



Segregation Arrangements

Document approval				
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Revision Register			
Version	Date	Position Title	Amendment / Reason for revision

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1. Introduction

1.1 Background

- (a) Roy Hill Infrastructure Pty Ltd (**RHI**) owns and operates the RHI Railway from the Roy Hill Mine to Port Hedland in the Pilbara region in Western Australia.
- (b) RHI recognises its obligation to comply with the *Railways (Access) Act 1998* (**Act**) and the Railways (Access) Code 2000 (**Code**) and specifically section 28 and sections 30 to 34 of the Act.
- (c) The objective of these Segregation Arrangements is to ensure that RHI complies with the requirements of sections 28 and 30 of the Act to segregate its Access-Related Functions and in particular give effect to the obligations set out in:
 - (i) section 31 of the Act, which requires an effective regime for the protection of Confidential Information arising from performing Access-Related Functions;
 - (ii) section 32 of the Act, which requires the avoidance of conflicts of interest between the duties of a relevant officer in performing Access-Related Functions and duties involved in the other business of a Railway Owner;
 - (iii) section 33 of the Act, relating to the duty of fairness which requires that relevant officers in performing their duties must not have regard for the interest of the Railway Owner in a way that is unfair to persons seeking Access or to other rail Operators; and
 - (iv) section 34 of the Act, which requires that the railway owner must ensure that its accounts and records are in such form as to enable income, expenditure, assets and liabilities related to carrying out Access-Related Functions are properly recorded and distinguished from the Railway Owner's other income, expenditure, assets and liabilities. This also requires that any apportionment required between its Access-Related Functions and other functions be done in a fair and reasonable manner.
- (d) RHI notes that section 29 of the Act allows the Regulator to impose other requirements on RHI additional to those covered in sections 31 to 34 of the Act, so as to further improve the effectiveness of the Segregation Arrangements if and as required.
- (e) RHI will perform both the Access-Related Functions specified in section 2 of these Segregation Arrangements and also perform the rail haulage functions associated with the operation of train services.
- (f) RHI is a wholly owned subsidiary of Roy Hill Holdings Pty Ltd (**RHH**). RHH, through its subsidiary companies, will be a vertically integrated business. RHH, through its subsidiary companies, will construct and operate the mining operation at the Roy Hill Mine, transport the product on the RHI Railway to the port of Port Hedland, export the product through the port of Port Hedland and market the product.
- (g) Consistent with its objective to be a low cost producer and exporter of iron ore product, RHH has limited senior management roles and a limited number of employees each of whom may assume numerous roles within the complete vertically integrated business.

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- (h) RHI notes that the objective of these Segregation Arrangements is to ensure that RHI complies with the requirements of the Act to segregate its Access-Related Functions from its other functions, and the functions of RHH. To the extent that the segregation of Access-Related Functions as set out in these Segregation Arrangements imposes additional costs and burdens on RHH and its subsidiary companies (either directly or indirectly), these Segregation Arrangements permit the complete recovery of all of those costs.

1.2 Timing of implementation

Access-Related Functions will be undertaken in phases. In these Segregation Arrangements:

- (a) phase 1 refers to Access-Related Functions which are relevant to the period prior to the first Access Agreement taking effect; and
- (b) phase 2 refers to Access-Related Functions which are relevant to the period subsequent to the first Access Agreement taking effect.

2. Access-Related Functions

For the purpose of these Segregation Arrangements, Access-Related Functions means:

- (a) performance of activities specified under the Act and the Code including (but not limited to):
- (i) calculating the floor and ceiling costs for approval by the Regulator;
 - (ii) applying the Costing Principles, the Over-payment Rules, the Train Management Guidelines and the Train Path Policy;
 - (iii) ensuring that suitable controls, measures and procedures are established to give effect to the Segregation Arrangements approved by the Regulator; and
 - (iv) undertaking the steps defined in Parts 2 and 3 of the Code for the negotiation of Access Agreements inside the Code;
- (b) negotiation of Access Agreements, comprising:
- (i) negotiation of Access Agreements and the granting of Access rights; and
 - (ii) pricing for the provision of Access;
- (c) management of Access Agreements, comprising performance monitoring and management of day-to-day operational issues;
- (d) train scheduling, train path allocation, control planning and the granting of ad-hoc Train path entitlements;
- (e) the collection, use, and dissemination of train running data including manifest details;
- (f) Train control, including provision of appropriate authorities for trains to use scheduled Train paths (train orders or signals) and real-time management of trains;
- (g) emergency management of the RHI Railway including co-ordination of emergency service responses;
- (h) regulatory compliance which includes:

