

Monday 19 June 2017

PROPOSED CONSTITUTION AMENDMENTS TO FACILITATE ADOPTION OF THE ATTRIBUTION MANAGED INVESTMENT TRUST REGIME

NOTICE PURSUANT TO SECTION 601GCA(3) OF THE CORPORATIONS ACT

GARDA Capital Group (**ASX: GCM**) is a stapled group, with each stapled security consisting of one share in GARDA Capital Limited ACN 095 039 366 and one unit in GARDA Capital Trust ARSN 150 164 720 (**GCT**). GARDA Funds Management Limited ACN 140 857 405 (**GFML**) is the responsible entity of GCT.

GFML gives notice¹ that it proposes to make changes to the Constitution of GCT (**Constitution**), to provide specific clauses to allow for the application of the income tax regime for managed investment trusts that was recently enacted under the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth) (**AMIT regime**). This notice relates to the GCT units only.

GCT is eligible to be an 'attribution managed investment trust' (**AMIT**), if an irrevocable election is made. GFML has not yet decided whether it will in fact make that election for GCT for the financial year ended 30 June 2017. GFML intends to make the Constitution changes in any case to enable an election to be made with effect from this financial year, or from any subsequent financial year.

GFML will decide whether to elect into the AMIT regime based on the best interests of securityholders as a whole. If an election is made, GFML will inform securityholders.

A summary of the effect of the proposed amendments to the Constitution is set out in the table below.

Reasons for proposed amendments to the Constitution

The proposed amendments would allow GFML to choose to adopt the AMIT regime for GCT. GFML believes the benefits of operating under the AMIT regime include:

- greater certainty in respect of various tax positions due to the AMIT regime's attribution of taxable income to securityholders, compared to the current 'present entitlement' regime;
- greater fairness associated with the AMIT regime's attribution of taxable income to securityholders, as income can be allocated on a 'fair and reasonable basis', compared to the current 'proportionate share' which is inflexible in various circumstances;
- greater certainty as to the tax status of GCT and its entitlement to certain tax concessions, including deemed 'fixed trust' status for tax purposes;
- reduced potential for adverse taxation for securityholders, by allowing for cost base adjustments where distributions are less than the taxable income attributed to securityholders;
- preservation of the character of the income for income tax purposes in the hands of securityholders; and
- the ability to reconcile 'under and over' estimations of net income of GCT to allow for adjustments in the year of discovery, rather than requiring amendments to previously lodged income tax returns and previous tax distribution statements.

¹ GFML has published this notice under notional subsection 601GCA(3) of the *Corporations Act 2001* (Cth), as modified by *ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489*, to inform securityholders of proposed amendments to be made to the GCT Constitution.

How to contact us if you wish to respond to this notice

You are not required to respond to this notice. GFML intends to amend the Constitution as proposed, on or after the day that is 7 days after the date of this notice, unless it receives requests to call and arrange a meeting of securityholders of GCT to consider and vote on a special resolution to amend the Constitution as proposed, from securityholders with at least 5% of the votes that may be cast on the resolution by the time specified below.

If you do wish to request a meeting of securityholders of GCT to vote on the amendments to the Constitution as proposed in this notice, your request must be made in writing to GFML by 5pm (AEST) Monday 26 June 2017. A request may be sent by email to lachlan.davidson@gardacapital.com.au.

If no meeting is called, GFML will amend the Constitution by executing a supplemental deed to the Constitution and lodging it with the Australian Securities and Investments Commission. You will be notified after that happens.

Effect of amendments to the Constitution

The table below gives is a brief summary of the effect of the proposed amendments to the Constitution of GCT to allow for the AMIT regime.

Proposed amendment	Summary of nature of amendment
Powers of the Manager²	The Manager will be given all the powers necessary to elect into and comply with the AMIT regime, including doing all things necessary to give effect to the matters outlined below.
When GCT elects to be an AMIT	If the Manager does elect to enable the AMIT provisions, new clause 16.1A provides that the new AMIT schedule (Schedule 3), will apply. It does not change the existing distribution clauses, but does 'qualify' these clauses to the extent that they are inconsistent with the specific clauses added into new Schedule 3.
New Schedule 3 – The AMIT Provisions	A new Schedule 3 - AMIT Provisions will be inserted into the Constitution. It contains the powers for the Manager to comply with the new AMIT rules. Clause 17 of the Constitution provides the Manager with the general discretion to make an election to apply the AMIT rules. Clause 2 of Schedule 3 then allows for: <ul style="list-style-type: none"> determining various components for any AMIT income year; making attributions to Members on a 'fair and reasonable' basis; providing for updated reporting statements for Members (an 'AMMA Statement'), including any amendments; and requiring the Manager to comply with the AMIT legislation from time to time. Clause 2 of Schedule 3 also deals with 'unders and overs', for the purpose of adjustments to income which can be made in the year they are discovered, rather than reissuing distribution statements that require Members to adjust their returns for a prior year. It also deals with the reporting required to Members when a determination is made. Clause 3 of Schedule 3 allows the Manager to attribute 'Determined Trust Components' (as defined) to Members, in accordance with the Constitution and the AMIT rules. The clause utilises terminology consistent with both the Tax Act and AMIT Regime (as defined) to attribute amounts of different character, and provides the principles under which the Manager must apply them.

² GFML (as responsible entity) is the 'Manager' in the GCT Constitution.

	<p>Clause 3 of Schedule 3 requires that the attribution to Members under the AMIT schedule must take into account the existing distribution provisions already in the Constitution.</p>
<p>Manager protections</p>	<p>Clause 5 of Schedule 3 confirms that the Manager's existing limitation of liability and indemnity extends to all actions taken by it under the AMIT regime, and all costs expenses and liabilities, including for tax payable.</p>
<p>Definitions</p>	<p>General definitions relevant for the AMIT regime will be inserted into clause 1.1 of the Constitution. These provide for underlying changes to the AMIT legislation going forward.</p> <p>There are also specific definitions incorporated into Schedule 3 itself.</p>