

**BIO-GENE TECHNOLOGY LIMITED**  
**ACN 071 735 950**

**A Public Company Limited by Shares**

# **CONSTITUTION**

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**CONSTITUTION  
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Corporations Law  
A Company Limited by Shares

## CONSTITUTION

of

**Bio-Gene Technology Limited**

**ACN 071 735 950**

### PRELIMINARY

#### 1 Definitions

In this Constitution, unless the context otherwise requires:

**Accounting Standards** means the accounting standards made by the Australian Accountants Standards Board for the purposes of the Law;

**Appointment Day** means the 43<sup>rd</sup> day after the issue of an Elimination Notice in accordance with this Constitution;

**Approval Resolution** means a resolution to approve a proportional takeover scheme in accordance with the Takeover Provisions;

**ASX** means Australian Stock Exchange Limited;

**Authorising Member** means a member issued with an Elimination Notice who does not provide to the Company a notice in response to that Elimination Notice that the member does not wish their Unmarketable Shareholding to be sold by the Company;

**Board** means the directors acting as a Board of directors;

**Business Day** means Monday to Friday inclusive except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day and any other day ASX declares not to be a business day;

**CHESS** has the meaning given in Chapter 21 of the SCH Business Rules;

**CHESS Approved Securities** has the meaning given in Chapter 21 of the SCH Business Rules;

**CHESS Subregister** means that part of the Register for a class of CHESS Approved Securities that is administered by SCH and records uncertificated holdings of securities in that class;

**clause** means a clause of this Constitution;

**Company** means Bio-Gene Technology Limited;

**Constitution** means the constitution of the Company for the time being in force;

**directors** mean the directors of the Company from time to time;

**dividend** includes bonus;

**Elimination Notice** means a notice issued by the Company to a member concerning the possible sale of their Unmarketable Shareholding in accordance with the Law and Listing Rules;

**Elimination Price** means the price per share of the shares of an Unmarketable Shareholding equal to the simple average of the last sale prices of the shares quoted on ASX for each of the ten trading days immediately preceding the Appointment Day;

**Elimination Provisions** means clauses 61 to (and including) 65 of this Constitution;

**Elimination Sale** means the sale of Unmarketable Shareholdings in accordance with the Elimination Provisions and the Relevant Law;

**Escrow Period** means the escrow period defined by the Listing Rules or as determined or permitted by ASX for the securities in question;

**financial year** has the meaning given to it in the Law;

**Law** means the Corporations Law;

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**member** means a person who is entered in the Register as the holder of shares in the capital of the Company;

**month** means calendar month;

**Notice Period** means the 42 day period specified in the Elimination Notice;

**Office** means the registered office for the time being of the Company;

**paid up** or **paid** includes credited as paid up or paid;

**Qualification Time** means :

- (a) the time determined by the directors not less than 48 hours before the general meeting to which the Qualification Time refers; or
- (b) if no determination is made, 48 hours before the relevant general meeting.

**Replaceable Rules** means any provision of those sections and sub-sections of the Law which are designated under section 141 of the Law as “replaceable rules” and so capable of being replaced or modified by this Constitution;

**Register** means the register of members to be kept pursuant to the Law;

**Regulations** mean the Corporations Regulations;

**Relevant Law** means the Corporations Law, Listing Rules and SCH Business Rules;

**related body corporate** has the meaning given to it in the Law;

**resolution** means a resolution other than a special resolution;

**Restriction Agreement** means a restriction or escrow agreement as defined by the Listing Rules;

**Restricted Securities** mean restricted securities as defined by the Listing Rules;

**SCH** means securities clearing house as defined by the Law;

**SCH Business Rules** means the business rules of the SCH;

**SCH Transfer** means a proper transfer for securities for the purposes of the SCH as required by the Law;

**Seal** means the common seal of the Company or, where appropriate, the duplicate seal or the official seal;

**secretary** includes any person appointed to perform the duties of secretary on a temporary basis and any duly appointed assistant secretary;

**shares** mean shares in the share capital of the Company;

**special resolution** has the meaning given to it in the Law;

**Takeover Provisions** means clauses 58 to (and including) 60 of this Constitution ; and

**Unmarketable Shareholding** means a holding of shares in the Company that is less than a marketable parcel as defined by the Listing Rules.

## **2 Interpretation**

In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include every gender;
- (c) references to the Law or the Regulations, any section or schedule of the Law or the Regulations or any other legislation or regulations are references to that law as amended, consolidated, supplemented or replaced from time to time;
- (d) headings are to be disregarded in interpreting this Constitution;
- (e) references to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
- (f) references to clauses are references to clauses of this Constitution; and
- (g) in writing or written includes printing, lithography, photography and other means of representing or reproducing words in a visible form.

## **3 Replaceable Rules not to apply**

The Replaceable Rules contained in the Law shall not apply to the Company.

## **4 Constitution subject to the Relevant Law**

This Constitution is subject to the Relevant Law and where there is any inconsistency between a clause of this Constitution and the Relevant Law, the Relevant Law shall prevail to the extent of the inconsistency.

## **5 Application of the Listing Rules**

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevent an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.

- (e) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (g) The application and effect of the Listing Rules to the Company and this Constitution is subject to determinations exemptions and modifications of the rules by ASX.

## **6 Determinations of time**

- (a) Unless otherwise provided, a reference to a time means that time in the State or Territory in which the Office is located.
- (b) In order to determine a period of time, not its commencement, a reference to a:
  - (i) day means a period of time commencing at midnight and ending 24 hours later; and
  - (ii) month means a calendar month, that period commencing at the beginning of a day of one of the twelve months of the year and ending immediately before the beginning of the day commencing the following month.
- (c) A period of time is to be calculated without counting the day on which the relevant act or event commencing the period of time occurs.
- (d) Any provision of this Constitution, except those provisions concerning the deposit of proxies, requiring an act to be done on any day which is not a Business Day will be interpreted as requiring that act to be done on or by the next Business Day.

## **CAPITAL**

### **7 Unissued shares under control of directors**

Any unissued shares shall be under the control of the directors. The directors:

- (a) may allot or otherwise dispose of unissued shares to such persons, subject to the Relevant Law, on such terms and conditions and at such times as the directors think fit, including bonus and partly paid shares;
- (b) have full power to give any person a call or option over any unissued shares and, subject to the Relevant Law, during such time and for such consideration as the directors think fit;

- (c) may issue shares with such preferential, deferred or special rights, privileges or conditions or with such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the directors may determine; and
- (d) shall ensure that no preference shares are allotted except on the rights and restrictions contained in this Constitution or as otherwise approved by a special resolution of the Company in accordance with the Relevant Law.

## **8 Company may issue preference shares**

The Company may issue preference shares which are redeemable:

- (a) at a fixed time or on the happening of a particular event; or
- (b) at the Company's option; or
- (c) at the shareholder's option.

The terms upon which and the manner in which any redemption is to be effected shall, if permitted by the Relevant Law, be specified in the conditions of the issue of the shares.

## **9 Restricted Securities**

- (a) Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or by the ASX.
- (b) The Company will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or by the ASX.
- (c) During a breach of the Listing Rules relating to Restricted Securities, or a breach of Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights in respect of the Restricted Securities.

## **10 Voting rights of preference shares**

The holder of a preference share will be entitled to a right to vote in each of the following circumstances and in no others:

- (a) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;
- (b) on a proposal to reduce the Company's share capital;
- (c) on a resolution to approve the terms of a buyback agreement;

- (d) on a proposal that affects rights attaching to the share;
- (e) on a proposal to wind up the Company;
- (f) on a proposal for the disposal of the whole of the Company's property, business and undertaking; and
- (g) during the winding up of the Company.

## **11 Additional rights of preference shareholders**

- (a) A preference shareholder will be entitled to a dividend at a commercial rate in preference to shareholders of ordinary shares.
- (b) A preference shareholder will be entitled to a return of capital in preference to ordinary shareholders if the Company is wound up.
- (c) A preference shareholder will not have any additional rights to participate in surplus assets or profits of the Company.
- (d) A preference shareholder is entitled to the same rights as ordinary shareholders in relation to receiving notices, reports and audited accounts, and attending meetings.

## **12 Rights of partly paid shares**

The holder of a partly paid share will not be entitled to a greater proportion of either:

- (a) a dividend; or
- (b) an issue of bonus shares,

than the proportion which the amount paid for the share (not credited) is of the total amount paid and payable for the share (excluding amounts credited). Amounts paid in advance of a call will be ignored when calculating the proportion.

## **13 Interest on share capital**

The Company is authorised to pay interest on share capital in the circumstances and on the conditions provided for in the Relevant Law.

## **14 Brokerage or commission**

Subject to the provisions and restrictions contained in the Relevant Law, the Company may pay brokerage or commission to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the

Company. Such brokerage or commission may be paid or satisfied in cash, shares, debentures or debenture stock of the Company or otherwise.

## **15 Establishment of plan**

- (a) Subject to the requirements of the Relevant Law, the directors may, in their absolute discretion, establish a plan to facilitate investment in the shares by the Company by the directors or employees on such terms and conditions as they think fit.
- (b) The directors may, in their absolute discretion, modify, suspend or terminate all or any plans established pursuant to paragraph (a) from time to time on not less than one month's written notice to all relevant directors and employees.
- (c) The powers given to the directors by paragraphs (a) and (b) are additional to the other powers reposed in the directors by this Constitution and will not in any way be limited, restricted or otherwise affected by other clauses in this Constitution.

