

DRAFT

**Noble Group Ltd**

**MEMORANDUM**

To: Stewart Walker – ASL Financial &  
Commercial Services Ltd

Date: 27 October 2004

Copy: Patrick Aregger – Noble Investments  
Mauro Gerli – Noble Investments  
Stephen Marzo – CFO  
Anthony Day – Group Counsel

Ref: DJB/2004/001

From: David J Beringer

**NOBLE INVESTMENTS – CONTRACT EXECUTION IN JERSEY**

**Proposal**

We would like to engage ASL Financial and Commercial Services Ltd (“ASL”) to appoint two people in Jersey to serve as Directors of Noble Investments Ltd (“NIL”), a company registered in Bermuda. The Directors will be required to execute contracts in the name of NIL that arise in the normal course of business including Intermediary Agreements and Structuring Advisory Agreements.

We will appoint ASL to act as the Company Secretary for NIL. In keeping with optimum corporate governance standards ASL will organise quarterly Board of Directors’ meetings and others as required. It is envisaged these will be held in Jersey and by tele-conference.

We will use the ASL office address in Jersey as the business address for NIL and have a dedicated telephone and a dedicated fax line there.

**Background**

Noble Investments SA (NISA) was incorporated in Zurich as a vehicle to market and sell guaranteed hedge fund (or more correctly “structured alternative investment”) products. The shareholders are Noble Finance Ltd with 65%, Patrick Aregger with 12.5%, Mauro Gerli with 12.5% and Colin Barrow with 10%.

To optimise tax efficiencies a parallel company, NIL was established in Bermuda with identical shareholding arrangements. NIL has entered into a consultancy agreement with NISA for advisory services and is billed on a cost-plus basis. All contracts are concluded in NIL’s name. The current directors of NIL are Richard Elman, Anthony Day, John Collis and Anthony Whaley.

The end product is typically a note or bond offering a guaranteed return with upside and is managed by a hedge fund manager. NIL works with issuers, who are typically banks, to structure the products. Product development can take four to six months per product.

The issuers could market the product directly to customers. However NIL enters into Structuring Advisory Agreements with issuers to promote and market the product involved for commission. NIL typically receives introducer broker fees and a share of the upside arising from the performance of the hedge fund. NIL enters into agreements with intermediaries in order to market the products to customers. The agreements are non-exclusive commission-sharing arrangements for the business of placing investment products.

### Discussion

The NIL and NISA structure has been disclosed to the Swiss tax authorities and they have ruled that NIL is not subject to Swiss federal or cantonal taxation. We have not advised that personnel working in Switzerland conclude contracts in the name of NIL, and there is concern that if the Swiss tax authorities learn this is happening that NIL will be deemed to have a Swiss tax presence.

The concluding of NIL contracts by Swiss staff is very unhelpful evidence when reviewing the facts and circumstances. We have agreed with Swiss tax advisers that various measures should be taken to improve foreign substance of NIL. These include:

- Composing the board of directors of non-Swiss resident persons;
- Holding Directors' meetings outside Switzerland;
- Holding the AGM outside Switzerland;
- Having offices, telephone and fax lines outside Switzerland; and
- The persons with signatory powers for contracts and other documents are non-Swiss resident and not working in Switzerland.

In the coming months we will also examine whether the following are possible:

- Holding the books, records and other business papers of NIL outside Switzerland;
- Arranging letter of credit and making / receiving payments outside Switzerland;
- Having NIL bank accounts with non-Swiss banks; and
- Keeping the financial statements in a currency other than Swiss francs.

## Risks

ASL-Jersey will need to review the contractual documentation and get comfortable with the risks associated with NIL's business. The following comments reflect Noble Group's views.

NIL provide services in an advisory capacity only. NIL and the wider Noble Group do not take on risks from the services provided. In the contracts concluded by NIL, they require counterparties to hold Noble harmless from any claim etc. To date NIL has entered into two distinct types of agreement:

*Structuring Advisory Agreements* - The Structuring Advisory Agreements contain language that provides a reasonably comprehensive exclusion of liability in favour of NIL and its affiliates.

*Intermediary Agreements* - The Intermediary Agreements are generally subject to NIL's standard terms (subject to Swiss Law) and set out the commission arrangements. The Agreement contains warranties on the part of the intermediary to comply with local laws and to hold NIL harmless generally. There is also a clause in which the Intermediary agrees to indemnify and keep indemnified NIL and related persons.

NIL's obligations are essentially restricted to providing marketing information and arranging the payment of commission to the intermediaries following placement. Since the intermediaries are not investors, but advisors to such investors, it is difficult to see how NIL would attract any liability to investors for losses arising from underperformance or guarantee failure unless NIL was not fulfilling its commission obligations.

The kind of exposures that are likely to be of real concern to NIL are unlikely to arise from contractual arrangements but rather in the context of claims for damages arising from allegations of fraud, negligence and or misstatement. A claim would be most likely to arise in the event of product underperformance or if a capital guarantee failed. A claim could arise from an investor or an intermediary who may himself be sued by an investor on the basis that reliance had been placed upon representations made by NIL which provided to be misleading or incorrect. It is considered that the success of any such claim is remote given:

- NISA or NIL do not guarantee or underwrite the product or guarantee product performance;
- Risk constitutes an integral part of these investments and this is reflected in all disclaimers; and
- NISA or NIL do not sell to or represent investors or handle investors' money.