

# NOTICE OF GENERAL MEETING

ABN 31 112 119 203

Notice is hereby given that a General Meeting of members of Babcock & Brown Capital Limited will be held at the Auditorium, Museum of Sydney at 11.00am on 27 February 2009

# Notice of Meeting

Notice is hereby given that a general meeting of Shareholders of Babcock & Brown Capital Limited ACN 112 119 203 (Company) will be held as follows:

**Date** 27 February 2009  
**Time** 11.00am, Sydney time  
**Place** Auditorium  
Museum of Sydney  
Corner of Bridge and Phillip Streets, Sydney.

This Notice of Meeting should be read in conjunction with the accompanying explanatory statement.

A proxy form accompanies this Notice of Meeting.

## **BUSINESS**

### **Return of Capital**

To consider and, if thought fit, to pass the following resolution as an ordinary resolution:

"That for the purposes of section 256C(1) of the Corporations Act, approval be given for the share capital of the Company to be reduced by returning to the persons who are registered as the holders of fully paid ordinary shares in the Company on the Record Date such amount representing 60 cents per fully paid ordinary share registered in their name aggregating approximately \$100,700,000."

## **INFORMATION FOR SHAREHOLDERS**

If you are registered on the Company register as a Shareholder at 7.00pm (Sydney time) on 25 February 2009, then you will be entitled to attend and vote at the general meeting to approve the Resolution.

If you wish to vote in person, you must attend the general meeting. If you cannot attend the general meeting, you may vote by proxy, attorney or if you are a body corporate, by appointing a corporate representative.

Attorneys who plan to attend the general meeting should provide the Registry with the original or a certified copy of the power of attorney under which they have been authorised to attend and vote at the general meeting prior to the general meeting.

A body corporate which is a Shareholder may appoint an individual to act as its corporate representative. The appointment must comply with the requirements of section 250D of the Corporations Act. The representative should bring to the general meeting evidence of his or her appointment, including any authority under which it is signed.

On a poll, Shareholders have one vote for every fully paid ordinary share held or unit held. On a show of hands, every person present and qualified to vote has one vote and, if one proxy has been appointed, that proxy will have one vote on a show of hands. Under the Corporations Act, if a Shareholder appoints more than one proxy, neither proxy may vote on a show of hands, but both proxies will be entitled to vote on a poll.

A Shareholder entitled to attend and vote is entitled to appoint not more than two proxies. If it is desired to appoint two proxies, then an additional proxy form can be obtained from the Company's share registry by telephoning +61 2 8280 7180.

Where more than one proxy is appointed, each proxy may be appointed to represent a specified proportion or number of the Shareholder's voting rights.

A proxy need not be a Shareholder of the Company and may be an individual or body corporate.

**TO BE VALID, YOUR PROXY FORM MUST BE RECEIVED BY THE REGISTRY BY NO LATER THAN 11.00AM (SYDNEY TIME) ON 25 FEBRUARY 2009.**

Proxy forms (and if the appointment is signed by the appointor's attorney, the original authority under which the appointment was signed or a certified copy of the authority) must be received by the Company's share registry Link Market Services Limited:

- by mail to Locked Bag A14, Sydney South NSW 1235; or
- by hand to Level 12, 680 George Street, Sydney NSW 2000; or
- by fax to +61 2 9287 0309; or
- by electronic lodgement online at Link Market Services' website [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au) in accordance with the instructions provided on the website. You will need your Holder Identification number (HIN) or Security Reference Number (SRN) to lodge your proxy online, prior to 11.00am (Sydney time) on 25 February 2009.

The Board of the Company has determined that, for the purposes of the general meeting shares will be taken to be held by the persons who are registered as Shareholders as at 7.00pm (Sydney time) on 25 February 2009. Accordingly share transfers registered after that time will be disregarded in determining entitlements to attend and vote at the general meeting.