## **JOINT HOLDERS**

### **16 Joint holders**

Where two or more persons are registered as the holders of any share, they shall be deemed to hold the same as joint tenants with benefits of survivorship, but:

- (a) the Company shall not be bound to register more than three persons (unless they are trustees, executors or administrators of a deceased holder) as the holders of any share;
- (b) the joint holders shall be liable severally as well as jointly in respect of all payments (including calls and instalments) which ought to be made in respect of the share;
- (c) on the death of any joint holder, the survivor or survivors shall be the only person or persons recognised by the Company as having any title to the share, but the directors may require evidence of death;
- (d) any one joint holder may give a valid receipt for any dividend, bonus or return of capital payable to the joint holders; and
- (e) delivery of a certificate or statement for a share to any joint holder shall be sufficient delivery to all the joint holders.

### **17 Recognition of other interests in shares**

Subject to the provisions of the Relevant Law, the Company shall be entitled to treat the registered holder of any shares as the absolute owner of those shares and accordingly shall not be bound to recognise any equitable or other claim to or interest in the shares on the part of any person.



## **CERTIFICATES**

### **18 Uncertificated Holdings**

- (a) The directors may determine upon allotment of any shares that the shares are only to be held as uncertificated holdings under the SCH Business Rules. A member holding any such share is not entitled to require the Company to issue or deliver a certificate of title for the share to any person or entity. At any time, the directors may revoke a determination under this provision.
- (b) The Listing Rules and SCH Business Rules will determine whether shares will be allotted or held as certificated or uncertificated holdings
- (c) Where share(s) are to be held as an uncertificated holding, the directors may cancel without replacement a certificate of title for the share(s) to be held as an uncertificated holding.
- (d) Subject to the Relevant Law, a statement complying with the requirements of the SCH Business Rules will be provided to all shareholders of uncertificated holdings, free of charge, recorded on the Company's sponsored subregister within 5 Business Days of the creation of the holding or 5 Business Days after the end of the month in which there is a change in the members shareholding.

### **19 Entitlement of member to a certificate or statement**

- (a) Subject to clause 18 and paragraph (b), every member shall be entitled free of charge to one certificate for the shares registered in his name or to several certificates each for a reasonable portion of those shares.
- (b) Where shares are registered in the names of two or more persons, only one certificate is required to be issued in respect of those shares.
- (c) The certificate for shares shall be executed in accordance with the clauses of this Constitution concerning execution of documents, and shall include all information required by the Relevant Law.

### **20 Application to register transfer of shares**

Subject to clause 18, on every application to register the transfer of any shares or to register any person as a member in respect of any shares which may have been transmitted to that person by operation of law, the certificate for those shares shall be delivered up to the Company for cancellation and a new certificate in similar form specifying the shares transferred or transmitted shall be delivered to the transferee or transmittee. If a registration is required for some only of the shares specified on the certificate delivered up to the Company, a new certificate specifying the shares remaining untransferred or untransmitted must be given to the transferor.

## **21 Replacement of worn out or defaced certificates**

- (a) If any certificate is worn out or defaced, the directors may, upon production of the certificate to the Company, order that it be cancelled and a new or duplicate certificate be issued.
- (b) The duplicate certificate will be issued within 3 Business Days after production of the certificate to the Company and in the form required by the Relevant Law.
- (c) A reasonable fee may be charged for any replacement certificate.

## **22 Replacement of lost or destroyed certificates**

- (a) If any certificate is lost or destroyed, the directors may order that a new certificate be issued upon being furnished with:
  - (i) evidence of loss or destruction as required by the Relevant Law;
  - (ii) an undertaking to return the certificate (if found) as required by the Relevant Law; and
  - (iii) if the directors consider it necessary, a bond or indemnity as the Relevant Law authorises the directors to require.
- (b) The new certificate will be issued within 3 Business Days of the satisfaction of the above sub-paragraphs and in the form required by the Relevant Law.
- (c) A reasonable fee may be charged for any replacement certificate.

## **LIEN ON SHARES**

### **23 Lien for calls or money payable in respect of shares**

- (a) Subject to the Relevant Law, the Company has a first and paramount lien on every share for all money presently payable called or payable at fixed times in respect of that share.
- (b) Subject to the Relevant Law, the Company shall also have a first and paramount lien on all shares for all money presently payable by a holder or his estate to the Company or for all money payable by the Company (or in respect of which the Company becomes liable to pay) to any governmental or other competent authority in respect of the shares.
- (c) The directors may at any time declare any share to be wholly or in part exempt from the provisions of paragraphs (a) and (b). The Company's lien (if any) on a share shall extend to all dividends payable on the share.

## **24 Limitation of liens**

- (a) The Company will not have a lien over particular shares or dividends in respect of those shares, except concerning any of the following:
  - (i) an unpaid call or instalment due but unpaid on those shares;
  - (ii) where the shares are acquired under an employee incentive scheme, an amount is owed to the Company for acquiring those shares; and
  - (iii) an amount that the Company is required by law to pay (and has paid) in respect of the shares of a member or deceased former member.
- (b) In each of the above situations, the lien extends to reasonable interest and expenses incurred because the amount is not paid.

## **25 Sale under lien**

- (a) The Company may sell any shares on which the Company has a lien in any manner the directors think fit provided that no sale shall be made:
  - (i) unless a sum in respect of which the lien exists is presently payable; and
  - (ii) until the expiration of fourteen days after a notice in writing, stating and demanding payment of the amount which is presently payable, has been given to the registered holder of the shares or the person entitled to the shares by reason of the death or bankruptcy of the registered holder.
- (b) The proceeds of the sale shall be received by the Company and applied in payment of that part of the amount in respect of which the lien exists as is presently payable, and any residue shall be paid to the person entitled to the shares at the date of the sale.

## **26 Transfer on sale under lien**

For the purpose of giving effect to a sale under the previous clause, the directors may authorise a person to transfer the shares sold to the purchaser of those shares. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in connection with the sale.

## **CALLS**

### **27 Limit on calls**

The Company may provide by special resolution that the whole or a part of its unpaid share capital may only be called up if the Company becomes an externally administered body corporate.

### **28 Directors may make calls**

The directors may make calls as they think fit on the members in respect of all moneys unpaid on the shares held by the members that are not moneys made payable at fixed times by the conditions of allotment. Each member shall pay the amount of every call made on him to the persons and at the times and places appointed by the directors. A call may be made payable by instalments and shall be deemed to have been made when the resolution of the directors authorising that call was passed. The directors may revoke or postpone a call.

### **29 Notice of calls**

At least 30 days' written notice of a call shall be given specifying the time and place for payment. The non-receipt of any notice by, or the accidental omission to give notice of any call to, any member shall not invalidate the call.

### **30 Payment of calls**

If the conditions of allotment of any share require the whole or part of the amount or issue price for that share to be paid by instalments, every such instalment shall be paid to the Company when due by the person who for the time being is the registered holder of the share or his legal personal representative.

### **31 Difference in terms of issue as to calls**

The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the time for payment of those calls.

### **32 Interest on sums not paid**

If a sum called in respect of a share is not paid on or before the date for payment, the person from whom the sum is due shall pay interest on the sum from the date for payment to the time of actual payment at such rates as the directors may determine. The directors may waive payment of interest, either in whole or in part.

### **33 Fixed payment deemed calls**

Any sum which, by the terms of issue of a share, becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which the sum is payable. In case of non-payment and provided notice requiring payment has been

given in accordance with clause 29, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

### **34 Prepayment of calls**

The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the amount unpaid upon the shares held by him beyond the sums actually called up. The directors may authorise payment by the Company of interest on the whole or any part of the amount so received until the amount becomes due or is repaid at the rate agreed between the member paying the sum in advance and the directors. The directors may at any time authorise repayment of the whole or any part of the amount paid in advance upon giving to the member one month's notice of the date for repayment.

### **35 Proof of calls**

In proceedings for the recovery of money due for any call, it shall be sufficient to prove that:

- (a) the name of the member sued is entered in the Register as the holder or one of the holders of the shares in respect of which the call was made;
- (b) the resolution making the call was duly recorded in the minute book; and
- (c) notice of the call was duly given to the member issued in accordance with this Constitution,

and it shall not be necessary to prove the appointment of the directors who made the call or any other matter whatsoever but the proof of the matters listed in this clause shall be conclusive evidence of the debt.

## **FORFEITURE OF SHARES**

### **36 Forfeiture notice**

If a member fails to pay any call or instalment of a call on the due date for payment, the directors may, at any time while any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

### **37 Contents of forfeiture notice**

The notice shall name a further day (not earlier than fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made. The notice shall state that, in the event of non-payment by the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

### **38 Forfeiture for failure to comply with notice**

- (a) If the requirements of any such notice are not complied with, any share in respect of which the notice has been given, before the payment required by the notice has been made, may be forfeited by a resolution of the directors to that effect.
- (b) Such forfeiture shall include all dividends declared in respect of the forfeited shares and not paid before the forfeiture. The non-receipt of any notice by, or the accidental omission to give notice of any forfeiture to any member shall not invalidate the forfeiture.
- (c) If the share the subject of a forfeiture resolution is entered on the CHESSE Subregister, the Company may take all necessary steps to move the share to a subregister administered by the Company.

### **39 Sale of forfeited shares**

Subject to the Relevant Law and the following clause, a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

### **40 Limitation on cancelling forfeited shares**

The Company will only cancel forfeited shares with the approval of holders of ordinary shares.

### **41 Effect of forfeiture**

In the absence of the approval of holders of ordinary shares, a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the Company all money which, at the date of forfeiture, were payable by him to the Company in respect of the shares together with interest on this amount from the date of forfeiture until payment at such rate as the directors may determine. The directors shall be under no obligation to enforce such payment.

### **42 Evidence of forfeiture**

A statutory declaration in writing by a director or secretary of the Company that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

### **43 Proceeds of sale and transfer of forfeited shares**

The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition of the share and the directors may authorise any person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of. The transferee shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any

irregularity or invalidity in the proceedings in connection with the forfeiture, sale or disposal of the share.

