



# Constitution of BCD Resources NL

Adopted on:

2011

**MILLS OAKLEY LAWYERS**

Level 6, 530 Collins Street

MELBOURNE VIC 3000

Telephone: +61 3 9670 9111

Facsimile: +61 3 9605 0933

DX 558, MELBOURNE

[www.millsoakley.com.au](http://www.millsoakley.com.au)

Ref: 5167182

## Table of Contents

|   |           |
|---|-----------|
| <b>Constitution of BCD Resources NL</b>                                   | <b>1</b>  |
| <b>1 Definitions and interpretation</b>                                   | <b>1</b>  |
| 1.1 Definitions   | 1         |
| 1.2 Interpretation  | 2         |
| 1.3 Transitional provisions   | 3         |
| <b>2 Nature of the Company</b>  | <b>3</b>  |
| 2.1 No liability Company  | 3         |
| 2.2 No contractual obligation to pay calls                                | 3         |
| 2.3 Internal management of the Company                                    | 3         |
| 2.4 Objects   | 3         |
| <b>3 Shares</b>   | <b>3</b>  |
| 3.1 Share capital   | 3         |
| 3.2 Changes to shares and share capital                                   | 5         |
| 3.3 Partly paid shares and calls  | 6         |
| 3.4 Liens   | 7         |
| 3.5 Certificates  | 9         |
| 3.6 CHESS   | 9         |
| 3.7 Transfer of shares  | 10        |
| 3.8 Transmission of shares – death, bankruptcy or lack of mental capacity | 11        |
| 3.9 Restricted Securities   | 13        |
| 3.10 Non-marketable parcels   | 13        |
| 3.11 Proportional takeover bids   | 14        |
| <b>4 General meetings</b>   | <b>15</b> |
| 4.1 Annual general meeting  | 15        |
| 4.2 Right to call and attend general meetings                             | 16        |
| 4.3 Notice of general meetings  | 16        |
| 4.4 Cancellation or postponement of a general meeting                     | 18        |
| 4.5 Conducting general meetings   | 19        |
| 4.6 Adjournment of general meetings                                       | 21        |
| 4.7 Resolutions, voting and polls at general meetings                     | 21        |
| 4.8 Proxies and Representatives   | 23        |
| 4.9 Meetings of holders of a class of shares                              | 24        |
| <b>5 Directors</b>  | <b>24</b> |
| 5.1 Preliminary   | 24        |
| 5.2 Appointment of a Director   | 25        |
| 5.3 Resignation, cessation and termination of a Director                  | 26        |
| 5.4 Executive Directors   | 28        |
| 5.5 Alternate Director  | 28        |
| 5.6 Remuneration of Directors   | 29        |
| 5.7 Conflicts of interest   | 31        |
| <b>6 Management of business by Directors</b>                              | <b>33</b> |
| 6.1 Powers of Directors   | 33        |
| 6.2 Directors must keep transactions secret                               | 33        |
| 6.3 Appointment of attorney for Company                                   | 33        |
| 6.4 Delegation by the Directors   | 34        |
| 6.5 Seals and execution of documents                                      | 34        |
| 6.6 Negotiable instruments  | 34        |

---

|           |  |           |
|-----------|--|-----------|
| <b>7</b>  | <b>Board meetings</b>  | <b>34</b> |
|           | 7.1 Directors' resolution without a meeting                      | 34        |
|           | 7.2 Calling Board meetings                                       | 35        |
|           | 7.3 Notice of meeting  | 35        |
|           | 7.4 Conduct of Board meetings                                    | 35        |
|           | 7.5 Chairing Board meetings                                      | 35        |
|           | 7.6 Voting by Chair at Board meetings                            | 36        |
|           | 7.7 Quorum at Board meetings                                     | 36        |
|           | 7.8 Meeting competent to exercise all powers                     | 36        |
|           | 7.9 Passing of Directors' resolutions                            | 36        |
|           | 7.10 Resolution passed deemed to be a determination of the Board | 36        |
|           | 7.11 Committee powers and meetings                               | 36        |
|           | 7.12 Validity of acts of Directors                               | 36        |
| <b>8</b>  | <b>Directors' and Members' minutes</b>                           | <b>37</b> |
|           | 8.1 Minutes  | 37        |
|           | 8.2 Minutes to be signed by chair                                | 37        |
|           | 8.3 Members' access to minutes                                   | 37        |
| <b>9</b>  | <b>Secretary</b>   | <b>37</b> |
|           | 9.1 Appointment of Secretary                                     | 37        |
|           | 9.2 Notification to ASIC   | 37        |
|           | 9.3 Terms and conditions of appointment                          | 37        |
| <b>10</b> | <b>Auditor</b>   | <b>37</b> |
|           | 10.1 Appointment of Auditor                                      | 37        |
|           | 10.2 Auditor and meetings of Members                             | 38        |
| <b>11</b> | <b>Dividends and capital reserves</b>                            | <b>38</b> |
|           | 11.1 Payment of dividend   | 38        |
|           | 11.2 Determination of Dividend particulars                       | 38        |
|           | 11.3 Board's discretion  | 38        |
|           | 11.4 No confirmation at general meeting                          | 38        |
|           | 11.5 Interest not payable  | 38        |
|           | 11.6 Entitlement to receive Dividends                            | 39        |
|           | 11.7 Date Dividend is payable                                    | 39        |
|           | 11.8 Dividends proportional to paid up capital                   | 39        |
|           | 11.9 Deductions from Dividends                                   | 39        |
|           | 11.10 Unclaimed Dividends  | 39        |
|           | 11.11 Dividend plans   | 39        |
|           | 11.12 Payment of Dividends using assets or securities            | 40        |
|           | 11.13 Capitalisation of reserves and profits                     | 40        |
|           | 11.14 Applying a sum for the benefit of Members                  | 40        |
|           | 11.15 Implementing the resolution                                | 41        |
| <b>12</b> | <b>Inspection</b>  | <b>41</b> |
| <b>13</b> | <b>Service and payments</b>                                      | <b>41</b> |
|           | 13.1 Service   | 41        |
|           | 13.2 Payments  | 43        |
| <b>14</b> | <b>Proceedings involving officers</b>                            | <b>43</b> |
|           | 14.1 Indemnity   | 43        |
|           | 14.2 Payments and advances to officer                            | 44        |
|           | 14.3 Insurance   | 44        |
| <b>15</b> | <b>Winding up</b>  | <b>45</b> |
|           | 15.1 Rights of Members on winding up                             | 45        |
|           | 15.2 Division of assets  | 45        |

---

*Corporations Act 2001 (Cth)*

*Public no liability company*

**Constitution**  
of  
**BCD Resources NL ACN 057 793 834**  
**(Company)**

## **1 Definitions and interpretation**

---

### **1.1 Definitions**

- (a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1(b):
- (i) while the Company is listed on the Official List, an expression in a clause that deals with a matter dealt with by a provision of the Listing Rules or the Settlement Rules has the same meaning as in that provision; and
  - (ii) subject to clause 1.1(a)(i), an expression in a clause that is used in the Corporations Act has the same meaning as in the Corporations Act.
- (b) In this Constitution:
- ASIC** means the Australian Securities and Investments Commission;
- ASTC** means the ASX Settlement Pty Ltd ACN 008 504 532;
- ASX** means ASX Limited ACN 008 624 691;
- Alternate Director** means a person appointed as an alternate director of the Company under clause 5.5(a) who has not vacated their office;
- Auditor** means a person appointed as an auditor of the Company under clause 10.1 who has not vacated their office;
- Board** means the Directors acting as a board of Directors;
- Business Day** means a day on which trading banks are open for business in Launceston, Tasmania other than a Saturday or a Sunday;
- Constitution** means this constitution as amended from time to time and a reference to a clause of this constitution;
- Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations and instruments made under the Corporations Act together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that section, part or division as so modified, amended or re-enacted;
- Certificate** means, in relation to a share, the certificate (if any) issued by the Company recording the name of the Member registered as owner of the share;
- Chair** means the person elected in accordance with clause 7.5(a);
- CHES** means the Clearing House Electronic Subregister System established and operated by ASTC for the clearing and settlement of transactions in CHES approved securities, the transfer of securities and the registration of transfers;

