) the process for the selection, appointment and re-election of Directors; and
- d) selecting of candidates who will best complement the BCL Board, having regard to the range of skills, perspectives, experience and expertise on the BCL Board.

2.3 BCL will consult with VicBar in relation to the BCL Board composition:

- a) annually;
- b) upon a vacancy on the BCL Board; or
- c) at such other time as required.

2.4 The purpose of such consultation will be in relation to whether:

- a) the BCL Board possesses the requisite skills to manage and administer the business of BCL;
- b) the BCL Board in its current composition has the capacity to govern BCL to meet its strategic objectives and business plan activities for the following year;
- c) the BCL Board renewal is desirable or necessary in the short or long term; and
- d) a review of Directors' remuneration is required.

2.5 BCL further agrees to undertake annual Board evaluations to assess and report the performance of the BCL Board relative to its objectives.

3. BCL DIRECTOR TENURE

3.1 The BCL Constitution does not provide for any maximum term of directorship. The Parties agree that supplementary to provisions 2.2 and 2.4 of the BCL Constitution, the tenure of an appointed Director (the BCL CEO and BCL Chairman exempted) should (subject to Clause 3.2) be subject to the following conditions:

- a) an appointed Director shall hold office for a fixed term of three (3) years, with a maximum of two (2) further terms of three (3) years each;
- b) at the expiry of each three (3) year term, a Director must stand to be reappointed by the shareholders of BCL at the Annual General Meeting that year;
- c) subject to Clause 3.2, the maximum tenure of a Director shall be:
 - i. nine (9) consecutive years from the date of first appointment, or
 - ii. at expiry of the final term, whichever is later; and
- d) a Director cannot be reappointed for a period of three (3) years after retiring or being removed from the BCL Board.

3.2 The BCL Board in consultation with the VicBar may exercise discretion to extend the maximum tenure specified under Clause 3.1 where such an extension is considered to be beneficial for the composition of the BCL Board. Such discretion will be exercised annually, requiring the Director to stand for reappointment annually at the BCL Board Annual General Meeting.

4. APPOINTMENT OF BCL CHAIRMAN

- 4.1 VicBar will consult with the BCL Board in relation to the appointment of the BCL Chairman pursuant to Clause 10.4(a) of the BCL Constitution.
- 4.2 In the event VicBar does not exercise its power under Clause 10.4(a) of the Constitution, the BCL Board must consult with the VicBar prior to appointment of a Chairman under Clause 10.4(b) of the BCL Constitution.

5. APPOINTMENT OF BCL CEO AND/OR MANAGING DIRECTOR

- 5.1 BCL shall consult with VicBar in respect of the appointment of a BCL CEO and/or Managing Director at any time the position becomes vacant or upon resignation of the BCL CEO and/or Managing Director.
- 5.2 A member of the Bar Council must be on the nomination panel for the recruitment of the BCL CEO and/or Managing Director.

6. BCL STRATEGIC PLAN AND ANNUAL BUSINESS PLAN

- 6.1 BCL must have in place a 3-5 year strategic plan approved by the BCL Board.
- 6.2 BCL shall consult VicBar in developing a strategic plan and at least six months prior to the expiry of its strategic plan. BCL must consult with VicBar to formulate a new strategic plan to take effect following the expiry of the previous strategic plan to ensure alignment with VicBar's Strategic Plan.
- 6.3 BCL shall consult with the VicBar about its proposed annual business plan, which sets out the proposed business activity for the forthcoming year, prior to the business plan being approved by the BCL Board.

7. DIVIDENDS

- 7.1 BCL will consult with the VicBar annually as to whether a dividend should be paid to VicBar and the amount that is to be paid, while having regard to Clause 24 of the BCL Constitution.
- 7.2 If in any year BCL reasonably determines that a dividend should not be paid to VicBar, this must be communicated to VicBar as soon as practicable after such determination is made.