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- (i) development, maintenance and monitoring compliance with appropriate safety standards for RHI staff, its contractors and any rail Operators;
- (ii) development and authorisation of RHI's operating Rules for the RHI Railway and the issue of special notices, instructions and warnings related to these Rules;
- (iii) access-related legislative compliance matters as required under the Act and Code, including:
 - (A) preparation of documents for the Regulator's approval in accordance with Part 5 of the Code; and
 - (B) ensuring that suitable policies, procedures and controls are established to give effect to, and facilitate compliance with, these Segregation Arrangements approved by the Regulator;
- (i) development of maintenance standards for rail infrastructure;
- (j) maintenance, comprising the maintenance of the track and infrastructure, including signalling and communications maintenance;
- (k) interface/emergencies, comprising:
 - (i) emergency management on the RHI Railway including co-ordination of emergency service responses;
 - (ii) the development of operating standards for train services (to the extent they relate to the infrastructure), such as maximum braking distances, maximum train lengths, as well as maintenance standards for the rail infrastructure; and
- (l) any administrative or corporate services, comprising support services for the performance of below rail functions.

To the extent that these Segregation Arrangements impose any additional costs on RHH or any of its subsidiaries (either directly or indirectly), those costs will be paid or reimbursed by the third party Operator. For example, if it is necessary for RHH or its subsidiaries to employ or engage any new employees, contractors or consultants to satisfy the obligations imposed on RHH or its subsidiaries by these Segregation Arrangements, the third party Operator will pay all the costs incurred in connection with that new employee, contractor or consultant.

3. Conflicts of Interest (section 32)

- (a) RHI will manage its Access Related Functions so that for RHI's relevant officers no conflicts of interest exist between his or her duties:
 - (i) as a person concerned in the performance of Access Related Functions, on the one hand; and
 - (ii) as a person involved in the business of RHI on the other.
- (b) In the case of train scheduling and Train control, these functions will be undertaken by RHI staff or contractors who have signed a Confidentiality and Compliance Agreement.
- (c) RHI recognises that organisational separation is a key means of preventing conflicts of interest arising in relation to the provision of Access-Related Functions. RHI will manage its Access Related Functions so that, for relevant officers, no conflicts of interest exist.

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- (d) Under these Segregation Arrangements, RHI commits that no person will perform duties concurrently for both RHI and other members of the RHH Group where a conflict of interest exists.
- (e) RHI commits to controlled management of information flow consistent with organisational separation. That is, RHI will ensure that those staff members performing Access-Related Functions, such as train scheduling, will not perform any haulage-related functions and the restrictions on the internal flow of information will apply. In terms of the RHI organisational structure, RHI will separate the following functions:
 - (i) rail infrastructure, comprising the functions outlined in section 2; and
 - (ii) haulage related functions, being those other functions (including rolling stock operations and maintenance).
- (f) Given that potential conflicts of interest in relation to the performance of Access-Related Functions will be greatest when an Operator is running train services on the RHI Railway in competition with RHI train services, RHI staff performing train scheduling functions will sign a Confidentiality and Compliance Agreement.
- (g) RHI also notes that there will be common directors on the RHH and RHI boards. RHI will implement control measures to manage potential Board level conflicts of interest to protect a third party's Confidential Information. This will be in relation to the handling of the details of Access negotiations and Access Agreements.
- (h) No person (other than key management staff and corporate services) will perform duties concurrently for both RHI and RHH that would present an unnecessary risk of conflict of interest. In effect, any person performing below-rail functions will be precluded from also performing above-rail functions (unless indirectly, whether by virtue of the position (such as is the case for the General Manager Port and Rail, the Chief Operating Officer and the Chief Executive Officer) or due to the nature of the task not presenting conflicts of interest (as is the case for corporate services functions)).