By Order of the Board



**Francis Joseph Giordano**  
Company Secretary

27 January 2009

# Explanatory Statement

## 1 BACKGROUND

On 10 November 2008 the Company announced that it would convene a meeting of shareholders, to be held by no later than 28 February 2009, for the purpose of considering and approving:

- A return of capital to shareholders, aggregating \$100.7 million, equating to 60c per Share; and
- The termination of the Management Agreement between the Company and Babcock & Brown in consideration, amongst other things, for the payment of \$32.5 million upon termination of the agreement (which would occur following shareholder approval) and a further \$17.5 million conditional upon a change of control occurring in the Company or eircom prior to 30 April 2010.

The announcement stated that the Board supported Shareholders' desire for an independent Company but the Board would not be in a position to make a formal recommendation to Shareholders in relation to the proposal until they had received an opinion from an independent expert.

Since then, in connection with the preparation of the financial statements of the Company for the half year ended 31 December 2008, the Board has had to consider the potential classification of the Company's investment in Golden Pages as a current asset, which would require the carrying value of that investment to be reduced and the extent of any impairment to the carrying value of the Company's investment in eircom. The process of considering these matters has not been finalised.

Accordingly, so as to allow further time to consider these matters and also the impact they may have on the proposed termination of the Management Agreement, the Company has agreed with Babcock & Brown to delay until no later than 30 March 2009 the requirement to hold a shareholders meeting to consider the proposal to terminate the Management Agreement. However, the Board considers that this delay should not interfere with the proposed return of capital, which was not conditional on the termination of the Management Agreement being approved in any event.

Accordingly, the Board has convened the Shareholders' Meeting to consider the return of capital and this meeting is to be held on 27 February 2009.

It is expected that a further meeting will be convened by no later than 30 March 2009 to consider the proposal to terminate the Management Agreement.

## 2 RETURN OF CAPITAL

The Company listed on the ASX on 11 February 2005 after a successful initial public offering (IPO) to raise equity of \$1 billion.

The Company has utilised the proceeds of the IPO to make two investments in which the Company retains a controlling interest; namely eircom and Golden Pages.

While the Company invested a substantial proportion of the capital raised under the IPO in eircom and Golden Pages, the subsequent refinancing of these investments has resulted in some of the invested capital being returned to the Company.

As at the date of this Notice of Meeting, the Company itself holds approximately \$325 million in available cash reserves which is not ear-marked for any other investment. As previously advised to Shareholders, the Board does not consider that further acquisitions or investments would be a better use of surplus capital than the return of \$100.7 million surplus capital proposed by the Resolution. Further the Board does not intend that the Company will undertake further investments.

The proposed Return of Capital comprises 60 cents per Share, which, in aggregate, equates to approximately \$100.7 million.

The Return of Capital will apply equally to each Shareholder in proportion to the number of Shares they hold on the Record Date.

### **3 REASONS FOR THE RETURN OF CAPITAL**

The sole purpose of the Return of Capital is to distribute the Company's excess cash reserves to Shareholders.

The Board has considered a range of alternative ways of returning capital to Shareholders, but has concluded that the Return of Capital supports this objective because:

- the Company wishes to achieve a more efficient capital structure and the Board considers that the Return of Capital will enable the Company to achieve this;
- the \$100.7 million to be returned essentially represents capital that has formed part of the Company's "issued capital" since its IPO in 2005. This capital was originally intended to be used for acquisitions or investments by the Company, but with subsequent economic and financial market changes it is now not anticipated to be required for this purpose;
- given that the Company is unlikely to consider any further acquisitions or investments in the near future, the Board believes that the return of these surplus funds to Shareholders is prudent in terms of an appropriate capital management strategy; and
- the Board considers that the Return of Capital is in the best interests of the Shareholders.

Although the Board does not have any current intentions to (and nor is the Company required to) invest further equity in Golden Pages or eircom, the Board has decided in the context of the proposed internalisation and related recommendation of the Manager and taking into account the information and advice available to the Company and given the current uncertain economic environment, that it is prudent, at least in the short term, to retain for the time being, the balance of its cash reserves after the Return of Capital of \$100.7 million.