**Company** means BCD Resources NL ACN 057 793 834;

**Director** means a director of the Company from time to time;

**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, each as amended or replaced from time to time, except to the extent of any express waiver by ASX;

**Managing Director** means a person appointed as managing director of the Company under clause 5.4(a);

**Member** means a person entered in the Register of Members as a holder of shares in the Company;

**Mining Purposes** has the same meaning given to that expression in section 9 of the Corporations Act;

**Official List** means the official list of entities that ASX has admitted and not removed;

**Register of Members** means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Corporations Act;

**Registered Office** means the registered office of the Company;

**Representative** means a person appointed to represent a corporate Member or a corporate proxy at a general meeting of the Company under clause 4.8 and the Corporations Act;

**Restricted Securities** has the same meaning given to it in the Listing Rules;

**Secretary** means a person appointed under clause 9 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company; and

**Settlement Rules** means the settlement rules of ASTC as amended or replaced from time to time.

## 1.2 Interpretation

- (a) In this Constitution unless the contrary intention appears:
  - (i) words importing any gender include all other genders;
  - (ii) person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
  - (iii) the singular includes the plural and vice versa;
  - (iv) a reference to an amount paid on a share includes an amount credited as paid on that share; and
  - (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise.
- (b) To the maximum extent permitted by the Corporations Act, the provisions of the Corporations Act that apply as replaceable rules do not apply to the Company.
- (c) While the Company remains on the Official List, the following clauses apply:
  - (i) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;

- (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
  - (iii) 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);
  - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain that provision this Constitution must be treated as containing that provision;
  - (v) if the Listing Rules require this Constitution not to contain a provision and it contains that provision, this Constitution must be treated as not containing that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution must be treated as not containing that provision to the extent of the inconsistency.
- (d) Where any clause is expressed to be subject to the Listing Rules or requires compliance with the Listing Rules, or contains words to the same effect, that clause is subject to the Listing Rules or requires compliance with the Listing Rules only while the Company remains on the Official List.

### **1.3 Transitional provisions**

This Constitution must be interpreted in a way that every Director, Managing Director and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution.

## **2 Nature of the Company**

---

### **2.1 No liability Company**

The Company is a no liability company.

### **2.2 No contractual obligation to pay calls**

The acceptance of shares in the Company, whether by issue or transfer, does not constitute a contract on the part of the relevant Member to pay calls in respect of the shares or to make any contribution to the debts and liabilities of the Company.

### **2.3 Internal management of the Company**

The internal management of the Company will be governed by this Constitution.

### **2.4 Objects**

The sole objects for which the Company is established are Mining Purposes.

## **3 Shares**

---

### **3.1 Share capital**

#### **(a) Directors to issue shares**

- (i) Subject to this Constitution, the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares, the Directors:
  - (A) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions,

whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit;

- (B) may grant to any person an option over shares or pre-emptive rights at any time and for any consideration as they think fit; and
  - (C) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.
- (ii) The Directors must ensure that the issue of securities following the exercise, conversion or paying up of any security of the Company quoted by ASX is not in any way prevented, delayed or interfered with by the Company except as permitted by the Listing Rules.

**(b) Preference shares**

The Company must not issue any preference shares except in accordance with the Corporations Act and only if the rights and restrictions attaching to those preference shares are set out in this Constitution or in a special resolution of the Members.

**(c) Redeemable preference shares**

Subject to clause 3.1(b) the Company can issue preference shares which are, or at the option of the Company are to be, liable to be redeemed provided that the terms of which and the manner in which any redemption is to be effected is, if permitted by law, specified in the conditions of issue of the preference shares and unless otherwise resolved by special resolution of Members, redeemable preference shares will have the following rights:

- (i) the right to a fixed, cumulative preferential dividend at the rate specified in the terms of offer in priority to any payment of Dividends to the holders of the other shares;
- (ii) the same rights as holders of ordinary shares to receive notices and to attend general meetings of the Company;
- (iii) the right to vote at general meetings if:
  - (A) any dividend is in arrears; or
  - (B) the matter to be decided is a proposal for the winding up of the Company, the sale or disposal of the Company's main undertaking, the reduction or return of any part of the share capital or which affects the rights attaching to the redeemable preference shares; and
- (iv) on a winding up, in priority to any payment to the holders of any other class of shares, the right to be repaid the amount paid-up on the redeemable preference shares but with no further right to participate in the profits or assets of the Company.

**(d) Redemption of preference shares**

- (i) Subject to Part 2H.2 of the Corporations Act and the law generally, a preference share is redeemable and the Company may redeem a preference share at any time by giving the holder 14 days prior notice of intention to redeem.
- (ii) On redemption of a preference share, the Company is to pay the holder, subject to delivery of the relevant share certificate, the total of:

- (A) the amount of capital paid or credited as paid on the preference share; and
- (B) any other amount payable by the Company on redemption under the terms of offer.

**(e) Brokerage or commission**

- (i) Subject to the Corporations Act and the Listing Rules, the Company may pay brokerage or commission to any person in consideration of that person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company or for procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any shares in the Company.
- (ii) Any brokerage or commission may be paid or satisfied in cash, shares, debentures or other securities of the Company or otherwise as the Directors determine.

**(f) Registered holder to be treated as absolute owner**

Unless otherwise required by this Constitution or by law, the Company:

- (i) must treat the registered holder of a share as the absolute owner; and
- (ii) is not obliged to recognise:
  - (A) any trust, equitable, contingent, future or partial interest in any share;
  - (B) any interest in any fractional part of a share; or
  - (C) any other right (other than an absolute right) in respect of any share.

**(g) Joint holders of shares**

- (i) Where two or more persons are registered as the joint holders of a share:
  - (A) they are taken to hold the share as joint tenants with rights of survivorship;
  - (B) each Member is jointly and severally liable for any payment in respect of the share;
  - (C) the Member whose name first appears in the Register of Members in respect of the share is deemed to be the registered holder of the share for the purposes of this Constitution and any action permitted or required by the Constitution; and
  - (D) any one of the joint holders of the share may give an effective receipt for any dividend, bonus or return of share capital payable to the joint holders.
- (ii) Without limiting the above, the Company is not bound:
  - (A) to register more than three persons as joint holders of a share; or
  - (B) to issue more than one Certificate or holding statement in respect of shares jointly held.

**3.2 Changes to shares and share capital**

**(a) Changes to shares**

- (i) Subject to the Corporations Act and the Listing Rules the Company may:
  - (A) convert an ordinary share to a preference share, other than to a redeemable preference share;
  - (B) reclassify any shares into classes of shares;
  - (C) cancel any shares;
  - (D) buy-back its own shares; and
  - (E) reduce its share capital.
- (ii) Subject to the Corporations Act and the Listing Rules, the Company may convert all or any of its shares into a larger or smaller number of shares by ordinary resolution passed at general meeting.
- (iii) All ordinary shares must have the same rights and obligations attached to them unless otherwise approved by ASX or permitted by the Listing Rules.

**(b) Varying and cancelling class rights**

- (i) The Company may vary or cancel the rights attaching to any class of shares only if the variation or cancellation is permitted by the Corporations Act and is approved by special resolution of each of the Members holding shares of the relevant class.
- (ii) The Directors must give written notice of the variation or cancellation to the Members holding the shares of the relevant class within seven days of the variation or cancellation.

**3.3 Partly paid shares and calls**

**(a) Directors' power to make calls**

The Directors may:

- (i) make calls on a Member at any time or times in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (ii) make a call payable by instalments; and
- (iii) revoke or postpone a call.

**(b) Prepayment of calls and interest**

The Directors may:

- (i) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (ii) authorise payment by the Company of interest on the whole or any part of an amount accepted, until the amount becomes payable and at the rate as is agreed on between the Directors and the Member paying the sum.

**(c) When made, notice and instalments**

- (i) A call will be taken to have been made at the time when the resolution of the Directors authorising the call was passed.
- (ii) A call made on shares must be made payable at least 14 days after the day on which the call is made.