4. Confidential Information (section 31)

RHI must protect Confidential Information, comprising information that has not been made public and that:

- (a) is by its nature confidential;
- (b) was specified to be confidential by the person who supplied it; or
- (c) is known by a person using or disclosing it to be confidential.

4.1 Definition of Confidential Information

If a person seeking access or other Operator discloses Confidential Information to RHI, then it is, and shall be taken to have always been, Confidential Information.

Phase 1

- (a) Examples of Phase 1 Confidential Information include:
 - (i) Access applications and Preliminary Information provided by persons seeking access with their Access applications; and

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- (ii) correspondence related to the negotiation of the Access Agreement.
- (b) Access-related Confidential Information received in Phase 1 will only be used by RHI for the purpose of:
 - (i) responding to an Access Proposal;
 - (ii) negotiating an Access Agreement; or
 - (iii) as specifically authorised by the person seeking access or other rail Operator.

Phase 2

- (c) Examples of Phase 2 Confidential Information include:
 - (i) the Access Agreement itself and information exchanged in the management of the Access Agreement over time;
 - (ii) any data relating to the recording of usage of the Access Agreement including train scheduling and planning data, to the extent it identifies specific haulage operations, including master train plans and fortnightly train plans and voice logging tapes from Train control;
 - (iii) any data related to the running of haulage operations under an Access Agreement; and
 - (iv) billing information.

4.2 Disclosure

- (a) RHI may disclose Confidential Information of a person seeking access or a rail Operator:
 - (i) if the person seeking access or an Operator provides its prior written consent to RHI;
 - (ii) to the extent disclosure is required or compelled by any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body, or a requirement of a stock exchange or regulator;
 - (iii) to the extent disclosure is necessary for:
 - (A) the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers; or
 - (B) notifications to brokers, insurers or claims assessors, provided that the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
 - (iv) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a dispute provided that RHI does not disclose the Confidential Information of one person seeking access or Operator to another person seeking access or another Operator without the first person's consent;
 - (v) to the extent the disclosure is required to protect the safety or security of persons or property or in connection with an accident or emergency;
 - (vi) to the extent the Confidential Information comprises the Operator's or the person's (where the person seeking access proposes to be an Operator) rollingstock details; or
 - (vii) in accordance with, or as permitted by, an Access Agreement.
- (b) Where an employee of RHI has prescribed duties which involve managing or conducting Access Related Functions, RHI will require the employee to sign a Confidentiality and Compliance Agreement. RHI will provide training to all RHI employees who are required to sign a

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Confidentiality and Compliance Agreement with respect to their obligations under the Act, the Code and these Segregation Arrangements.

- (c) RHI has established, or will establish, a regime for protecting Confidential Information including:
- (i) A system of securing Access related information that only allows authorised RHI staff and contractors to access the records. This information will be located in secure and lockable facilities within RHI's offices and Train control centres.

RHI will control access to its entire head office and its other offices and these offices will be locked when not attended.

Train control centres are secured and entry is controlled by RHI.
 - (ii) A security system on electronic records that allows only authorised RHI staff and contractors to access the records.

Access to electronic records that are confidential can only be given by the responsible manager and will only be given to persons who have signed a Confidentiality and Compliance Agreement.

RHI has physically dedicated computer file servers. User ids and passwords are set up and managed by the RHI information technology group. Authority to allocate passwords resides with the responsible manager.
 - (iii) Appropriate controls on data, including information and costing and pricing information to protect Confidential Information.

The responsible manager must authorise all access to and use of Confidential Information and will only grant access to persons who have signed Confidentiality and Compliance Agreements.
 - (iv) Specific provisions in each Access Agreement will impose contractual obligations on RHI to protect Confidential Information.
- (d) For the avoidance of doubt, nothing in this section prevents RHI from disclosing, in the ordinary course of business, financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any person seeking access or an Operator.

5. Duty of fairness (section 33)

(a) Overview

RHI acknowledges that, in performing Access Related Functions, RHI and its employees must not have regard to the interests of RHI in a way that is unfair to persons seeking access or to other Operators.