However, the Board intends to review the Company's level of cash reserves and the Company's ongoing cash requirements in light of, amongst other things, the outcome of the proposed internalisation of the management of the Company, with a view, later this year, to making a determination of the amount of additional surplus capital, if any, that should be returned to Shareholders.

### **4 WHY DOESN'T THE COMPANY DECLARE A DIVIDEND INSTEAD OF THE RETURN OF CAPITAL?**

To date, the Company has not declared any dividends. The Company has previously indicated to Shareholders that it will not have a definitive dividend policy until its investments have further developed and matured, and that it will consult with Shareholders on the future strategy of the Company once its current investments are realised.

The Board is not certain of the level of available profits at the date of this Notice of Meeting, in part because of the reasons explained in Section 1 of this Explanatory Statement; in particular the impact for accounting purposes of any impairment upon the book value of its assets upon any retained profits of the Company.

### **5 APPROVALS REQUIRED TO IMPLEMENT THE RETURN OF CAPITAL**

Under section 256B(1) of the Corporations Act, the Company may reduce its share capital if the reduction:

- (a) is fair and reasonable to Shareholders as a whole;
- (b) does not materially prejudice the Company's ability to pay its creditors; and
- (c) is approved by Shareholders under section 256C of the Corporations Act.

In relation to these requirements:

- (a) The Board considers that the Return of Capital is fair and reasonable to Shareholders as a whole because it will apply to all Shareholders equally having regard to the number of Shares held by each of them on the Record Date.
- (b) The Board believes, after having made enquiry, that the Company has sufficient cash reserves to pay the Return of Capital without materially prejudicing the Company's ability to pay its creditors. The Company has no bank debt and, as previously advised to Shareholders and ASX, the debt and banking facilities of eircom and Golden Pages are non-recourse to the Company.
- (c) The Resolution seeks the approval of Shareholders as required under section 256C of the Corporations Act.

In accordance with section 256C of the Corporations Act, a copy of the Notice of Meeting has been lodged with the Australian Securities & Investments Commission.

## 6 WHAT IS THE EFFECT OF THE RETURN OF CAPITAL ON THE COMPANY?

As at the date of this Notice of Meeting, the Company has 167,904,914 Shares on issue. After the Return of Capital, the Company's paid up share capital account will be reduced by approximately \$100.7 million. The number of Shares on issue will not change as a result of the Return of Capital because no Shares will be cancelled under the Return of Capital.

As all of the Shares are fully paid, the Return of Capital does not involve a reorganisation that gives rise to fractional entitlements.

As at the date of this Notice of Meeting, the Company has 2,000,000 options on issue. The number of options on issue will not change as a result of the Return of Capital, however, the exercise price of all options will be reduced by \$0.60 in accordance with ASX Listing Rule 7.22.3.

## 7 FINANCIAL IMPLICATIONS OF THE RETURN OF CAPITAL

The Return of Capital will be sourced from the Company's available cash reserves at the time the Return of Capital is made.

## 8 TIMETABLE

Subject to Shareholders approving the Return of Capital, the following indicative timetable will apply.

EVENT	DATE
Shareholders' Meeting to approve the Return of Capital	27 February 2009
Shares trade on "ex" Return of Capital basis	3 March 2009
Record Date for determining entitlements to participate in the Return of Capital	10 March 2009
Despatch date for payment of Return of Capital	17 March 2009

These dates are indicative only and may change.

If the Return of Capital is approved by Shareholders, the payment of the Return of Capital will ordinarily be satisfied by sending a cheque to those persons who are Shareholders as at the Record Date.

However, Shareholders that have an existing direct credit authority for the payment of dividends on their Shares recorded with the Registry on the Record Date will have the capital returned on their Shares credited to their nominated bank account.