#### **44 Forfeiture applies to non-payment of fixed payment**

The provisions of this Constitution as to forfeiture shall apply to the non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if the sum had been payable by virtue of a call duly made and notified.

#### **45 Surrender of shares**

The directors may accept the surrender of any paid up shares as a compromise of any question as to the holder being properly registered in respect of those shares. Any share so surrendered may be disposed of in the same manner as a forfeited share.

### **TRANSFER OF SHARES**

#### **46 Instrument of transfer**

Subject to this Constitution and the Relevant Law, a member may transfer all or any shares by:

- (a) an instrument of transfer duly stamped (if necessary) and delivered to the Company. The instrument of transfer shall be in writing in the usual or common form or in such other form as the directors may from time to time prescribe or, in particular circumstances, agree to accept; or
- (b) a SCH Transfer.

#### **47 Execution of instrument of transfer and completion of transfer**

The instrument of transfer of any share shall be signed by or on behalf of the transferor and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register as the holder of the share.

#### **48 Prohibited transfers**

The directors shall not register a transfer to a person who is known to them to be an infant or person of unsound mind but the directors shall not be bound to inquire as to the age or soundness of mind of any transferee.

#### **49 Registration procedure**

Every instrument of transfer, except a SCH Transfer, shall be left at the Office with the certificate for the shares to be transferred and such other evidence as the directors may require to prove the title of the transferor or his right to transfer the shares. The Company shall retain all instruments of transfer that are registered but any instrument of transfer which the directors

refuse to register shall (except in the case of fraud or suspected fraud) be returned on demand to the person who deposited that instrument.

## **50 Suspension of registration of transfers**

The directors may suspend the registration of transfers at any time and for any period not exceeding thirty days in total in any calendar year.

## **51 CHESS Transfer**

- (a) The directors may take such action as they consider necessary or desirable to enable the Company to take part in any system established or recognised by the Relevant Law for transfers or dealings in marketable securities.
- (b) A SCH Transfer must be executed, effected and registered in accordance with the SCH Business Rules.
- (c) Excepted as permitted by the Relevant Law, the Company will not prevent, delay or interfere with the generation of a proper SCH Transfer or the registration of a paper based transfer in registerable form.

## **52 Refusal to register transfer other than SCH Transfers**

- (a) The Company will not in any way prevent, delay or interfere with the generation of a proper SCH Transfer or the registration of a paper based transfer in registerable form.
- (b) Except for a SCH Transfer, the directors may refuse to register any transfer where the Listing Rules permit the Company to do so
- (c) If the shares are Restricted Securities and the transfer is or may be in breach of the Listing Rules, or an Restriction Agreement in relation to the restricted securities, the directors will refuse to register any transfer of the shares.

## **53 Holdings of less than a marketable parcel**

The directors may determine by resolution whether to allow the establishment of a new certificated holding of less than a marketable parcel.

## **54 Operation of registers**

The Company will comply with the Listing Rules for any Company sponsored subregister operated by the Company.

## **55 Restricted Securities**

Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX.



**56 Transfer of title**

A transferor will remain the registered holder of shares transferred under a SCH Transfer until the transfer takes effect in accordance with the SCH Business Rules.

**57 Branch register**

The directors may determine to establish a branch register and make such provisions as they think fit concerning the maintenance of this register.

**PROPORTIONAL TAKEOVERS**

**58 Prohibition on registration**

Until the expiry of the Takeover Provisions, the Company will not register any transfer not entered on the SCH Subregister which would give effect to the acceptance of an offer under a proportional takeover scheme under Chapter 6 of the Law unless and until an Approval Resolution is passed or deemed to be passed in accordance with this Constitution.

**59 Approval of proportional takeovers**

- (a) If an offer is made for the purchase of shares under a proportional takeover scheme, the directors will call a general meeting to pass an Approval Resolution. The general meeting to consider the Approval Resolution will be held at least 14 days before the end of the period for acceptance of the offer under the proportional takeover scheme.
- (b) The general meeting to consider an Approval Resolution will be convened and conducted in accordance with the requirements of this Constitution and the Relevant Law concerning general meetings.
- (c) The offeror and any associates of the offeror under the proportional takeover scheme will be prohibited from voting on the Approved Resolution.
- (d) Subject to the above paragraph, the persons who hold shares included in a class of shares, at the end of the day when the offer was made, in respect of which the offer under the proportional takeover scheme relates, will be entitled to vote on the Approval Resolution.
- (e) Each person entitled to vote will be entitled to one vote for each share held by the person in the class of shares, at the end of the day when the takeover was made, in respect of which the takeover offer relates.
- (f) An Approval Resolution will be taken to be passed if the proportion of the number of votes in favour of the resolution to the total number of voters entitled to vote on the resolution is greater than one half. The resolution will be considered to be rejected if not passed.

- (g) An Approval Resolution will be deemed to be passed in accordance with this Constitution if a vote on the Approval Resolution is not taken before the end of the 15<sup>th</sup> day before the end of the offer under the proportional takeover scheme.

## **60 Expiry of Takeover Provisions**

The Takeover Provisions will cease to have effect on the day that is three years after the latter of:

- (a) the date when the Takeover Provisions first became binding on the Company; or
- (b) the date when the Takeover Provisions are last renewed by a special resolution of the Company.

## **SALE OF UNMARKETABLE SHAREHOLDINGS**

### **61 Proposal to eliminate unmarketable shareholdings**

The Board may from time to time propose to reduce or eliminate Unmarketable Shareholdings. A notice in writing of each proposal to reduce or eliminate Unmarketable Shareholdings will be provided to each member holding an Unmarketable Shareholding. The notice will include statements that:

- (a) the notice is given in accordance with the Constitution;
- (b) the Company intends to sell the member's Unmarketable Shareholding;
- (c) if the member wishes to retain their Unmarketable Shareholding, they must give notice of their desire to the Company within 42 days after the date of the notice; and
- (d) if the member does not provide a notice to the Company that the member wishes to retain their Unmarketable Shareholding, the Company will be regarded as irrevocably appointed by the member as the member's agent to sell the member's Unmarketable Shareholding in accordance with the Constitution.

### **62 Limitation on notices**

- (a) Subject to paragraph (b), only one Elimination Notice proposing to reduce or eliminate Unmarketable Shareholdings may be provided to members in the 12 month period after the adoption of this Constitution or the renewal of the Elimination Provisions.
- (b) If after the issue of an Elimination Notice to members and before the sale of Unmarketable Shareholdings, a takeover offer or announcement is made:
  - (i) the authority of the Company to sell Unmarketable Shareholdings will be terminated; and

- (ii) a further Elimination Notice may be issued to members after the end of the takeover period.
- (c) An Elimination Notice will not be issued to relevant members during the takeover period of a takeover scheme or announcement.

## **63 Terms of appointment**

- (a) An Authorising Member is regarded on the Appointment Day as irrevocably appointing the Company as the member's attorney to sell the member's Unmarketable Shareholding. The terms of appointment are:
  - (i) the Company may take all necessary steps to authorise the Authorising Member's shares to be moved from the CHESSE Subregister to a subregister administered by the Company;
  - (ii) the purchase price will not be less than the Elimination Price;
  - (iii) a transfer for the shares may be executed by the Company as attorney for the Authorising Member;
  - (iv) the sale of the Unmarketable Shareholdings will occur within five Business Days after the end of the Notice Period;
  - (v) completion of the sale will occur within the latter of five business days after the date of sale or the date agreed between the Company and the purchaser;
  - (vi) the consideration for the sale will be cash;
  - (vii) the Company is authorised to receive the proceeds of any Elimination Sale and deal with the proceeds in accordance with this Constitution;
  - (viii) the Company will pay all stamp duty and other expenses incurred in respect of the Elimination Sale that would be otherwise borne by the Authorising Member;
  - (ix) the terms of any offer, sale or contract concerning the sale of the Unmarketable Shareholdings may be enforced by the Company on behalf of the Authorising Member; and
  - (x) the auditor of the Company, acting as an expert and not as an arbitrator, will determine any dispute arising between any purchaser, the Company and/or the Authorising Member in respect of terms of the sale of Unmarketable Shareholdings and the implementation of the Elimination Provisions.

- (b) The Company will do all that is reasonably necessary to sell Unmarketable Shareholdings of Authorising Members. Any sale will be in accordance with the above terms of appointment.

#### **64 Sale of Unmarketable Shareholdings**

- (a) The transfer of Unmarketable Shareholdings may be effected by one transfer document where the same purchaser purchases some or all of the Unmarketable Shareholdings of two or more Authorising Members.
- (b) The proceeds of sale of any Unmarketable Shareholding will be provided to the Authorising Member by a cheque mailed to the member's address within 14 days of receipt of the proceeds of sale or as otherwise agreed between the Company and the Authorising Member.
- (c) Where the Authorising Member's whereabouts is unknown, the proceeds of sale will be dealt with in accordance with the laws regarding unclaimed monies. The purchaser of any Unmarketable Shareholdings are not bound to ensure the regularity of the actions and proceedings of the Company under the Elimination Provisions.
- (d) The entry of the purchaser's name in the Registry as the holder of the shares purchased from the Authorising Member will record the validity of the sale.

#### **65 Term of sale power**

The Elimination Provisions will cease to have effect on the day which is 12 months after the latter of:

- (a) the date when the Elimination Provisions first became binding on the Company; or
- (b) the date when the Elimination Provisions are last renewed by the Company passing a special resolution at a general meeting providing for their renewal.