(b) Ensuring duty of fairness

The mechanisms for ensuring RHI's compliance with its duty of fairness will include:

- (i) the process under the Code for determining the fairness of prices negotiated under provisions of section 21(1) of the Code (where applicable); and
- (ii) relevant provisions of RHI's standard Access Agreements including consultation mechanisms, obligations to provide information and dispute resolution mechanisms.

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(c) **Application of fairness to Part 5 instruments**

RHI acknowledges that its obligation to comply with its duty of fairness includes compliance with the Regulator's determinations under Part 5 of the Code including:

- (i) these Segregation Arrangements;
- (ii) the Train Management Guidelines;
- (iii) the Train Path Policy;
- (iv) the Costing Principles; and
- (v) the Over-payment Rules.

(d) **Interim**

RHI will also inform persons seeking access and rail Operators at the beginning of negotiations (whether inside or outside of the Code) of their rights to confidentiality.

(e) **Agreement**

If negotiations have commenced outside the Code and the persons seeking access and rail Operators subsequently make an Access application under the Code, RHI and the person seeking access or rail Operator will agree on what information previously supplied by the person seeking access and the rail Operator is subject to the confidentiality provisions of these Segregation Arrangements.

6. Preparation of accounts and records (section 34)

In both Phases 1 and 2 of these Segregation Arrangements, RHI will prepare and maintain accounts and financial records for the purposes of complying with the Act and the Code or to assist the Regulator in the performance of the Regulator's duties under the regime in the manner approved by the Regulator. Complying with this legislative obligation will entail the preparation and maintenance of separate accounts and records distinguishing income, expenditure, assets and liabilities of Access-Related Functions from other RHI functions.

Phase 1

In Phase 1, the separate accounts and financial records will be prepared by RHH's financing department, based on information supplied by RHI. In preparing Access-related accounts and financial records, RHI will present the regulatory accounts in a format approved by the Regulator and comply with the Costing Principles approved by the Regulator.

Phase 2

- (a) For Phase 2, RHI commits to being substantially self-sufficient for regulatory accounting, Access pricing and revenue management purposes (noting that RHH's finance department will be relied upon for information to assist the development of regulatory accounts). However, statutory accounting and cost accounting functions will still be performed by RHH's finance department.
- (b) RHI will control the information used to prepare its regulatory accounts. RHI will control the data used to generate invoices for Access customers.

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- (c) The collection of payments by RHH's finance department will be based on information supplied by RHI. Detailed information supporting invoices will be provided directly to customers by RHI.
- (d) The provisions in these Segregation Arrangements for the protection of Confidential Information will apply to the billing process.
- (e) Financial information provided by RHI to RHH's finance group for normal internal reporting purposes will be aggregated to prevent disclosure of Confidential Information. All staff in RHH's finance department and auditors given access to Confidential Information will be recorded on a register maintained by RHI and will sign a Confidentiality and Compliance Agreement.

7. Compliance and review

7.1 Regulator Monitoring, Enforcement and Review

- (a) RHI must ensure compliance with these Segregation Arrangements encompass commitments to:
(1) operate its business in accordance with these Segregation Arrangements; (2) undertake compliance auditing; and (3) implement a complaints handling process.
- (b) Stakeholders have the ability to express any concern to the Regulator which may arise at any time and the Regulator will investigate such claims.
- (c) RHI acknowledges that the Regulator has the power under the Act to require RHI to amend these Segregation Arrangements at any time and any person seeking access or any other rail Operator may, at any time, request the Regulator to consider amendments to these Segregation Arrangements.
- (d) Within five business days of becoming aware of any breach of these Segregation Arrangements, RHI will report the breach to the ERA in writing and provide details of the breach and how it is being rectified. RHI notes that the Regulator has the ability to commission special audits on any issue or area where additional assurance is sought.
- (e) RHI will also undertake awareness training of its obligations under the Act or Code for all staff who are engaged in Access-Related Functions or who are required to sign Confidentiality and Compliance Agreements.