- (iii) When a call is made, notice of the amount of the call, of the day when it is payable, of the place for payment, and, if the Company is listed on the Official List, the information required by the Listing Rules, must, at least seven days before the due date for payment, be sent by post to the holder of shares on which the call is made.
- (iv) The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.
- (v) A call may be required to be paid in instalments.

**(d) Differentiation between holders**

The directors may differentiate between the holders of shares as to the amount of calls to be paid and the times of payment.

**(e) Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.

**(f) Forfeiture and sale or auction**

- (i) Without limiting the redemption rights under section 254R of the Corporations Act, a share in the Company is immediately forfeited if:
  - (A) a call is made on the share; and
  - (B) the call is unpaid at the end of 14 days after it became payable.
- (ii) A forfeited share in the Company will then be offered for sale or by auction on any terms and in any manner as the Directors determine, and in accordance with any applicable requirements of the Corporations Act and the Listing Rules.
- (iii) If at any sale by auction under section 254Q of the Corporations Act:
  - (A) no bid for the share is received at the sale; or
  - (B) the share is withdrawn from sale,
 the share must be held by the Directors in trust for the Company. It must then be first offered to Members for a period of 14 days before being disposed of in such manner determined by the Directors.
- (iv) At any sale by auction under section 254Q of the Corporations Act, a share forfeited for non-payment of any call may, if the Directors so determine, be offered for sale and sold credited as paid up to the sum of:
  - (A) the amount paid on the share at the time of forfeiture; and
  - (B) the amount of the call; and
  - (C) the amount of any other call or calls becoming payable on or before the date of sale.

**3.4 Liens**

**(a) First and paramount lien**

Subject to the Listing Rules, and unless the Directors otherwise resolve, the Company has a first and paramount lien on every share and any dividend payable in respect of the share where there is any amount payable to the Company in respect of the share at any time as a result of:

- (i) a call;

- (ii) if the shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (iii) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Member.

**(b) Company's rights to recover payments**

- (i) A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:
  - (A) obliged by law to make the relevant payment; or
  - (B) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (ii) The Company is not obliged to advise the Member in advance of its intention to make the payment.

**(c) Reimbursement is a debt due**

- (i) The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member.
- (ii) The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

**(d) Holding lock to protect lien**

- (i) The Company may do everything necessary or appropriate under the Settlement Rules to protect any lien, charge or other right to which it is entitled under the Corporations Act or this Constitution.
- (ii) If the Company has a lien on securities in a CHES holding, the Company may give notice to ASTC, in the form required by ASTC from time to time requesting ASTC to apply a holding lock to that CHES holding.

**(e) Sale of shares**

- (i) Subject to clause 3.4(e)(ii), the Company may sell any share over which it has a lien.
- (ii) The Company must not sell a share under clause 3.4(e)(i):
  - (A) unless a sum in respect of which the lien exists is presently payable; and
  - (B) until 14 days has passed after written notice demanding payment of the sum referred to in clause 3.4(e)(ii)(A) has been given to the Member, or to the person entitled to the share by reason of the Member's death or bankruptcy.

**(f) Transfer on sale under lien**

- (i) For the purpose of giving effect to a sale under clause 3.4(e), the Company may receive the consideration, if any, given for the share sold and may execute a transfer of the share sold in favour of the purchaser

of the share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.

- (ii) The purchaser is not bound to see to the application of the purchase money.

**(g) Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share.

**(h) Proceeds of sale**

The proceeds of a sale under clause 3.4(e) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

**3.5 Certificates**

**(a) Issue of Certificate**

- (i) The Company must issue each Member with a Certificate, or a statement of holdings as required by the Settlement Rules, for any shares held by them.
- (ii) The Company may issue a single Certificate for more than one share held by a Member.

**(b) Form of Certificate**

Every Certificate:

- (i) must include all information required by the Corporations Act, the Listing Rules or the Settlement Rules; and
- (ii) must be issued in the form determined by the Directors.

**(c) Certificate of joint holders**

The delivery of a Certificate or statement of holdings in relation to a share to the registered holder of the share or their agent is effective delivery to all the joint holders of that share.

**(d) Certificates after reorganisation of capital**

The Company must issue new certificates after a reorganisation of capital of the Company at the times and in the manner required by the Listing Rules.

**(e) Issuer sponsored holding statements**

If a Member on the issuer sponsored sub-register asks, the Company must issue transaction statements in accordance with the Listing Rules and may require reasonable payment for a special transaction statement.

**(f) Replacement of Certificates**

If required by the Corporations Act, the Listing Rules or the Settlement Rules, the Company must cancel and replace a worn out, defaced, stolen, lost or destroyed Certificate in the manner prescribed by the relevant provision of the Corporations Act, the Listing Rules or the Settlement Rules.

**3.6 CHES**

**(a) Participation in CHES**

- (i) The Board may at any time resolve that the Company participate in CHESSE.
- (ii) This clause will apply if the Company is granted participation in CHESSE.

**(b) Compliance with Settlement Rules**

If any of its securities are CHESSE approved securities, the Company must comply with the requirements of the Settlement Rules and Listing Rules including those relating to maintenance of registers, issuing holding statements and transfers in relation to its CHESSE approved securities.

**(c) CHESSE registers**

If the Company's securities are CHESSE approved securities, in addition to the CHESSE sub-register, the Directors must ensure the Company provides for an issuer sponsored sub-register, or a certificated sub-register, or both (at least if the Company has Restricted Securities on issue) managed in compliance with the Listing Rules.

**(d) ASTC transfer**

The Company must not prevent, delay or interfere with the generation of a proper ASTC transfer or the registration of a paper-based transfer in registrable form except as permitted by clause 3.7(e), the Listing Rules or Settlement Rules.

**3.7 Transfer of shares**

**(a) Forms of instrument of transfer**

Subject to this Constitution, shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Directors approve.

**(b) Execution and delivery of transfer**

Subject to the Corporations Act and the Listing Rules, the Directors must refuse to register the transfer if the transfer referred to in clause 3.7(a) is not:

- (i) executed by or on behalf of both the transferor and the transferee; and
- (ii) left for registration at the Registered Office, accompanied by the Certificate (if any) of the share to be transferred and any other information the Directors properly require to show the right of the transferor to make the transfer.

**(c) Registration of transfers**

A person transferring a share remains the holder of the shares until the transfer is registered and the name of the person to whom the share is transferred is entered in the Register of Members in respect of the share and a transfer of a share does not pass the right to any dividends declared on the share until registration.

**(d) Company to register transfer without charge**

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

**(e) Power to refuse to register**

- (i) Subject to clause 3.7(e)(ii), the Corporations Act and the Listing Rules, the Directors may refuse to register any paper-based transfer of shares,

or request ASTC to apply a holding lock to prevent a proper ASTC transfer, for any of the following reasons:

- (A) under clause 3.7(a) or 3.7(b);
  - (B) the Company has a lien on the shares the subject of the transfer;
  - (C) a court order restricts a Member's capacity to transfer the shares;
  - (D) registration of the transfer would be contrary to Australian law and ASX agrees in writing to the refusal or the application of a holding lock (which must not breach the Settlement Rules);
  - (E) if the transfer does not comply with the terms of any employee incentive scheme of the Company;
  - (F) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a marketable parcel as defined in the Listing Rules;
  - (G) the relevant Member has agreed in writing to the application of a holding lock (which must not breach the Settlement Rules) or that the Company may refuse to register a transfer;
  - (H) if required by the Listing Rules during any escrow period of Restricted Securities; or
  - (I) if otherwise permitted under the Listing Rules.
- (ii) Neither the Directors nor the Company may refuse to register a transfer of shares made under a valid exercise of an enforcement power under a mortgage of the shares the subject of the transfer.
  - (iii) The Directors must notify the person who deposited the instrument of transfer of any refusal to transfer the shares under clause 3.7(e)(i) within five Business Days from the date the instrument of transfer is lodged.
  - (iv) If the Company asks ASTC to apply a holding lock under clause 3.7(e)(i) it must tell the holder of the shares in writing of the holding lock and reason for it, within five Business Days after the date on which it asked for the holding lock.