### **TRANSMISSION OF SHARES**

#### **66 Death of a member**

If a member dies:

- (a) where the member was a joint holder of any shares, the surviving joint holder (or holders) shall be the only person (or persons) recognised by the Company as having any title to or interest in those shares; and
- (b) the legal personal representatives of the member (not being one of two or more joint holders) shall be the only persons recognised by the Company as having any title to or interest in the shares registered in the members' name.

**67 Transmission on merger**

The merger of any two or more corporations under the laws of any jurisdiction shall constitute a transmission of rights.

**68 Transmission on death or bankruptcy**

- (a) Any person becoming entitled to a share because of the death or bankruptcy of a member or otherwise by operation of law, upon production of any evidence of entitlement which the directors may require, may elect either to be registered as holder of the share or to nominate some other person to be registered as the transferee of that share.
- (b) If the person so becoming entitled elects to be registered, he or she shall deliver or send to the Company a notice in writing signed by him or her. If that person elects to have another person registered, he or she shall execute a transfer of the share in favour of that other person. All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, the form of transfer and the registration of transfers of shares shall be applicable to any such notices or transfers.

**69 Members of unsound mind**

The committee, trustee or other person who has proper management of the estate of a member who is of unsound mind or whose estate is likely to be dealt with in any way under laws relating to mental health, on production of the evidence required by the directors, will be entitled to the same right and entitlements as the member would otherwise have been entitled to.

**MODIFICATION OF RIGHTS**

**70 Modification of rights of class of shares**

Subject to clause 73, if at any time the share capital, whether by reason of the issue of preference shares or otherwise, is divided into different classes of shares, all or any of the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be modified, abrogated or altered in any way with the consent in writing of the holders of three quarters in nominal value of the shares issued in that class or with the sanction of a resolution passed by a majority of three quarters in nominal value of the shares issued in that class. At any meeting to approve such a resolution:

- (a) the quorum shall be members present personally or by proxy and entitled to vote in respect of at least five percent of the issued shares of the class;
- (b) if a quorum is not present within thirty minutes of the time appointed for the commencement of the meeting, it shall stand adjourned to the same day in the next week at the same time and place. If no quorum is present at the adjourned meeting, it shall be dissolved; and

- (c) the provisions contained in this Constitution relating to notice of meetings, the appointment of a chairman and of proxies, attorneys and representatives, the depositing and form and validity of proxies and the conduct of general meetings shall apply to any meeting of a class.

**71 No consent or sanction required for redemption**

A consent or sanction referred to in the previous clause shall not be required in respect of the redemption of any shares or any other alteration of rights attaching to any shares where that redemption or alteration is in accordance with the terms of issue of those shares.

**72 Variation by issue of further shares ranking equally**

The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally in respect of those preferred or other rights.

**73 Restriction on amending voting and dividend rights**

The Company will not remove or change a member's right to vote or receive dividends in respect of particular shares except in any of the following cases:

- (a) calls due and payable on those shares have not been paid;
- (b) in the case of the voting right, the instrument appointing a proxy in respect of those shares has not been deposited in accordance with this Constitution; and
- (c) in the case of the voting right, the member became the holder of those securities after the Qualification Time.

**GENERAL MEETINGS**

**74 Convening of general meetings**

- (a) In relation to the convening of general meetings:
  - (i) any director of the Company may convene annual general meetings or general meetings to be held at any place within or outside Australia as the director thinks fit;
  - (ii) a general meeting shall be convened by the directors as soon as practicable following a requisition of members in the manner provided for by the Law; and
  - (iii) members shall have no right to call general meetings of the Company except as provided by this clause and the Law.

- (b) Except a general meeting required to be convened and held under the Relevant Law, the directors will be entitled to cancel a general meeting.

## **75 Annual General Meeting**

Subject to paragraph (c) and any extensions of time granted under the Law:

- (a) the Company must hold an annual general meeting (AGM) within 18 months after its registration; and
- (b) the Company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.
- (c)

## **76 Notice of general meetings**

- (a) Except as permitted by the Law, at least twenty-eight days notice of every general meeting or meeting of any class of members shall be given in the manner provided by this Constitution to such persons as are entitled under this Constitution to receive notices.
- (b) The following people will be entitled to receive a notice of every general meeting or meeting of a class of members:
  - (i) every member for a general meeting and every member of the relevant class of members for meetings of a specific class or classes of members;
  - (ii) every director and alternate director;
  - (iii) in respect of the relevant members determined by sub-paragraph (i), any person entitled to that member's share as a consequence of the death or bankruptcy of the member; and
  - (iv) the auditor of the Company.
- (c) No other person is entitled to receive notices of general meetings or meetings of a specific class or classes of members.

## **77 Contents of notice of general meetings**

Every notice convening a general meeting shall specify:

- (a) the place, the day and time of the meeting and the general nature of the business to be transacted at the meeting;

- (b) if the directors decide in their absolute discretion to hold the meeting in two or more places, the technology to be used to facilitate the meeting;
- (c) if it is proposed to pass a special resolution, the intention to propose the special resolution and the resolution; and
- (d) if a member is entitled to appoint a proxy, a statement providing:
  - (i) that the member has a right to appoint a proxy;
  - (ii) the member may appoint a proxy of the member's choice; and
  - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

**78 Omission to give notice**

Except as prescribed by the Law, the accidental omission to give notice of a meeting to any member or the non-receipt of notice of a meeting by any member shall not invalidate any of the proceedings at that meeting.

**PROCEEDINGS AT GENERAL MEETING**

**79 Quorum for general meeting**

No business shall be transacted at any general meeting unless a quorum is present at the commencement of the business. A quorum shall be four members present in person or by attorney or proxy.

**80 Representative of body corporate**

Where:

- (a) a person present at a meeting is authorised to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under Section 250D of the Law; and
- (b) the person is not otherwise entitled to be present at the meeting,

the body corporate shall, for the purposes of this Constitution, be deemed to be present in person at the meeting.

**81 No quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting, any meeting convened on a requisition of members shall be dissolved but any other meeting shall



stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the directors may appoint by notice to the members. If at the adjourned meeting a quorum is not present, the meeting shall be dissolved.

## **82 Chairman of general meeting**

The chairman of the directors, or, in his absence, the deputy chairman (if any) shall be entitled to take the chair at every general meeting. If there is no chairman or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or if he is unwilling to act, the directors present may choose a chairman. If the directors do not choose a chairman, the members present shall choose one of the directors to be chairman and if no director is present or willing to take the chair, the members shall choose one of their number to be chairman.

## **83 Powers of chairman**

At any general meeting, a declaration by the chairman that a resolution or special resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the book of proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution or special resolution.

## **84 Adjournment of general meeting**

The chairman of a general meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **85 Notice of adjourned meeting**

If any general meeting is adjourned for more than one month, a notice of the adjournment shall be given to members of the Company in the same manner as notice was or ought to have been given of the original meeting. In the case of all other adjournments, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **86 Questions and comments by members**

- (a) Reasonable opportunity will be provided to members as a whole at the annual general meeting to ask questions about or make comments about the management of the Company.
- (b) If the Company's auditor or the representative is at the annual general meeting, the chairman will allow a reasonable opportunity for members as a whole at the meeting to ask the auditor or the representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## VOTING

### 87 Resolution determined by majority

- (a) At a general meeting:
- (i) all questions submitted to the meeting shall be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Relevant Law;
  - (ii) in the case of an equality of votes, the vote shall be re-taken; and
  - (iii) in the first instance, voting shall be on a show of hands. However, a poll may be demanded on any question by:
    - the chairman;
    - at least 5 members, members' proxies, attorneys or representatives entitled to vote on the resolution; or
    - a member or members present in person or by proxy, representative or attorney holding not less than 5% of the votes that may be cast on the resolution on a poll.

The chairman shall decide in each case the manner in which a poll shall be taken, but in all cases the chairman shall ascertain the number of votes attaching to shares held or represented by persons voting in favour of a resolution or special resolution and the number of votes attaching to shares held or represented by persons voting against the resolution. Any dispute as to the admission or rejection of a vote shall be determined by the chairman and the chairman's determination made in good faith shall be final and conclusive.

- (b) A poll may be demanded:
- (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (c) The demand for a poll may be withdrawn.

**Votes**

- (a) Subject to this Constitution, the Relevant Law and the Company having CHES Approved Securities on issue, the members entitled to vote at a general meeting will be those members at the Qualification Time.
- (b) Subject to the rights or restrictions on voting which may attach to or be imposed on any class of shares, on a show of hands every person present as a member or as a representative, proxy or attorney of a member shall have one vote and (subject to paragraphs (d) and (e)) on a poll every member present in person or by proxy, attorney or representative shall have one vote for each share held by that member.
- (c) A person entitled to cast more than one vote upon a poll need not use all the votes or cast all the votes used in the same way.
- (d) Subject to any restrictions affecting the right of any member or class of members to attend any meeting, a member holding any shares upon which no moneys are due and payable to the Company shall be entitled to receive notices and to attend any general meeting and to vote and be reckoned in a quorum notwithstanding that moneys are then due and payable to the Company by that member in respect of other shares held by that member. Upon a poll, a member shall only be entitled to vote in respect of shares held by the member upon which no moneys are due and payable to the Company at the time the poll is taken.
- (e) A member will be entitled to a fraction of a vote for each partly paid share. This fraction will be equivalent to the proportion of the amount paid (not credited) to the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call will be ignored when calculating the fraction.
- (f) Any objection to the qualification of a voter must be raised at the meeting or adjourned meeting at which the vote is given or tendered. An objection to the qualification of a voter must be referred to the chair. The chair's decision concerning the objection will be final. A valid vote will be valid for all purposes of this Constitution. Any vote required to be disregarded by the Listing Rules will be invalid.
- (g) In respect of Restricted Securities a member will not be entitled to cast a vote in respect of those securities while there exists a breach of a Restriction Agreement in relation to those securities or a breach of the Listing Rules relating to restricted securities.