7.2 Complaints handling

- (a) RHI commits to implement the complaints handling procedure detailed below as part of these Segregation Arrangements. RHI notes that any person seeking Access is entitled to approach the Regulator at any time that it considers a breach of these Segregation Arrangements may have occurred. The Act provides the Regulator with wide powers to investigate any alleged breach of these Segregation Arrangements.
- (b) If a person seeking access or a rail Operator considers that RHI has breached its legislative segregation obligations, it may lodge a written complaint with RHI.
- (c) RHI will conduct an internal investigation of any complaint and advise the complainant in writing of the outcome of the investigation and RHI's response, if any. RHI will advise the Regulator within 10 business days of its receipt of any complaint and the action it is taking to investigate the complaint. RHI will use reasonable endeavours to complete its internal investigation and advise the complainant and the Regulator of the result within 30 days of receiving the complaint.

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8. Definitions

In these Segregation Arrangements:

Access	has the meaning given to the term “access” in the Code.
Access Agreement	has the meaning given to the term “access agreement” in the Code.
Access Proposal	means a proposal as described in section 8 of the Code.
Access Regime	means the access regime the subject of the Act and the Code.
Access Related Functions	has the meaning given to the term “access-related functions” in section 24 of the Act.
Act	means the <i>Railways (Access) Act 1998</i> .
Code	means the Railways (Access) Code 2000 established under the Act.
Confidential Information	has the meaning given to the term “confidential information” in section 31(2) of the Act.
Confidentiality and Compliance Agreement	means an agreement to be signed by RHI or a RHI employee, director, contractor or consultant indicating their understanding of the obligations imposed under the Act or the Code and specifically so far as those obligations relate to the protection of Confidential Information.
contractor	means a person or entity engaged by RHI to provide advice on or assist in carrying out its Access-Related Functions.
Costing Principles	means RHI’s costing principles as approved by the Regulator under section 46 of the Code.
emergency	means any event of temporary duration where RHI believes it requires staff to attend and assist. Examples are: <ul style="list-style-type: none"> (a) any event or incident which by its nature requires immediate intervention or action; and (b) a safety or operational incident. Under the Rail Safety Management System, as approved under <i>the Rail Safety National Law</i>, RHI is required to utilise RHI staff to attend to and investigate safety incidents.
Operator	means an entity to which Access is provided under an Access Agreement.
Over-payment Rules	means RHI’s over-payment rules as approved by the Regulator under section 47 of the Code.

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Phase 1	means the period commencing on the date on which these Segregation Arrangements are approved by the Regulator, and expiring on the date on which Phase 2 commences.
Phase 2	means the period commencing on the date on which the first Access Agreement with RHI takes effect and third party trains are operational on RHI's Railway, and expiring on the date on which no Access Agreement is in effect in relation to RHI's Railway.
Preliminary Information	means information received by RHI from a person seeking access or other rail operator which is Confidential Information.
Railway Owner	means the owner of the RHI Railway.
Regulator	means the Economic Regulation Authority.
relevant officer	has the meaning given to the term "relevant officer" in section 24 of the Act.
RHH	is defined in section 1.1(f) of these Segregation Arrangements.
RHH Group	means RHH, RHI, RHIO and RHO.
RHI	is defined in section 1.1(a) of these Segregation Arrangements.
RHI Railway	means the railway owned and operated by RHI from the Roy Hill Mine to the port of Port Hedland.
RHIO	means Roy Hill Iron Ore Pty Ltd.
RHO	means Roy Hill Operations Pty Ltd.
Roy Hill Mine	means the iron ore mine located at Roy Hill in the Pilbara region of Western Australia owned by the RHH Group.
Rules	means RHI's rules governing safe operation of trains on the RHI Railway together with any amendments, deletions or additions and all policies and notices issued by RHI for the purpose of ensuring the safe use of the RHI Railway.
Train control	means the control of trains by RHI or its agents on the RHI Railway.
Train Management Guidelines	means RHI's train management guidelines as approved by the Regulator under section 43 of the Code.
Train path	is the contractual entitlement to operate a train service on the RHI Railway.
Train Path Policy	means RHI's train path policy, as approved by the Regulator under section 44 of the Code.

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