**(f) Company to retain instrument of transfer**

The Directors must retain every instrument of transfer that is registered for such period as the Directors determine.

**(g) Return of instrument of transfer**

If the Directors refuse registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

**3.8 Transmission of shares – death, bankruptcy or lack of mental capacity**

**(a) Death of sole holder of share**

- (i) In respect of a share owned by a Member (and not owned by several holders jointly), if that Member dies the Company will recognise only the

personal representative of the deceased Member as being entitled to the deceased Member's interest in the share.

- (ii) If the personal representative gives the Directors the information they reasonably require to establish the personal representative's entitlement to be registered as holder of the share, the personal representative is entitled, whether or not registered as the holder of the share, to the same rights as the deceased member and:
  - (A) may by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
  - (B) may by giving a completed transfer form to the Company, transfer the share to another person.
- (iii) On receiving an election under clause 3.8(a)(ii)(A), the Company must register the personal representative as the holder of the share.
- (iv) A transfer under clause 3.8(a)(ii)(B) is subject to all provisions of this Constitution relating to transfers of shares generally.

**(b) Death of joint holder of share**

- (i) If one of the registered joint holders of a share dies, the surviving holder or holders of the share are entitled to be registered as the holders of the share.
- (ii) The survivor of the joint holder or holders named first in the Register of Members will for the purposes of this Constitution be treated as the first named holder of the share.

**(c) Liability of estate**

The estate of the deceased Member is not released from any liability in respect of the shares.

**(d) Transmission of shares on bankruptcy**

- (i) If a person entitled to a share because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the share, the person may:
  - (A) by giving a written notice to the Company, elect to be registered as the holder of the shares; or
  - (B) by giving a completed transfer form to the Company, transfer the shares to another person.
- (ii) On receiving an election under clause 3.8(d)(i)(A), the Company must register the person as the holder of the shares.
- (iii) A transfer under clause 3.8(d)(i) (B) is subject to all provisions of this Constitution relating to transfers of shares generally.

**(e) Transmission of shares on mental incapacity**

- (i) If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares the person:
  - (A) may:

- (1) by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
- (2) by giving a completed transfer form to the Company, transfer the share to another person; and
- (B) is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.
- (ii) On receiving an election under clause 3.8(e)(i)(A) the Company must register the person as the holder of the shares.
- (iii) A transfer under clause 3.8(e)(i)(B) is subject to the same rules as apply to transfers of shares generally.

### 3.9 Restricted Securities

#### (a) Compliance with Listing Rules relating to Restricted Securities

Despite any other provision in this Constitution, whilst the Company remains admitted to the Official List, the Directors must ensure the Listing Rules relating to Restricted Securities are complied with.

#### (b) Disposal of Restricted Securities

Under clause 3.9(a), the Company must ensure that it refuses to acknowledge a disposal of (as defined in the Listing Rules) Restricted Securities during the escrow period for any Restricted Securities except as permitted by the Listing Rules or ASX.

#### (c) No entitlements during breach

Under clause 3.9(a), the Company must ensure that during a breach of the Listing Rules relating to Restricted Securities, or a breach of a 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.

### 3.10 Non-marketable parcels

#### (a) Procedure for sale of non-marketable parcels

The Directors may cause the Company to sell a Member's shares if they hold less than a marketable parcel of shares and the following procedures are observed:

- (i) The Directors send a Member who on the date of the notice holds less than a marketable parcel of shares, a notice which:
  - (A) explains the effect of this clause;
  - (B) allows the Member to elect to be exempt from this clause (a form of election for that purpose must be sent with the notice); and
  - (C) specifies a date at least six weeks from the date the notice is sent by which the Member may make the election in clause 3.10(a)(i)(B).
- (ii) The Member is taken to irrevocably appoint the Company as agent to do anything in clause 3.10(a)(iii) if on the date specified in the notice:
  - (A) the Company has not received a notice from the Member electing to be exempt from this clause; and
  - (B) the Member has not increased his or her parcel to a marketable parcel.

- (iii) The Company may sell the shares which make up the less than marketable parcel as soon as practicable at a price which the Directors consider to be the best price reasonably obtainable for the shares at the time they are sold.
- (iv) The proceeds of sale must not be applied in payment of the expenses of the sale and must be paid to the former holder on the former holder delivering to the Company proof of title to the shares acceptable to the Directors.
- (v) The purchaser of the shares under this clause need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied and their title to the shares is not affected by any irregularity by the Company in relation to the sale.
- (vi) The costs and expenses of a sale under this clause, including brokerage and stamp duty, if any, are payable by the purchaser, or if the Corporations Act permits, by the Company.
- (vii) A notice to a Member under clause 3.10(a)(i) may only be given once in a 12 month period and may not be given during the offer period of a takeover bid for the Company.
- (viii) If a takeover bid for the Company is announced after a notice is given but before an agreement for sale of the shares is entered into:
  - (A) this clause ceases to operate for those shares; and
  - (B) despite clause 3.10(a)(vii), after the offer period of the takeover bid closes, a new notice may be given.
- (ix) If a Member's holding becomes a marketable parcel after notice is given but before an agreement for sale of the shares is entered into, the Directors may decide that this clause no longer applies to that Member.

**(b) Other sale of non-marketable parcels of shares**

In addition to the powers of the Directors provided by clause 3.10(a), the Directors may cause the Company to sell a Member's shares if they hold less than a marketable parcel of shares without complying with the procedures in that clause and may determine that a Member's right to vote or receive dividends in respect of those shares is removed or changed if the following conditions are observed:

- (i) if the shares are shares in a new holding created by the transfer of a parcel of shares that was less than a marketable parcel at the time the transfer document was initiated or, in the case of a paper based transfer, at the time the transfer was lodged with the Company;
- (ii) the proceeds of a sale under this clause, less the cost of the sale, are sent to the Member; and
- (iii) any dividends that have been withheld under this clause are sent to the Member after the sale, subject to the former Member delivering to the Company proof of title acceptable to the Directors.

**3.11 Proportional takeover bids**

**(a) Transfers not to be registered**

A transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid must not be registered unless a

resolution to approve the proportional takeover bid has been passed or is taken to have been passed under clause 3.11(b).

**(b) Approving resolution**

- (i) Where offers have been made under a proportional takeover bid, the Directors must, before the day that is 14 days before the last day of the bid period, during which the offers under the proportional takeover bid remain open or a later day allowed by ASIC (**Resolution Deadline**):
  - (A) call a meeting of the persons entitled to vote on the resolution for the purpose of considering and, if thought fit, passing a resolution to approve the proportional takeover bid; and
  - (B) ensure that the resolution is voted on under this clause 3.11(b).
- (ii) The provisions of this Constitution in relation to general meetings apply, with such modification as the circumstances require, to a meeting that is convened under clause 3.11(b)(i), as if that meeting were a general meeting of the Company.
- (iii) The bidder under a proportional takeover bid and any associates of the bidder are not entitled to vote on the approving resolution and if they do vote, their votes must not be counted.
- (iv) Subject to clause 3.11(b)(iii), a person who, as at the end of the day on which the first offer under the proportional takeover bid was made, held securities of the relevant class, is entitled to vote on the approving resolution relating to the proportional takeover bid.
- (v) A resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (vi) If a resolution has not been voted on under this clause 3.11(b) as at the end of the day before the Resolution Deadline, a resolution will be taken to have been passed under this clause 3.11(b) on the Resolution Deadline.

**(c) Sunset**

Clause 3.11 ceases to have effect at the end of three years beginning:

- (i) where those clauses have not been renewed in accordance with the Corporations Act, on the date that those clauses were adopted by the Company; or
- (ii) where those clauses have been renewed in accordance with the Corporations Act, on the date those clauses were last renewed.

## **4 General meetings**

### **4.1 Annual general meeting**

**(a) Company must hold annual general meeting**

The Company must hold a general meeting, to be called the annual general meeting, once a year and in accordance with the Corporations Act, unless:

- (i) section 250N(4) of the Corporations Act applies; and
- (ii) the Company is not listed on the Official List.