**Voting by joint holders**

Where there are joint registered holders of any share, any joint holder may vote at any meeting either personally or by proxy or attorney in respect of the shares as if the joint holder was solely entitled to those shares, but if more than one joint holder is present at any meeting (whether personally, by proxy or by attorney) and tenders a vote, only the vote of the joint holder whose name stands first on the register shall be counted. Several legal personal representatives of a

deceased member shall for the purpose of this clause be deemed to be joint holders of the shares registered in the name of that member.

**90 Attorney of member**

Any member may appoint an attorney to act on behalf of the member at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the member's behalf, a power of attorney shall be deposited at the Office or delivered to the Company in compliance with the notice convening that meeting. At the first meeting and at any subsequent meeting to which the power of attorney may relate, the attorney shall hand to the Chairman of the meeting a properly executed declaration of non-revocation of the power of attorney.

**91 Members of unsound mind**

If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, their committee or trustee or such other person as properly has the management of their estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

**PROXIES**

**92 Entitlement to appoint a proxy**

- (a) A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting or at a number of meetings until the proxy expires or is revoked.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) A member who is entitled to cast 2 or more votes at a meeting, may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half the votes. Fractions resulting from the application of this clause shall be disregarded.
- (d) The appointment of a proxy in respect of a specified meeting will be deemed to include the appointment of that proxy for any adjournment of that meeting unless the proxy is revoked prior to the holding of the adjourned meeting.
- (e) Where an appointment of proxy is signed by all joint holders of any share(s), the votes of the proxy so appointed shall be accepted in respect of that share(s) to the exclusion of any votes tendered by a proxy for any one of those joint holders.

**93 Rights of proxies**

- (a) A proxy appointed to attend and vote for a member has the same rights as the member:
  - (i) to speak at the meeting; and
  - (ii) to vote (but only to the extent allowed by the appointment); and
  - (iii) join in a demand for a poll.
- (b) A proxy may vote on a show of hands.
- (c) A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

**94 Standing proxy**

- (a) An appointment of a proxy may be expressed to be for a specific time/meeting, or to be a standing proxy until the occurrence of a specified event or until revoked by the appointor.
- (b) If an appointment of a proxy does not specify the meeting or period for which the appointment is to be in force, the appointment will remain in force for 12 months, except subject to the conditions of the proxy, a proxy may be revoked by the appointor or the appointor's attorney at any time. This revocation shall have effect from the time written notice of this revocation is given to the Company.

**95 Instrument appointing proxy**

The instrument appointing a proxy shall be in writing signed by the appointor or by the appointor's attorney duly authorised in writing, or, if the appointor is a body corporate, under its common seal or the hand of a duly appointed officer or attorney.

**96 Deposit of Proxy with Company**

- (a) The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney shall, unless otherwise specified in the notice convening the meeting, be deposited at the Office not less than forty-eight hours before the time for holding the meeting or adjourned meeting. A proxy not deposited in accordance with this Constitution will be invalid.
- (b) Unless otherwise specified in the notice convening the meeting, a proxy and the authority or attorney under which the proxy is signed may be deposited at the Office by personal delivery, post, facsimile or e-mail. The proxy will provide an address for delivery and post, and a facsimile number for facsimile transmission.

**97 Validity of vote given in accordance with proxy**

A vote given in accordance with the terms of an instrument of proxy or a power of attorney shall be valid notwithstanding:

- (a) the previous death of the member;
- (b) mental incapacity of the member;
- (c) revocation of the proxy’s appointment by the member;
- (d) revocation by the member of the authority or attorney under which the proxy was appointed by the appointor; or
- (e) transfer of the member’s share in respect of which the proxy was appointed,

unless the Company receives by delivery, post, facsimile or any other manner approved by the Company, written notice of that matter at the Office or any place specified for the deposit of proxies before the start or resumption of the meeting at which a proxy votes.

**98 Form of proxy**

Every instrument of proxy shall as nearly as circumstances permit be in the form or to the following effect and signed by the appointor or member:

\_\_\_\_\_ Limited  
ACN \_\_\_\_\_

**PROXY**

I..... of .....  
being a member of the above Company, hereby appoint the person(s) named below, or the Chairman if no person is named below, in respect of that number or proportion of the shares held by me in the Company as set out below:

<b>Name of proxy</b>	<b>Address</b>	<b>Number of shares / proportion of shares</b>
----------------------	----------------	--

.....  
.....

as proxy to vote on my behalf at the following meeting(s) of the Company and at any adjournment thereof:

- 1 Meeting of the Company to be held on \_\_\_\_\_ OR
- 2 All meetings of members of the Company held within \_\_\_\_\_ months from the date of this appointment OR
- 3 All meetings of members of the Company held prior to the revocation of this appointment.

This Proxy may be used as follows:

**Resolution** **For/Against**

.....For/Against

.....For/Against

Signed this ..... day of .....

Signature of Member: .....

Name of Member:.....

This proxy must be delivered, posted or forwarded by facsimile or e-mail to the Company at least 48 hours before the relevant meeting at the following address:

[Address]

[Facsimile number]

[e-mail]

or in such other form as the directors may from time to time prescribe or accept. The instrument of proxy may be worded so that a proxy may be directed to vote either for or against each of the resolutions to be proposed. Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not filled in shall be deemed to be given in favour of the chairman of the meeting or meetings to which it relates.

## **DIRECTORS**

### **99 Number of directors**

The number of the directors shall not be less than four, nor, until otherwise determined by the Company in general meeting, more than ten.

### **100 Residence of directors**

At least two of the directors shall be natural persons who ordinarily reside within Australia.

### **101 Age of directors**

- (a) Unless approved annually by a special resolution at the annual general meeting, a person shall not be appointed or continue to act as a director upon or after reaching the age of 72 years.
- (b) A vacancy in the office of a director occurring because the director attains the age of 72 will not be taken into account in determining when other directors must retire.

**102 First directors**

The first directors shall be appointed by the subscribers to the Constitution.

**103 Current directors**

The directors and secretary in office at the time of adoption of this Constitution will continue in office subject to this Constitution.

**104 Consent and no share qualification**

Before being appointed as a director, a person must give the Company a signed consent to act as a director which must be retained by the Company. A director need not be the holder of any shares in the Company.

**105 Election of directors by Company**

- (a) The election of directors (including election of additional directors and filling of current vacancies) shall be by resolution of the Company in general meeting.
- (b) An election of directors will occur each year.
- (c) A single resolution shall not include a motion for the appointment of 2 or more persons as directors of the Company unless a unanimous resolution has first been passed that the resolution be moved at the meeting.

**106 Directors may fill casual vacancies or appoint additional directors**

- (a) Notwithstanding the previous clause, the directors shall also have power at any time to appoint any other person as a director, either to fill a casual vacancy or as an addition to the Board, except that the total number of directors shall not at any time exceed the maximum number for the time being fixed by or under this Constitution.
- (b) A director appointed to fill a casual vacancy or as an addition to the Board will not hold office (without re-election) past the next annual general meeting of the Company.

**107 Auditor cannot be director**

No auditor of the Company or partner or employee or employer of an auditor shall be appointed a director or an alternate director of the Company.

**108 Alternate director**

Subject to the provisions of the Law, each director (the **Appointor**) by notice in writing may appoint any person (whether or not a member) to act as an alternate director in place of the Appointor during such period as the Appointor thinks fit. Any alternate director:



- (a) may be removed or suspended from office by written notice to the Company from the Appointor;
- (b) is entitled to receive notice of meetings of the Board, to attend meetings (if the Appointor is not present) and to be counted towards a quorum at meetings;
- (c) is entitled to vote at meetings where the alternate director attends on all resolutions on which the Appointor could vote if the Appointor attended and, where the alternate director is also a director, the alternate director shall have a vote as a director as well as a separate vote on behalf of the Appointor;
- (d) need not be the holder of any shares in the Company;
- (e) may exercise any powers that the Appointor may exercise where the Appointor is unavailable for any reason except the power to appoint an alternate director. The action of an alternate director shall be conclusive evidence as against third parties of the unavailability of the Appointor;
- (f) shall automatically vacate office if the Appointor is removed or otherwise ceases to hold office for any reason;
- (h) shall cease to hold office after 7 days of notice of the passing of a resolution to terminate the appointment by either the Board or the Company;
- (i) whilst acting as a director, is responsible to the Company for the alternate's own acts and defaults and shall not be deemed to be the agent of the Appointor;
- (i) shall not be entitled to receive any remuneration from the Company but shall be entitled to reimbursement for reasonable travelling and other expenses incurred by the alternate in attending meetings of the Board or otherwise on the Company's business;
- (j) shall not be taken into account in determining the number of directors for the purposes of this Constitution; and
- (k) may act as an alternate for more than one director.

## **109 Nomination of directors**

- (a) For each candidate for a position of director, a notice of nomination stating that the person is nominated as a candidate for election as a director and signed by a member or the candidate for election must be received by the Company at least 30 Business Days before the general meeting for the election of the director or a later date determined by the directors, which shall not be later than the last date on which the notice convening the general meeting may be lawfully given.

- (b) The Company will accept nominations for the election of directors up to 30 Business Days before the date of a general meeting at which directors may be elected.
- (c) A director who retires by rotation shall be regarded as offering himself for re-election at the general meeting at which the director retires unless before the last date for nomination of directors, the director notifies the Company in writing that the director is not available for re-election.

## **DIRECTORS' TENURE OF OFFICE**

### **110 Directors' tenure of office**

Subject to the Relevant Law, each director shall hold office until removed in accordance with this Constitution or until the director's office is vacated in accordance with this Constitution.