8. REPORTING AND LINES OF RESPONSIBILITY

- 8.1 The BCL CEO and BCL Chairman will attend quarterly meetings of Bar Council or as otherwise requested by Bar Council to report on BCL's financial and overall performance. The dates for attendance are to be determined each December for the following year, by agreement between the BCL CEO and the VicBar CEO, and subject to change as is reasonably required and on reasonable notice.
- 8.2 BCL will submit a quarterly report to VicBar that adheres to the Reporting Requirements prior to each of the Bar Council meetings to be attended in accordance with Clause 8.1.
- 8.3 The BCL CEO shall provide monthly management reports to the Bar Council Executive and VicBar CEO.

9. PROVISION OF SERVICES / IN-KIND BENEFITS

- 9.1 The VicBar and BCL may provide Services to each other from time to time. Any costs associated with the provision of Services for which the other Party is liable, will (unless otherwise agreed) be payable on a cost recovery basis.
- 9.2 The Parties must provide a written request for costs sought, and shall supply copies of all relevant invoices, receipts and/or other evidence as reasonably requested.

10. COMMUNICATION

- 10.1 BCL shall consult with the VicBar in respect of any operational activity, which may have significant impact on the VicBar or its members, and such activity includes the provision of IT services, telephone services, email, website access, rental increases, and other matters insofar as they may impact VicBar members.

11. POLICIES AND PROTOCOLS

- 11.1 The CEO of BCL shall consult with the CEO of VicBar in relation to the introduction of policies and protocols that relate to employees or members of BCL and VicBar respectively, to ensure that the policies are consistent between the Parties to the extent possible and align with BCL and VicBar's respective strategic plans.

12. TAX SHARING

- 12.1 BCL and VicBar have entered into a Tax Sharing and Funding Agreement for the purposes of determining the Parties' tax entitlements and liabilities as result of forming a Consolidated Group comprising of VicBar and BCL.
- 12.2 This MOU confirms that the Tax Sharing and Funding Agreement continues to operate, and the Parties agree to do all things necessary to carry out the terms of that agreement.

13. BUDGET PROCESS

- 13.1 BCL will consult with VicBar in relation to its annual budget, prior to settling, and VicBar shall be given an opportunity to raise any matter that may reasonably be expected to materially adversely affect VicBar or its members.
- 13.2 Notwithstanding the requirement for BCL to consult with VicBar, VicBar does not have power to veto any decision of the BCL Board in relation to its annual budget.

14. GOODS AND SERVICES TAX

- 14.1 If, by operation of the GST Law, any Supply under this MOU is regarded as a taxable supply and the Consideration for that Supply is not stated to be inclusive of GST, the Supplier will be entitled to recover from the Recipient an amount equivalent to the GST payable by the Supplier in relation to the Supply.
- 14.2 If GST is payable, the Supplier will provide the Recipient with a tax invoice or a document adequate to entitle the Recipient to claim an input tax credit.

15. GENERAL

15.1 **No waiver:** Failure by either Party to enforce a right is not a waiver of that right or any other right.

15.2 **Law:** This MOU is governed by the laws applicable in Victoria, Australia.

15.3 **Notices:** Any notice, demand or other communication required to be given or made in writing under this MOU shall be delivered or sent as follows:

in the case of **VicBar:**

- a) by email to the Vicbar CEO or by hand to Level 5, 205 William Street, Melbourne, Vic 3000;

in the case of **BCL:**

- b) by email to the BCL CEO or by hand to Level 8, 555 Lonsdale Street, Melbourne, Vic 3000.

EXECUTED BY THE PARTIES AS AN AGREEMENT

EXECUTED by **THE VICTORIAN BAR
INCORPORATED** by its authorised
officer

WENDY HARRIS

Name

Wendy Harris

President

Acting President

EXECUTED by **BARRISTERS'
CHAMBERS LIMITED** (ACN 004 454 004)
in accordance with s127 of the
Corporations Act 2001 (Cth)

Spencer Chipperfield

Director / Secretary

SPENCER CHIPPERFIELD

Print name

Paul Clark

Director

Paul Clark
CEO and Managing Director
Barristers' Chambers Limited

Print Name