**(b) Business of the annual general meeting**

- (i) Whether or not stated in the notice of the annual general meeting, the business of the annual general meeting may include:
  - (A) receiving and considering the statement of financial performance, statement of financial position, reports of the Directors, reports of the Auditors, and the statement of the Directors;
  - (B) electing Directors;
  - (C) appointing the Auditor; and
  - (D) fixing the remuneration of the Auditor.
- (ii) The business of the annual general meeting must include putting to vote a resolution that the remuneration report be adopted.
- (iii) The business of the annual general meeting may also include any other business which under this Constitution or the Corporations Act ought to be transacted at an annual general meeting.

**(c) Members' opportunity to ask questions**

- (i) The Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on:
  - (A) the management of the Company; or
  - (B) the remuneration report.
- (ii) If the Auditor is at the meeting, the Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the Meeting to ask the Auditor questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

**4.2 Right to call and attend general meetings**

**(a) Calling a general meeting**

- (i) A Director or the Directors may, by written notice, call a general meeting at a time and place as the Director or the Directors resolve.
- (ii) Members may requisition the holding of a general meeting only in accordance with the Corporations Act and the Directors must call a general meeting as soon as practicable after receiving that requisition.
- (iii) Members may call and arrange to hold a general meeting only in accordance with the Corporations Act.

**(b) Right to attend general meetings**

- (i) Each Member and any Auditor is entitled to attend a general meeting.
- (ii) Each Director is entitled to attend and speak at a general meeting.
- (iii) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor. □
- (iv) A Member's proxy or a Representative may attend a general meeting only as provided by this Constitution and the Corporations Act.

**4.3 Notice of general meetings**

**(a) Amount of notice of general meetings**

Unless a shorter period is provided for by the Corporations Act or the Listing Rules, at least 28 days notice must be given of a general meeting.

**(b) Calculation of period of notice**

In computing the period of notice under clause 4.3(a), the day of the general meeting called by it is to be disregarded.

**(c) Right to notice of general meeting**

Written notice of the general meeting must be given under clause 13 and must be given to any person entitled to receive notice under the Corporations Act including:

- (i) each Member entitled to vote at the meeting;
- (ii) each Director; and
- (iii) the Auditor (if any) of the Company.

**(d) Content of notice**

A notice calling a general meeting must comply with the Corporations Act and the Listing Rules and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution;
- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
  - (B) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportional number of votes each proxy is appointed to exercise;
- (v) be accompanied by an instrument of proxy in the form required by the Listing Rules or otherwise in any other form as the Directors may from time to time prescribe or accept;
- (vi) if required by the Listing Rules, include a voting exclusion statement;
- (vii) for a notice of the annual general meeting, contain a statement that the resolution on the remuneration report required by the Corporations Act will be put at the annual general meeting; and
- (viii) contain information that is worded and presented in a clear, concise and effective manner.

**(e) Notice of general meeting to ASX**

If at the time notice of a general meeting is given the Company is admitted to the Official List, the Directors must notify ASX of:

- (i) the date of a meeting at which Directors are to be elected, at least five Business Days before the closing date for receipt of nominations for election to the office of Director; and

- (ii) the contents of any prepared announcement to be delivered at the general meeting, by no later than the start of the general meeting.

#### **4.4 Cancellation or postponement of a general meeting**

##### **(a) Directors may cancel or postpone a general meeting**

- (i) The Directors may cancel or postpone a general meeting by giving notice not less than three business days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (ii) Clause 4.4(a)(i) does not apply to general meetings called by court order or in accordance with the Corporations Act:
  - (A) by the Directors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
  - (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

##### **(b) Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
  - (A) the postponed date and time for the holding of the general meeting;
  - (B) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
  - (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

##### **(c) Business at postponed general meeting**

Subject to clause 4.1(b), the only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the general meeting.

##### **(d) Proxy or Representative at postponed general meeting**

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

**(e) Validity of resolutions**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

**4.5 Conducting general meetings**

**(a) Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

**(b) Technology**

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

**(c) Quorum for a general meeting**

The quorum for a general meeting or an adjourned general meeting is three Members and the quorum must be present at all times during the meeting.

**(d) Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once; and
- (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.

**(e) Absence of quorum at a general meeting**

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
  - (A) if called in accordance with the Corporations Act by a Director at the request of Members or by Members, is dissolved; and
  - (B) in any other case, is to be adjourned to a date, time and place as specified by the Directors.
- (ii) If the Directors do not specify one or more of the requirements in clause 4.5(e)(i)(B), the general meeting is adjourned to:
  - (A) if the date is not specified, the same day of the following week;
  - (B) if the time is not specified, the same time; and
  - (C) if the place is not specified, the same place.

**(f) Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 4.5(e) within 30 minutes after the time for the general meeting, the Directors may, in

their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

**(g) Appointment and powers of Chair of general meeting**

- (i) The Chair will be entitled to take the chair at general meetings.
- (ii) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (iii) The Chair may at any time that the Chair thinks necessary or desirable for the proper and orderly conduct of the meeting:
  - (A) impose a limit on the time that a person may speak on each motion or other item of business to be put to a vote of the members present;
  - (B) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present;
  - (C) determine any dispute concerning the admission, validity or rejection of a vote at a general meeting; and
  - (D) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or a poll, including the appointment of scrutineers.
- (iv) A decision by the Chair under clause 4.5(g)(iii) is final.
- (v) The Chair may delegate any power conferred by this clause to any person.

**(h) Absence of Chair at general meeting**

- (i) If there is no Chair, or if the Chair is unable or unwilling to chair a general meeting, the Directors may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
- (ii) If a general meeting is held and the Chair, or the person elected under clause 4.5(h)(i), is not present within 30 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may take the chair of the meeting (in order of precedence):
  - (A) the deputy chair (if any);
  - (B) a Director chosen by a majority of the Directors present;
  - (C) the only Director present;
  - (D) a person (whether a Member or not) chosen by a majority of the Directors present; or
  - (E) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.
- (iii) If an acting chair becomes unwilling or unable to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) the previous acting chair becomes willing and able to take the chair at that meeting.

- (iv) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this Constitution.

#### **4.6 Adjournment of general meetings**

##### **(a) Adjournment of general meeting by Chair**

- (i) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (ii) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting (on a show of hands) agree or direct that the Chair must do so.
- (iii) If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

##### **(b) Resumption of adjourned general meeting**

- (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 4.6(a).
- (ii) The resumed meeting may only be adjourned by the Chair.

#### **4.7 Resolutions, voting and polls at general meetings**

##### **(a) Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Corporations Act.

##### **(b) Resolution determined by majority**

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution, the Corporations Act or the Listing Rules.

##### **(c) Voting by Chair at general meetings**

In case of an equality of votes on a resolution at a general meeting the Chair of that meeting does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

##### **(d) How voting is carried out**

- (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 4.7(f) or the Corporations Act either before, on or immediately after the declaration of the result of the vote on a show of hands.
- (ii) On a show of hands, a declaration by the Chair that a resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes is conclusive evidence of the result.
- (iii) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

##### **(e) Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (i) the election of the Chair; or

(ii) the adjournment of the general meeting.

**(f) Demand for poll**

Subject to clause 4.7(e), a poll may be demanded on any resolution by:

- (i) the Chair;
- (ii) at least five Members present in person or by proxy or by representative; or
- (iii) any one or more Members holding shares conferring not less than five percent of the total voting rights of all Members having the right to vote on the resolution.

**(g) Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken.

**(h) Right to vote at general meetings**

Subject to this Constitution, the Corporations Act, the Listing Rules and any rights or restrictions attached to any class of shares, at a general meeting:

- (i) on a show of hands, each Member (including each holder of preference shares who has a right to vote) present in person or by proxy or Representative has one vote; and
- (ii) on a poll, each Member present in person or by proxy or Representative has one vote for each fully-paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share.

**(i) Right to vote of joint holder**

If a share is held jointly, only the Member whose name appears first in the Register of Members is entitled to vote at a general meeting.