### **111 Retirement of directors**

- (a) A director will not hold office (without re-election) past the third annual general meeting following the director's appointment or three years, whichever is longer. This rule does not apply to the managing director (but if there is more than one managing director, only the first appointed is entitled not to be subject to re-election).
- (b) A retiring director will be eligible to act throughout the meeting at which the director retires.
- (c) A director may retire from office after providing the Company with written notice of the director's intention to retire. The resignation of the director will come into effect on the latter of:
  - (i) the time the notice is provided to the Company; or
  - (ii) the time specified in the notice.
- (d) A director who retires or whose office is vacated under this Constitution shall be eligible for election or re-election to the Board except as expressly provided in this Constitution.
- (e) A retiring director is re-elected by a resolution of members. The re-election has effect from the end of the meeting at which the director is re-elected.

### **112 Removal of director by the Company**

The Company may by resolution remove any director at any time.

### **113 Vacation of office**

The office of a director shall be automatically vacated if the director:

- (a) becomes insolvent under administration;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (c) resigns his office by notice in writing to the Company; or
- (d) vacates office or is prohibited from being a director in accordance with any of the provisions of the Relevant Law or any order made under the Relevant Law.

A director whose office is vacated under paragraphs (a), (b) or (c) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

## **PROCEEDINGS OF DIRECTORS' MEETINGS**

### **114 Board meetings and quorum for Board meetings**

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The directors may determine the quorum necessary for the transaction of business.
- (c) Until such a determination is made, four directors shall be a quorum.
- (d) A quorum for directors' meetings will not be present during the consideration of a matter at a directors' meeting unless at least two directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter being considered.
- (e) A general meeting can deal with any matter which the directors cannot deal with in a directors' meeting because of the above paragraph.

### **115 Conduct of Board meetings**

- (a) The directors may conduct their meetings by telephone or other means of communication without a director or directors being in the physical presence of another director or other directors.
- (b) If a director consents to the holding of a meeting using a certain technology, the director may only withdraw their consent within a reasonable period before the meeting.

### **116 Convening of Board meeting and place of meeting**

A director may at any time and the secretary upon the request of a director shall convene a meeting of directors. Meetings may be held outside Australia.

**117 Notice of Board Meetings**

Unless otherwise agreed by the director or determined by the directors, 24 hours notice of each Board meeting will be provided to all directors. This notice may be provided by telephone, facsimile, e-mail or any other method agreed by the directors.

**118 Board meeting competent to exercise all powers**

A meeting of the directors at which a quorum is present shall be competent to exercise all or any of the powers and discretions vested in or exercisable by the directors generally.

**119 Resolution passed deemed to be determination of Board**

Any resolution properly passed at a duly convened meeting of the directors at which a quorum is present shall be deemed to be a determination by all the directors or the Board for the purposes of this Constitution.

**120 Directors may act notwithstanding vacancies**

The directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed as a quorum, they shall not act except in the case of emergency or for the purpose of filling up vacancies or summoning a general meeting.

**121 Chairman of Board meetings**

The directors may elect a chairman and deputy chairman of their meetings and determine the periods for which they are to hold office. If no chairman or deputy chairman is elected or if at any meeting neither the chairman nor the deputy chairman is present at the time appointed for the meeting, the directors present at the meeting shall choose one of their number to be chairman of the meeting.

**122 Questions to be decided by majority**

- (a) Questions arising at any meeting shall be decided by a majority of votes of directors present and voting. Subject to paragraph (b), in the case of an equality of votes, the chairman of the meeting shall have a second or casting vote.
- (b) The chairman of Board meetings will not exercise a casting vote at any meeting at which only four directors who are present are entitled to vote.

**123 Resolution in writing**

A resolution in writing of which notice has been given to all directors entitled to receive notice of a meeting of the directors and which is signed by a majority of directors entitled to attend and vote at meetings of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the directors. For the purposes of this clause, the signature of an alternate director shall be as effective as, and may be substituted for,

the signature of the Appointor. The resolution is passed when the last director required to give the resolution majority approval signs the document.

#### **124 Committee powers and meetings**

The directors may delegate any of their powers to committees consisting of any member or members of their body as they think fit and may revoke any such delegation. Any committee shall exercise the powers delegated to it in accordance with any directions that may from time to time be imposed upon it by the Board. The meetings and proceedings of any committee consisting of two or more members shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the directors so far as they are applicable and are not superseded by any direction made by the Board under this clause.

#### **125 Validity of acts of directors**

All acts done by any meeting of the directors or by a committee of the directors or by any person acting as a director shall be valid notwithstanding that it is afterwards discovered that there was some defect in the appointment or election of any director or person acting as a director or that any director was disqualified or had vacated office or was otherwise not entitled to vote or act.

### **DIRECTORS' CONTRACTS**

#### **126 Directors not disqualified from holding office or contracting with Company**

Notwithstanding any rule of law or equity:

- (a) no director shall be disqualified by reason of being a director from holding any office or place of profit (other than as auditor) with the Company or with any company promoted by the Company or with any corporation in which the Company is a shareholder or which is a shareholder of the Company or in which the Company is otherwise interested;
- (b) no director shall be disqualified by reason of being a director from contracting with the Company (whether as vendor, purchaser or otherwise);
- (c) no contract referred to in paragraph (b) or any contract or arrangement entered into by or on behalf of the Company in which any director is in any way interested shall be avoided and no director shall be liable to account to the Company for any profit arising from such a contract or arrangement or from any office referred to in paragraph (a) (or other place of profit) by reason only of that director holding that office or of the fiduciary relations thereby established.

#### **127 Director may hold office or act in professional capacity**

A director:

- (a) may hold any office in connection with the Company's business except that of auditor; and

- (b) may act individually or through a firm of which the director is a member in a professional capacity for the Company (except as auditor) and the director or firm shall be entitled to remuneration for professional services as if the director were not a director.

## **128 Voting by interested directors**

- (a) A director of the Company who has a material personal interest in a matter that is being considered at a meeting of the Board, or of directors, of the Company:
  - (i) must not vote on the matter; and
  - (ii) must not be present while the matter is being considered at the meeting.
- (b) Paragraph (a) does not apply to an interest that a director has:
  - (i) as a member of the Company; and
  - (ii) in common with the other members of the Company.

## **129 Board resolution concerning voting on interested matters**

The Board may at any time exclude the operation of the above clause by passing a resolution that:

- (a) specifies the director, the interest, the matter and its relation to the affairs of the Company; and
- (b) states that the directors voting on the resolution (which must not include a director that has a material interest in the matter being considered) are satisfied that the interest should not disqualify the director or directors concerned from considering or voting on the matter.

## **POWERS OF DIRECTORS**

### **130 Powers of directors**

Subject to the Relevant Law and to any provision of this Constitution, the business of the Company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the Company and may exercise all such powers of the Company as are not, by the Relevant Law or by this Constitution, required to be exercised by the Company in general meeting.

### **131 Powers to borrow or raise money**

Without limiting the generality of the previous clause, the directors may from time to time at their discretion borrow or raise any sum or sums of money or obtain other accommodation for the purposes of the Company and may secure the repayment of such sum or sums or the

payment, performance or fulfilment of any debts liabilities, contracts or obligations incurred or undertaken by the Company in such manner and upon such terms and conditions as they think fit and in particular by the issue or re-issue of bonds, perpetual or redeemable debentures or debenture stock or any mortgage, charge or other security on the undertaking or the whole or any part of the property of the Company (both present and future) including its uncalled or unpaid capital for the time being.

**132 Directors may vote shares in other corporations**

Subject to the Relevant Law, the directors may exercise the voting power conferred by the shares in any corporation held by the Company in such manner as they think fit including in circumstances where a director may be interested in the exercise, such as an exercise in favour of any resolution appointing a director as an officer of a corporation or voting or providing for the payment of remuneration to officers of the other corporation.

**133 Security over Company's assets**

Subject to the Relevant Law, if the directors or any of them or any other persons become personally liable (whether as surety or otherwise) for the performance of any of the Company's obligations, the directors may, notwithstanding their interest, execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the liability.

**134 Assignment of Office**

A director shall not assign his or her office to another person unless such assignment is approved by special resolution at a general meeting.

**EXECUTIVE DIRECTORS**

**135 Managing director**

The directors may at any time appoint one or more of their body to the office of managing director or to any other executive office for any period and on any terms they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any appointment. A director appointed as executive chair or managing director shall automatically cease to hold office if the person ceases for any reason to be a director.

**136 Remuneration of executive directors**

An executive director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors may determine. An executive director's salary will not include a commission on, or percentage of, operating revenue.

**137 Directors may confer powers on executive directors**

The directors may confer upon a managing director or other executive director any of the powers exercisable by the directors upon such terms and conditions and with such restrictions as they think fit. Any powers so conferred may be concurrent with or to the exclusion of their own powers. The directors may at any time revoke, withdraw, alter or vary all or any of those powers.

**138 Retirement by rotation**

- (a) Subject to paragraph (b), an executive director is subject to retirement by rotation.
- (b) An executive director appointed to the position of managing director will not be subject to retirement by rotation and is not to be counted in determining rotation or retirement of other directors.

**LOCAL MANAGEMENT AND ATTORNEYS**

**139 Local Boards and agencies**

The directors may at any time provide for the management of the affairs of the Company in any place in any manner they think fit and without limiting the generality of this clause, the directors may:

- (a) establish any local Boards or agencies for managing any of the affairs of the Company in any locality and may appoint any persons to be members of the local Board or to act as managers or agents of the Company and, in connection with any appointment, may fix remuneration, impose conditions and remove any appointee as the directors think fit;
- (b) delegate to any person referred to in paragraph (a) any of the powers, authorities and discretions for the time being vested in the directors other than the power of making calls, and vary or annul such delegation; and
- (c) authorise the members for the time being of any local Board (or any of them) to fill up any vacancies and to act notwithstanding vacancies.