Cheques and direct credit advices will be sent by mail to Shareholders to the address as it is shown on Register on the Record Date.

## 9 TAX IMPACT OF RETURN OF CAPITAL

The Company has sought a Class Ruling from the ATO as to the tax implications of the Return of Capital for Shareholders. The Class Ruling is expected to be received prior to the Shareholders' Meeting. However, for specific advice, Shareholders should consult their own taxation adviser so that their particular circumstances are taken into consideration.

Specifically, the Class Ruling application requests confirmation that no part of the Return of Capital will be treated as a dividend for Australian tax purposes. On the basis of this being confirmed by the ATO, Shareholders should not be liable to tax on receipt of the Return of Capital, subject to the comments below.

The cost base of each Share held by a Shareholder will be reduced by the amount of the Return of Capital received per Share.

If the amount of the Return of Capital exceeds the cost base that a Shareholder has in a Share, the Shareholder will make a capital gain equal to that excess and the Shareholder's cost base in the Share will be reduced to nil. Any such capital gain may qualify as a discount capital gain depending on the nature of the Shareholder and whether that Shareholder has held the Share for at least 12 months before receiving the payment.

If the amount of the Return of Capital is less than the cost base that a Shareholder has in a Share, the Shareholder's cost base and reduced cost base in the Share will be reduced by the amount of the capital per Share. Although such a reduction does not give rise to an immediate taxation liability, the reduction is likely to result in an increased capital gain or reduced capital loss on a future disposal of Shares.

## 10 DIRECTOR SHAREHOLDINGS

The following table sets out the holdings (direct and indirect) in Shares by Directors at the date of this Notice of Meeting.

DIRECTOR	NO OF SHARES	NO OF OPTIONS
K Roxburgh	Nil	1,000,000
G Clark	Nil	1,000,000
A Love	Nil	Nil

No Director will receive any payment or benefit of any kind as a consequence of the Return of Capital other than as a Shareholder or option holder (as applicable).

## 11 OTHER MATERIAL INFORMATION

All Shareholders are entitled to vote on the Resolution.

There is no other information material to the making of a decision by Shareholders whether or not to vote in favour of the Return of Capital (being information that is known to the Board which has not previously been disclosed to holders of Shares) other than as set out in this Notice of Meeting.

## 12 RECOMMENDATION

Each of the Directors considers himself justified in making a recommendation concerning the Resolution. The Board unanimously recommends that Shareholders vote in favour of the Resolution.

## 13 DEFINITIONS

**\$ or cents** means Australian currency unless otherwise specified.

**ASX** means ASX Limited ABN 98 008 624 691.

**ATO** means Australian Taxation Office.

**Board** means the board of directors of the Company as at the date of this Notice of Meeting, being Kerry Roxburgh, Gregory Clark and Andrew Love.

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in Sydney.

**Company** means Babcock & Brown Capital Limited ABN 31 112 119 203.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Director** means a director of the Company as at the date of this Notice of Meeting.

**eircom** means eircom Group Limited.

**Golden Pages** means G.P.M Classified Directories (Management and Marketing) Ltd, a company incorporated in Israel.

**Listing Rules** means the Official Listing Rules of the ASX.

**Manager** means Babcock & Brown Capital Management Pty Limited ACN 112 118 144.

**Notice of Meeting** means the notice of meeting and explanatory statement issued by the Company in relation to the Return of Capital.

**Record Date** means 10 March 2009.

**Register** means the register of Shareholders maintained by the Registry.

**Registry** means Link Market Services Limited.

**Resolution** means the Resolution to approve the Return of Capital set out in the Notice of Meeting.

**Return of Capital** means the proposal to return capital to Shareholders as more fully described in this Notice of Meeting.

**Shares** means fully paid ordinary shares in the Company.

**Shareholder** means a person who is registered in the Register as a holder of Shares.

**Shareholders' Meeting** means the meeting of Shareholders convened by the Board to consider and vote on the Return of Capital.