**(j) Right to vote if call unpaid on shares**

A Member is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Member for which calls or other monies are due and payable to the Company at the time of the meeting.

**(k) Right to vote on death, bankruptcy or mental incapacity of Member**

A person entitled to exercise the rights attached to a share as a consequence of clauses 3.8(a), 3.8(b), 3.8(d) or 3.8(e) who, at least 48 hours before the time notified for a general meeting (or an adjourned meeting), satisfied the Board of that entitlement, may vote at that general meeting in respect of that share as if the person was registered as the holder of the share.

**(l) Voting exclusions**

If, in accordance with the requirements of the Listing Rules or to ensure that a resolution on which the Corporations Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Corporations Act, a notice of general meeting includes a voting exclusion statement specifying that, in relation to particular business to be considered at that general meeting, votes cast by particular persons are to be disregarded by the Company, then the Company must take no account, in determining the votes cast on a resolution relating to that business, of any vote cast or purported to be cast by or on behalf

of any of those persons (whether on a show of hands or on a poll) in relation to that resolution except to the extent permitted by the Listing Rules.

**(m) Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting or adjourned meeting; and
- (ii) must be determined by the Chair whose decision if made in good faith is final.

**4.8 Proxies and Representatives**

**(a) Appointment of proxies and Representatives**

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 4.8(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) Neither the proxy nor the Representative need be a Member.
- (iv) Unless the instrument or resolution appointing a proxy or Representative provides differently, the proxy or Representative has the same rights to speak, demand poll, join in demanding a poll or act generally at the meeting as the member would have had if the member was present.
- (v) An instrument appointing a proxy shall be valid if it contains the following information:
  - (A) the member's name and address;
  - (B) the company's name;
  - (C) the proxy's name or the office held by the proxy; and
  - (D) the meetings at which the proxy may be used.
- (vi) A proxy or Representative may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or Representative, and the authority under which the instrument is signed or a certified copy of the authority, are received by the Company:
  - (A) at least 48 hours (or in the case of an adjournment or postponement of a meeting, including an adjourned meeting, any lesser time that the directors or the Chair decides) before the time for holding the meeting or adjourned meeting or taking the poll, as applicable; or
  - (B) if clause 4.8(a)(vii) applies, such shorter period before the time for holding the meeting or adjourned meeting or taking the poll, as applicable, as the Company determined in its discretion.
- (vii) Where an instrument appointing a proxy or Representative has been received by the Company within the period specified in clause 4.8(a)(vi)(A) and the Company considers that the instrument has not been duly executed, the company, in its discretion, may:
  - (A) return the instrument appointing the proxy or Representative to the appointing member; and

(B) request that the member duly execute the appointment and return it to the Company within the period determined by the Company under clause 4.8(a)(vi)(B).

(viii) Any proxy or Representative appointed under clause 4.8 must be appointed in accordance with Division 6 of Part 2G.2 of the Corporations Act, and will have the rights set out in that Division.

**(b) Appointment received at electronic address**

For the purposes of clause 4.8(a), an appointment received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated in accordance with the Corporations Act.

**4.9 Meetings of holders of a class of shares**

**(a) General meeting provisions apply**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (i) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all the shares of the class, in which case that person constitutes a quorum);
- (ii) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll; and
- (iii) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

**(b) Director entitled to notice of class meetings**

A Director is entitled to receive notice of and to attend all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

**5 Directors**

**5.1 Preliminary**

**(a) Number of Directors**

- (i) The Company must have at least three Directors.
- (ii) The maximum number of Directors is to be fixed by the Directors, but must not be more than nine unless the Members in general meeting resolve otherwise.
- (iii) At least two Directors must ordinarily reside in Australia.
- (iv) If and for as long as the number of Directors is less than the number required under paragraph (i), the continuing Director or Directors may continue to act, provided that it is solely for one or more of the following purposes:
  - (A) increasing the number of Directors to the minimum number required under paragraph (i);
  - (B) calling a general meeting; or

- (C) in connection with requirements or circumstances of the Company considered urgent by the continuing Director or Directors acting reasonably.

**(b) Eligibility for appointment as Director**

- (i) To be eligible to be elected or appointed as a Director a person must:
  - (A) be an individual;
  - (B) be at least 18 years old; and
  - (C) not be otherwise ineligible or disqualified from holding office under this Constitution or the Corporations Act.
- (ii) To be eligible to be elected or appointed as a Director a person is not required to hold any shares in the Company.

**(c) Non-eligibility of Auditor**

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

**(d) Other offices held by Directors**

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions including additional remuneration as the Directors determine by resolution.

**(e) Period of appointment of Directors**

Each Director will hold office until they die or vacate the office under clause 5.3(a).

**5.2 Appointment of a Director**

**(a) Directors may appoint other Directors**

- (i) Provided the total number of Directors does not exceed the maximum number for the time being fixed by or under this Constitution:
  - (A) the Directors may appoint a person as a Director, whether to fill a casual vacancy or as an additional Director; and
  - (B) the Directors may also appoint a person as a Director to make up a quorum for a Board Meeting, if the total number of Directors otherwise present is not enough to make up that quorum.
- (ii) Any Director, except the Managing Director, appointed under clause 5.2(a)(i) after the Company is admitted to the Official List must retire from office at the conclusion of, and will be eligible for re-election at, the next annual general meeting following his or her appointment.

**(b) Election of Directors**

Except where a Director retires under clause 5.3(b) or 5.3(c) or has been appointed by the Directors under clause 5.2(a) and stands for election, a person is only eligible for appointment as a Director by resolution of the Members in general meeting if the Company receives at least 35 days before the relevant general meeting (or 30 days in the case of a meeting requisitioned by Members under the Corporations Act) both:

- (i) a nomination of the person by a Member; and

- (ii) a consent to that nomination signed by the person nominated for election as a Director.

### **5.3 Resignation, cessation and termination of a Director**

#### **(a) Vacation of office**

- (i) A Director vacates office if the Director:
  - (A) retires from office under clause 5.3(b) or 5.3(c);
  - (B) resigns their office by written notice to the Company under clause 5.3(d);
  - (C) is removed from the office of Director by a resolution of the Members in accordance with clause 5.3(e);
  - (D) fails to attend Board meetings for a continuous period of three months without leave of absence from the Board;
  - (E) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
  - (F) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
  - (G) is convicted on an indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
  - (H) is an executive Director under an employment or services agreement with the Company and that agreement terminates or otherwise ends, unless the Board determines otherwise; or
  - (I) ceases to be a Director or becomes prohibited from being a Director under the Corporations Act or the Listing Rules.
- (ii) A Director whose office is vacated under clause 5.3(a)(i)(I) is not eligible for re-election until the relevant prohibition no longer applies.

#### **(b) Director must retire after three years**

- (i) Whilst the Company remains listed on the Official List and subject to the Corporations Act, the Listing Rules and this Constitution, a Director must retire from office or seek re-election by no later than the later of:
  - (A) the third annual general meeting following his or her appointment or election; or
  - (B) three years.
- (ii) This clause does not apply to a Managing Director, however, if more than one Managing Director has been appointed, this clause does apply to all but the first appointed Managing Director.

#### **(c) Retirement by rotation**

- (i) Unless otherwise determined by a resolution of the Members, while the Company is admitted to the Official List, one third of the Directors for the time being, or if their number is not a multiple of three, then the whole number nearest one third, must retire from office at each annual general meeting.

- (ii) The Directors to retire under clause 5.3(c)(i) will be those who have been longest in office since their last election but as between persons who became Directors on the same day, those to retire will, unless they otherwise agree among themselves, be determined by drawing lots.
- (iii) A Director retiring under clause 5.3(c)(i) may act as a Director throughout the meeting at which he or she retires and at any adjournment.
- (iv) This clause does not apply to a Managing Director, however, if more than one Managing Director has been appointed, this clause does apply to all but the first appointed Managing Director.