**140 Appointment of attorney**

The directors may at any time by power of attorney executed in accordance with the clauses of this Constitution concerning execution of documents appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as the directors think fit. Any appointment may be made in favour of any company or the members, directors, nominees or managers of any company or firm or in favour of any fluctuating body of persons (whether nominated by the directors or otherwise) and any power of attorney may contain provisions for the protection or



convenience of the attorney or attorneys and of persons dealing with the attorney or attorneys as the directors may think fit.

#### **141 Sub-delegation of powers**

Any delegate, manager, agent or attorney appointed by the directors may be authorised by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

### **DIRECTORS' REMUNERATION**

#### **142 Remuneration of directors**

- (a) The directors shall be paid remuneration for services rendered as directors (but excluding any remuneration payable to any director under any executive service contract with the Company or a related body corporate) as the Company in general meeting may from time to time determine. The remuneration of a director shall be deemed to accrue from day to day.
- (b) If a non-executive director is paid, he or she will be paid a fixed sum.
- (c) An executive director's salary or director's fees will not include a commission on, or percentage of, operating revenue.

#### **143 Additional remuneration for extra services**

If any director performs extra services or makes any special exertions, whether in going or residing abroad or otherwise for any of the purposes of the Company, the Company may pay that director a fixed sum to be determined by the directors. This payment may be either in addition to or in place of any remuneration determined under the preceding clause.

#### **144 Expenses of directors**

In addition to any remuneration, the directors may also be paid all travelling and other expenses incurred by them in attending and returning from meetings of the directors, any committee of the directors or any general meetings of the Company or otherwise in connection with the business of the Company.

### **MINUTES AND REGISTERS TO BE KEPT**

#### **145 Minutes**

The directors shall cause to be duly entered in books provided for the purpose within one month of the relevant meeting, minutes containing details of:

- (a) the names of the directors present at each meeting of the directors and of any committee of directors;
- (b) all orders made by the directors and committees of directors;
- (c) all resolutions passed by directors or members without a meeting;
- (d) all resolutions and proceedings of general meetings of the Company, meetings of the directors and meetings of any committee of the directors; and
- (e) in respect of each resolution in the notice of a general meeting, the total number of proxy votes exercisable by all proxies validly appointed; and
  - (i) if the resolution is decided by a show of hands, the total number of proxy votes in respect of which the appointments specified that:
    - the proxy is to vote for the resolution;
    - the proxy is to vote against the resolution;
    - the proxy is to abstain on the resolution; and
    - the proxy may vote at the proxy's discretion,
  - (ii) if the resolution is decided on a poll, information specified in the above subparagraph and the total number of votes cast on the poll:
    - in favour of the resolution;
    - against the resolution; and
    - abstaining on the resolution.

#### **146 Signing of minutes**

Any minutes of any general meetings of the Company, meetings of the directors or meetings of any committee of the directors shall be signed by the chairman of the meeting or by the chairman of the next succeeding meeting within a reasonable time after the meeting and once signed shall constitute evidence of the matters stated in the minutes.

#### **147 Place and inspection of minute books**

The Company will keep its minute books at:

- (a) its registered office;

- (b) its principal place of business; or
- (c) any other place approved by the Australian Securities and Investments Commission (ASIC),

and will ensure the minute books are open for inspection by the members free of charge.

#### **148 Registers**

In accordance with the provisions of the Law, the directors shall cause the Company to keep:

- (a) the Register;
- (b) if the Company issues any debentures, a register of the debenture holders;
- (c) a register of charges;
- (d) if the Company grants options over unissued shares, a register of the option holders and copies of option documents; and
- (e) any other registers required to be kept under the Relevant Law.

### **THE SECRETARY**

#### **149 Secretary**

A secretary or secretaries of the Company shall be appointed by the directors in accordance with the Relevant Law. At least one secretary shall be ordinarily resident in Australia. The directors may also appoint acting and assistant secretaries. Any such appointment may be for such term, at such remuneration and upon such conditions as the directors think fit and any person so appointed may be removed by the directors.

### **EXECUTION OF DOCUMENTS**

#### **150 Common Seal optional**

Except where required by the Law, the Company need not have or use a company seal to execute documents or deeds. The directors may determine at any time by a resolution approved by the directors whether the Company is to have or use a company seal.

#### **151 Execution without the Common Seal**

The Company may validity execute a document (including a deed) without using the Seal if the document is signed by a director and countersigned by another director, secretary, assistant secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

**152 Execution by the Common Seal**

The Company may validly execute a document (including a deed) by affixing the Seal to the document and the affixing being witnessed by a director and countersigned by another director, a secretary, an assistant secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

**153 Without limitation**

Clauses 151 and 152 do not limit the ability of the directors to authorise somebody to execute a document for and on behalf of the Company.

**THE SEAL**

**154 Use of common seal**

The directors shall provide for the safe custody of the Seal. The Seal shall be used only by the authority of the directors or a committee of the directors with authority from the directors to authorise the use of the Seal.

**155 Official seals**

The Company may have for use in place of its common seal outside the State where the Seal is kept, one or more official seals, each of which shall be a facsimile of the Seal with the addition on its face of the name of every place where it is to be used. The person affixing an official seal shall, in writing under his hand, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

**NEGOTIABLE INSTRUMENTS**

**156 Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments shall be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by such persons and in such manner as the directors may determine.

**RESERVE FUND**

**157 Reserves**

Before declaring any dividends, the directors may set aside out of the profits of the Company any sums they think proper as reserves to be applied to meet contingencies, to equalise dividends, to pay special dividends, to repair, improve or maintain any property of the Company or for any other purpose the directors in their absolute discretion consider to be in the interests of the Company. Pending such application, the reserves may, at the discretion of the directors, be used in the business of the Company or be invested in any investments the directors think fit

(including the purchase of ordinary shares of the Company). The directors may deal with and vary these investments and dispose of all or any part for the benefit of the Company and may divide the reserves into special reserves as they think fit.

**158 Carry forward of profits**

The directors may carry forward any profits they consider ought not to be distributed as dividends without transferring those profits to a reserve.

**159 Revaluation of assets**

Subject to the Relevant Law, the directors may revalue any assets of the Company.

**DIVIDENDS**

**160 Provisions of dividends**

- (a) The directors may determine that a dividend is payable and fix:
  - (i) the amount;
  - (ii) the time for payment; and
  - (iii) the method of payment.
- (b) The methods of payment may include the payment of cash, issue of shares, grant of options and transfer of assets.
- (c) The directors may pay dividends as they think fit.

**161 Apportionment of dividends**

- (a) Subject to the rights of members entitled to shares with preferential, special or qualified rights as to dividends, the profits of the Company shall be divisible among the members in proportion to the amounts paid up on the shares held by them. For the purposes of this clause:
  - (i) any amount paid on a share during the period in respect of which a dividend is declared shall only entitle the holder of such share to a proportionate amount of that dividend as from the date of payment;
  - (ii) an amount paid on a share in advance of a call or before due shall not, be taken to be paid; and

- (iii) if any share is issued on terms that it shall rank for dividends as though fully or partially paid up as from a particular date, that share shall rank for dividends accordingly.
- (c) The holders of Restricted Securities will not be entitled to receive dividends where there exists a breach of a Restriction Agreement or a breach of the Listing Rules relating to restricted securities entered into by the Company in respect of the securities.
- (d) The directors are entitled to deduct from any dividend payment to a member all sums of money, if any, presently payable by the member to the Company on account of calls in relation to shares in the Company.

## **162 Selective dividends**

The directors may determine to pay one dividend on all shares or may determine to pay two or more dividends at a meeting of directors with each dividend determined to be payable on any shares to the exclusion of any other shares but so that the amount payable (out of the total of the amount of all dividends fixed for payment at that meeting) on all shares is in the proportions specified in this Constitution.

## **163 Dividends may be payable in foreign currency**

The directors shall fix the payment of dividends in Australian currency, but the directors may, if they think fit, determine that any dividend payable to some or all the members shall be paid in a currency or currencies other than Australian currency and for that purpose the directors may at the time of fixing the payment of the dividend stipulate a date on which they shall determine the rate or rates at which the dividend shall be converted into the other currency or currencies. Payment in another currency or currencies of the amount of any dividend converted pursuant to this clause shall be deemed as between the Company and all members to be an adequate and proper payment of the amount of the dividend.

## **164 Dividends only payable out of profits**

No dividend shall be payable except out of the profits of the Company.

## **165 No interest payable on dividends**

Interest is not payable by the Company in respect of any dividend.

## **166 Directors may retain certain dividends**

The directors may retain the dividends payable on any shares in respect of which any person is entitled to become a member as a consequence of death, bankruptcy or other operation of law until that person or a nominated transferee becomes a member in respect of the shares.

## **167 Payment of dividends**

Any dividend, interest or other moneys payable in respect of any shares may be paid by cheque or warrant sent through the post to:

- (a) the registered address of the member or person entitled or, in the case of joint holders, to the registered address of that holder whose name stands first on the register in respect of the joint holding; or
- (b) to such person at such address as the holder or joint holders may in writing direct.

Every cheque or warrant so sent may be made payable to the order of the person to whom it is sent and shall be at his/her risk.

## **168 Dividend payable by distribution of assets**

The directors when fixing the payment of a dividend may:

- (a) resolve that the dividend be paid wholly or partly by the distribution of specific assets including paid up shares, debentures or debenture stock of the Company or any other corporation; and
- (b) to the extent permitted by law, direct that the dividend be payable to particular members wholly or partly out of profits derived from any particular source and to the remaining members wholly or partly out of profits derived from any other particular source and may make the direction notwithstanding that by doing so the dividend will form part of the assessable income for taxation purposes of some members and will not form part of the assessable income of others.