**(d) Director may resign**

- (i) A Director may resign as a Director of the Company by written notice to the Company.
- (ii) If the resignation of a Director under clause 5.3(d)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Corporations Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

**(e) Removal of a Director by Members**

- (i) The Company may, by resolution of the Members in general meeting:
  - (A) remove a Director from office; and
  - (B) appoint another person as a Director in that Director's place.
- (ii) If a Director was appointed to represent the interests of particular Members, their removal under clause 5.3(e)(i) has no effect until a replacement to represent the interests of those Members has been appointed.
- (iii) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this Constitution or the Corporations Act, the removal under clause 5.3(e)(i) has no effect until a replacement has been appointed.
- (iv) Notice of intention to move the resolution referred to in clause 5.3(e)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
- (v) The Company must give the Director a copy of the notice as soon as practicable after it is received.
- (vi) The Director is entitled to put their case to Members by:
  - (A) giving the Company a written statement for circulation to Members; and
  - (B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).
- (vii) The written statement in clause 5.3(e)(vi) is to be circulated by the Company to Members by:
  - (A) sending a copy to everyone to whom notice of the general meeting is sent if there is time to do so; or

- (B) if there is not time to comply with clause 5.3(e)(vii)(A), having the statement distributed to Members attending the general meeting and read out at the meeting before the resolution is voted on.
- (viii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
- (ix) If a person is appointed to replace a Director removed under this clause, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

#### 5.4 Executive Directors

##### (a) Appointment of Managing Director and other executive Directors

The Directors:

- (i) may appoint one or more of themselves to the office of Managing Director or to any other executive office for a period and on the terms (including, subject to the Corporations Act and the Listing Rules, as to remuneration) as the Directors see fit;
- (ii) may confer on a Managing Director or other executive Director any of the powers that the Directors may exercise; and
- (iii) subject to the terms of appointment, may revoke or vary:
  - (A) the appointment of the Managing Director or other executive Director; or
  - (B) any of the powers conferred on the Managing Director or other executive Director.

##### (b) Consequence of cessation as Director or executive Director

- (i) A person ceases to be Managing Director or other executive Director if they cease to be a Director.
- (ii) A person ceases to be a Director if they cease to be the Managing Director or other executive unless the Board determines otherwise.

#### 5.5 Alternate Director

##### (a) Power to appoint Alternate Director

Each Director may at any time appoint any individual approved for that purpose by the Directors to act as an Alternate Director in the appointor's place and with such powers as are specified in the notice of appointment (being some or all of the appointor's powers as a Director).

##### (b) Suspension of appointment of Alternate Director

The appointor may vary, suspend or terminate the appointment of his or her Alternate Director.

##### (c) Notice of appointment of Alternate Director

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company.

##### (d) Remuneration of Alternate Director

An Alternate Director's only rights (if any) as to remuneration for ordinary service as a Director are against the appointor and not the Company.

**(e) Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one Director.

**(f) Termination of appointment**

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 5.5(c);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director

**5.6 Remuneration of Directors**

**(a) Remuneration to be in accordance with Listing Rules**

Any remuneration that is payable to Directors must comply with the Corporations Act and, whilst the Company remains listed on the Official List, the Listing Rules and in particular, whilst the Company remains listed on the Official List:

- (i) fees payable to non-executive Directors must be by way of a fixed sum and not by way of a commission on, or a percentage of, profits or operating revenue; and
- (ii) remuneration (including Director's fees and salary) payable to executive Directors must not include a commission on, or percentage of, operating revenue.

**(b) Director fees**

- (i) The Company may pay a Director fees for carrying out the duties and responsibilities of the office of Director required by the Corporations Act.
- (ii) The Members in general meeting may determine the total amount of fees to be paid to all the Directors under clause 5.6(b)(i) (excluding any remuneration payable to any Director under any executive service contract with the Company or a related body corporate).
- (iii) The Directors may determine how the total fees are divided among them, and, if no determination is made, the total fees must be divided among them equally.
- (iv) The Company must not increase the total amount of fees to be paid to the Directors without the approval of the Members in general meeting.
- (v) The notice calling the general meeting at which any increase is to be proposed must comply with the Corporations Act and the Listing Rules

and include the amount of the increase and the maximum amount of fees that may be paid to the Directors as a whole.

- (vi) The fees determined by the Members to be paid under clause 5.6(b)(ii) or 5.6(b)(iv) is a debt due to the Directors, which accrues from day to day.
- (vii) Subject to clause 5.6(b)(ii), fees under this clause may be provided in any manner the Directors see fit.
- (viii) In determining the total fees paid or to be paid to Directors under clause 5.6(b)(ii), any remuneration paid or to be paid under clauses 5.4(a), 5.6(c), 5.6(d), 5.6(e), 5.6(f) and clause 14 are ignored.

**(c) Remuneration of Directors for extra services**

Subject to the Corporations Act, in addition to or substitution for the fees paid under clause 5.6(a), if the Directors or Members request a Director to perform services or undertake special exertions (such as living overseas) in addition to those required by the Corporations Act, the Directors may determine that the Company remunerate the Director for those services.

**(d) Remuneration for other offices held by a Director or Managing Director**

Subject to the Corporations Act, a Director may hold any other office or position of profit in the Company (other than Auditor) together with the directorship on such conditions including additional remuneration (in addition to or substitution for the fees paid under clause 5.6(a)) as the Directors determine by resolution.

**(e) Reimbursement of expenses incurred by Director**

Subject to the Corporations Act, in addition to the fees set out in clause 5.6(a), a Director is entitled to reimbursement of the travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company;
- (iii) in connection with the Company's business; and
- (iv) in the case of a Managing Director or other executive Director, in connection with carrying out or managing the Company's business.

**(f) Payment of retirement benefit to Director**

- (i) Subject to the Corporations Act and Listing Rules, the Board may determine that, in addition to the remuneration paid or payable under clause 5.6(a), the Company pay a former Director, or the personal representative, spouse, relative or dependant of a Director who dies in office, a retirement benefit or pension in recognition of past services of an amount determined by the Board, or make contributions to a superannuation, retirement or pension fund for that purpose (including any amount paid or payable for the avoidance of any penalty, charge, tax or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions are not paid for an employee (within the meaning of the legislation)).
- (ii) Subject to the Corporations Act and the Listing Rules, the Directors may also resolve that the Company enter into a contract with a Director providing for payment of a retirement benefit.

**(g) Financial benefit**

- (i) A Director must ensure that the requirements of the Corporations Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Corporations Act.

**5.7 Conflicts of interest**

**(a) Prohibition on being present or voting**

Except where permitted by the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not be counted in a quorum;
- (ii) must not vote on the matter; and
- (iii) must not be present while the matter is being considered at the meeting.

**(b) Directors' interests**

Subject to this Constitution, the Corporations Act and the Listing Rules:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (A) enter into any agreement or arrangement with the Company;
  - (B) hold any office or place of profit (other than Auditor) in the Company; and
  - (C) act in a professional capacity (other than as Auditor) for the Company,

and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;

- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
  - (A) does not void or render voidable a contract made by the Director with the Company;
  - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
  - (C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest;
- (iii) a Director may be or become a director or other officer of, or otherwise be interested in:
  - (A) any related body corporate of the Company; or
  - (B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise, and

- (C) is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate, provided that, in the case of a related body corporate, any such remuneration or other benefits were approved by the Board; and
- (iv) any Director:
- (A) may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;
- (B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (C) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.
- (c) Material personal interest - Director's duty to disclose**
- (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Corporations Act applies.
- (ii) A notice required by clause 5.7(c)(i) must:
- (A) include details of:
- (1) the nature and extent of the interest; and
- (2) the relation of the interest to the affairs of the Company; and
- (B) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter.
- (d) Director may give standing notice about a material personal interest**
- (i) A Director required to give notice under clause 5.7(c) may give standing notice of the nature and extent of the interest in the matter.
- (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (iii) A notice under clause 5.7(d)(i) may be given:
- (A) at a Board meeting either orally or in writing; or
- (B) to the other Directors individually in writing.

- (iv) If the standing notice is given to the other Directors individually in writing:
    - (A) the notice is effective when it has been given to every Director; and
    - (B) the notice must be tabled at the next Board meeting after it is given.
  - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (e) Wholly owned subsidiary**
- If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:
- (i) the Director acts in good faith;
  - (ii) the Company is not insolvent at the time; and
  - (iii) the Company does not become insolvent as a result of the Director's act.