All matters concerning such dividends including valuation of assets shall be determined by the directors as they think expedient.

## **169 Dividend reinvestment**

The Board may permit members or a class of members to elect to reinvest cash dividends provided by the Company by subscribing for shares in the Company on the terms determined by the Board.

## **CAPITALISATION OF PROFITS**

### **170 Capitalisation of profits**

- (a) Subject to the Relevant Law, the directors may resolve to capitalise profits including any sum for the time being standing to the credit of any of the Company's reserve accounts profit and loss account, arising from a revaluation or sale of assets or otherwise arising.

- (b) The directors may resolve to apply any sum capitalised for the benefit of members in the following manner:
  - (i) in or towards paying up any amounts for the time being unpaid on any shares held by such members;
  - (ii) in paying up in full or in part any unissued shares or debentures of the Company to be allotted and distributed credited as fully paid to such members; or
  - (iii) partly as permitted by paragraph (i) and partly as permitted by paragraph (ii).

### **171 Directors' powers in relation to capitalisation of profits**

In giving effect to any resolution for capitalisation under the previous clause, the directors may:

- (a) appoint any person to make an agreement on behalf of the members entitled to benefit from the resolution where such agreement is required under the Relevant Law or is otherwise considered by the directors to be desirable;
- (b) make cash payments where shares or debentures become issuable in fractions; and
- (c) otherwise make provisions for adjusting differences and settling any difficulty arising pursuant to the resolution including a determination that fractions shall be disregarded or that a fractional entitlement be increased to the next whole number.

## **ACCOUNTS**

### **172 Accounting records**

The directors shall cause accounting and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Relevant Law or this Constitution. The records shall be kept:

- (a) in such manner as to enable them to be conveniently and properly audited;
- (b) for seven years after the completion of the transactions or operations to which they relate; and
- (c) at the Office or at such other place as the directors think fit and at all times be open to inspection by the directors.

### **173 Accounts**

- (a) The Company will prepare each financial year a financial report and a directors report.



- (b) The financial report for each financial year will consist of:
  - (i) the financial statements for the year;
  - (ii) the notes to the financial statements; and
  - (iii) the directors' declaration about the statement and the notes.
- (c) The financial statements for the year will consist of:
  - (i) a profit and loss statement for the last financial year of the Company;
  - (ii) a balance sheet at the date to which the profit and loss account is made up;
  - (iii) a statement of cash flows for the year; and
  - (iv) if required by the Accounting Standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (d) The notes to the financial statements will consist of:
  - (i) disclosures required by the Regulations;
  - (ii) the notes required by the Accounting Standards if any; and
  - (iii) any other information necessary to give a true and fair view of the financial position and performance of the Company and the consolidated entity if required.
- (e) The directors declaration is a declaration by the Directors:
  - (i) that the financial statements, and the notes required by the Accounting Standards, comply with the Accounting Standards;
  - (ii) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company, and the consolidated entity if required;
  - (iii) whether, in the directors' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
  - (iv) whether, in the directors' opinion, the financial statement and attached notes are in accordance with the Relevant Law.

## **AUDIT**

### **174 Auditors**

The Company will appoint an auditor to audit the Company's financial statements in accordance with the Law.

### **175 Approval of accounts**

Accounts of the Company when approved by a general meeting shall be conclusive except as regards any error identified within three months after the date of approval. If any error is identified within this period, the accounts shall forthwith be corrected and shall then be conclusive.

## **INSPECTION OF RECORDS**

### **176 Inspection of records**

Subject to the Law, the directors shall determine whether, to what extent, at what times and places and under what conditions the accounting and other records of the Company or any of them shall be open to the inspection of the members. No member (not being a director) shall have any right to inspect any account, book or document of the Company or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of the Company except as provided by the Law or as authorised by the directors or a resolution of the Company in general meeting.

## **NOTICES**

### **177 Service of notices by Company**

A notice may be given by the Company to any member either personally, by telex, facsimile or e-mail to the relevant telex, facsimile number or e-mail address of the member as shown on the Register, by sending it by post addressed to the member at his address as shown in the Register or otherwise by such method (including by advertisement) as the directors may determine.

### **178 Posting notices and documents to overseas members**

In the case of a member whose registered address is outside the country, a notice or document to that member will be sent by airmail in an envelope bearing the requisite postage, facsimile or such other manner that ensures it will be received quickly.

### **179 Notices to joint holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register and notice so given shall be sufficient notice to all the joint holders.

**180 Notice deemed to be served**

Any notice by advertisement shall be deemed to have been served on the day of publication of the newspaper containing the advertisement. Any notice sent by post shall be deemed to have been served on the day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it shall be deemed to have been served on the fifth day following the day on which it is posted. A notice sent by telex, facsimile, e-mail or other electronic means shall be deemed to have been served on the same day that it is sent.

**181 Service by post**

In proving service by post, it is sufficient to prove that the notice bearing the requisite postage was properly addressed and posted. A certificate in writing signed by a manager, secretary or other officer of the Company that the notice was so addressed and posted shall be conclusive evidence thereof.

**182 Notices to members whose whereabouts unknown**

Where:

- (a) the Company has bona fide reason to believe that a member is not known at the address shown for that member in the Register;
- (b) the Company has subsequently made an enquiry at that address as to the whereabouts of the member; and
- (c) the enquiry either elicits no response or a response indicating that the member's present whereabouts are unknown,

all future notices shall be deemed to be given to the member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of forty-eight hours and shall be deemed to be duly served at the commencement of that period. This clause shall apply unless and until the member informs the Company of a registered place of address or that the member has resumed residence at the member's address shown in the Register or notifies the Company of a new address to which the Company may send the member notices (which new address shall be deemed to be the member's registered place of address).

**183 Notices binding on transferees**

Every person who by operation of law, transfer or otherwise becomes entitled to any share shall be bound by every notice in respect of the share which, prior to his name and address being entered on the Register, is duly given to the person from whom that person derives title to the share.

**184 Notice to deceased or bankrupt members**

Any notice or document given to a member shall be deemed to have been duly given in respect of any shares held solely or jointly by the member despite that the member's death or bankruptcy and whether or not the Company has notice of death or bankruptcy until some other person is registered in place of the member as the holder or joint holder.

**185 Signing of notices**

The signature to any notice to be given by the Company may be written or printed.

**186 Counting of days**

Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given shall be reckoned in the number of days or other period.

**WINDING UP**

**187 Distribution of assets**

If the Company is wound up and the assets available for distribution among the members are insufficient to repay the whole of the paid up capital, such assets shall be distributed so that, as nearly as possible, the losses shall be borne by the members in proportion to the capital paid up at the commencement of the winding up (or which ought to have been paid up as at that date and has since been paid during the winding up) on the shares held by them. If in a winding up the assets available for distribution among the members are more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall (subject to the rights of the holders of shares issued upon special terms and conditions) be distributed amongst the members in proportion to the capital paid up at the commencement of the winding up (or which ought to have been paid up as at that date and has since been paid during the winding up) on the shares held by them.

**188 Fee or commission paid to liquidator to be approved in general meeting**

No fee or commission shall be paid by the Company to any director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part thereof except with the approval of the Company in general meeting, such meeting to be convened by notice specifying the fee or commission proposed to be paid.

**189 Distribution in specie**

If the Company is wound up (whether voluntarily or otherwise), the liquidator may, with the sanction of a special resolution, divide among the contributories in specie or kind any part of the assets of the Company and may, subject to obtaining the same sanction, vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories or any of them as the liquidator thinks fit. For the purposes of this clause, the liquidator may set values as

he considers fair and reasonable on any property to be divided and determine how the division is to be carried out.

**190 Distribution of assets other than in accordance with legal rights**

If the liquidator considers it expedient, any division of assets under the preceding clause may be otherwise than in accordance with the legal rights of the contributories and in particular, any class may be given preferential or special rights or may be excluded altogether or in part from a division of assets. Where any division occurs otherwise than in accordance with the legal rights of the contributories, any contributory who would be prejudiced shall have a right to dissent and ancillary rights under section 507 of the Law.

**191 Distribution on partly paid shares**

In any division of assets, where a contributory is entitled to shares with a liability to pay calls or otherwise, the contributory may, within ten days after the passing of the special resolution in respect of the division, by notice in writing direct the liquidator to sell his proportion and pay him the net proceeds and the liquidator shall, if practicable, act accordingly.

**INDEMNITY**

**192 Indemnification of officers of the Company**

Every officer of the Company shall be indemnified out of the property of the Company against the following:

- (a) any liability incurred by the officer in his or her capacity as an officer of the Company in defending any proceedings, whether civil or criminal, in which judgment is given in the officer's favour or in which the officer is acquitted including any application in relation to any such proceedings in which relief under the Law is granted to the officer by a Court; and
- (b) any liability incurred by the officer in his or her capacity as an officer of the Company to a person other than the Company or a related body corporate, unless the liability arises out of conduct involving a lack of good faith by the officer.

**193 Insurance premiums**

The Company may pay an insurance premium on a contract insuring an officer or previous officer of the Company against:

- (a) liabilities for costs and expenses incurred by the officer or previous officer in defending proceedings concerning the officer's or previous officer's conduct as an officer of the Company, whether civil or criminal, regardless of the outcome of the proceedings; and

- (b) any other liability incurred by the officer or previous officer as an officer of the Company except a liability which arises from conduct involving a wilful breach of duty in relation to the Company or contravention of subsections 232(5) and (6) of the Law.