## **6 Management of business by Directors**

### **6.1 Powers of Directors**

- (a) The business of the Company is to be managed by or under the direction of the Directors.
- (b) The Board may exercise all of the powers of the Company except any powers that any provision of the Corporations Act or this Constitution require the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 6.1(b), the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or shares or give any other security for a debt, liability or obligation of the Company or of any other person.

### **6.2 Directors must keep transactions secret**

Every Director and other agent or officer of the Company must:

- (a) keep secret all aspects of all transactions of the Company, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Board to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Board, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

### **6.3 Appointment of attorney for Company**

The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and

- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

#### **6.4 Delegation by the Directors**

- (a) Subject to the Corporations Act, the Board may delegate any of its powers to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The effect of the delegate so exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

#### **6.5 Seals and execution of documents**

- (a) The Directors must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal:
  - (i) it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use; and
  - (ii) every document to which it is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
- (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

#### **6.6 Negotiable instruments**

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **7 Board meetings**

### **7.1 Directors' resolution without a meeting**

- (a) The Directors may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign a document (which may include a facsimile transmission) containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

## 7.2 Calling Board meetings

A Director may at any time, and the Secretary on the request of a Director must, call a meeting of the Board.

## 7.3 Notice of meeting

Notice of every Board meeting must be given to each Director, other than a Director who is on a leave of absence approved of by the Directors, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure to give that notice occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

## 7.4 Conduct of Board meetings

- (a) A Board meeting may be called and held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audiovisual linkup; or
  - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Director gives his or her consent under clause 7.4(a)(iv), he or she may only withdraw such consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audiovisual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting
- (e) A meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Corporations Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this clause 7, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

## 7.5 Chairing Board meetings

- (a) The Directors may elect a Director to the office of Chair of the Board.
- (b) The Directors may determine the period for which the Chair is to hold office.
- (c) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
  - (i) no Chair has been elected; or
  - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

## 7.6 Voting by Chair at Board meetings

In case of an equality of votes on a resolution at a Board meeting, the Chair will have a second or casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Director in respect of that resolution.

## 7.7 Quorum at Board meetings

- (a) Unless the Directors determine otherwise, the quorum for a Board meeting is two Directors and the quorum must exist at all times during the meeting.
- (b) Subject to clause 5.5(e), in determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted.
- (c) If, and so long as, a quorum does not exist for the consideration of a particular matter at a Board meeting because one or more of the Directors is prohibited from voting under clause 5.7(a), the Directors, including the Director or Directors prohibited, are entitled to vote on a resolution to call, and put the matter before, a general meeting.

## 7.8 Meeting competent to exercise all powers

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

## 7.9 Passing of Directors' resolutions

A resolution of the Directors will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

## 7.10 Resolution passed deemed to be a determination of the Board

Any resolution properly passed at a duly called Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

## 7.11 Committee powers and meetings

- (a) Any committee of Directors may exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

## 7.12 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

---

## **8 Directors' and Members' minutes**

---

### **8.1 Minutes**

The Directors must cause to be entered in minute books of the Company 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 declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

### **8.2 Minutes to be signed by chair**

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **8.3 Members' access to minutes**

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

---

## **9 Secretary**

---

### **9.1 Appointment of Secretary**

The Directors must appoint one or more persons to the office of secretary to the Company.

### **9.2 Notification to ASIC**

- (a) If a Secretary is appointed, the Secretary must notify ASIC of the appointment.
- (b) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

### **9.3 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

---

## **10 Auditor**

---

### **10.1 Appointment of Auditor**

The Directors must appoint one or more persons to the office of Auditor to the Company unless the Members at general meeting have appointed an Auditor.

## 10.2 Auditor and meetings of Members

- (a) The Auditor is ineligible to be elected or appointed as a Director.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

## 11 Dividends and capital reserves

---

### 11.1 Payment of dividend

Subject to the Corporations Act, this constitution and to the terms on which shares are on issue, the Board may determine that a dividend or other distribution (**Dividend**) is or will be payable.

### 11.2 Determination of Dividend particulars

Without limiting the Board's discretion under clause 11.1, the Board may:

- (a) fix:
  - (i) the amount of the Dividend;
  - (ii) whether or not the Dividend is franked, the franking percentage and franking class;
  - (iii) the time for determining entitlements to the Dividend;
  - (iv) the time for payment of the Dividend; and
  - (v) the method of payment of the Dividend;
- (b) determine that the Dividend be paid by the Company:
  - (i) paying cash;
  - (ii) issuing shares;
  - (iii) granting options; or
  - (iv) transferring assets;
- (c) determine that the Dividend be paid:
  - (i) on shares of one class but not another class; or
  - (ii) at different rates for different classes of shares; and
- (d) set aside or carry forward profits of the Company before paying the Dividend.

### 11.3 Board's discretion

Without limiting the Board's discretion under clause 11.1, the Board may resolve to:

- (a) determine that an interim Dividend be paid on a stated future date;
- (b) determine that, unless revoked, a Dividend will be payable on a stated future date but not before; or
- (c) declare that a Dividend is payable, whether immediately or on a stated future date.

### 11.4 No confirmation at general meeting

Paying a Dividend does not require confirmation at a general meeting.

### 11.5 Interest not payable

Interest is not payable on a Dividend.

**11.6 Entitlement to receive Dividends**

A Dividend in respect of a share must be paid to the person who is entitled to have his or her name entered in the Register of Members as the holder of that share:

- (a) where the Board has set a date under clause 11.2(a)(iii), on that date; or
- (b) where the Board has not set a date under clause 11.2(a)(iii):
  - (i) if the Board has determined that a Dividend is to be paid under clause 11.3(a) or clause 11.3(b), on the date the Dividend is paid; or
  - (ii) if the Board has declared that a Dividend is payable under clause 11.3(c), on the date of the declaration.

**11.7 Date Dividend is payable**

A Dividend in respect of a share must be paid to the person entitled to receive the Dividend under clause 11.6:

- (a) where the Board has fixed a time under clause 11.2(a)(iv), at that time; or
- (b) in any other case, on the date the Dividend is paid.

**11.8 Dividends proportional to paid up capital**

- (a) Subject to the Corporations Act, this constitution and any rights or restrictions attached to a class of shares, the person entitled to a Dividend on a share is entitled to:
  - (i) if the share is fully paid, the entire Dividend; or
  - (ii) if the share is partly paid, a proportion of that Dividend equal to the proportion which the amount paid on that share is of the total amounts paid or payable on that share.
- (b) Amounts paid in advance of a call on a share are ignored when calculating the proportion under clause 11.8(a)(ii).

**11.9 Deductions from Dividends**

The Board may deduct from any Dividend payable to, or at the direction of, a Member all money (if any) presently payable by that Member to the Company whether on account of calls or otherwise in relation to shares in the Company or otherwise.

**11.10 Unclaimed Dividends**

The Board may invest unclaimed Dividends as they think fit for the benefit of the Company until claimed or until required to be dealt with under any law relating to unclaimed money.

**11.11 Dividend plans**

- (a) The Board may establish a dividend selection plan or bonus share plan on any terms, under which participants may elect in respect of all or some of their shares:
  - (i) to receive a Dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or
  - (ii) to forego a Dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust.
- (b) The Board may establish a Dividend reinvestment plan on any terms, under which participants may elect in respect of all or some of their shares to apply the

whole or any part of a Dividend from the Company in subscribing for securities of the Company or a related body corporate of the Company.

- (c) The Board may implement, amend, suspend or terminate a plan established under this clause 11.11.

#### **11.12 Payment of Dividends using assets or securities**

- (a) Without limiting clause 11.2(b), the Board may resolve when determining or declaring a Dividend that the Dividend is to be paid wholly or in part by the distribution of specific assets, including paid up shares, debentures, or other securities of the Company or of any other body corporate, and the Directors must give effect to that resolution.
- (b) If the Company is required to distribute to its Members, by way of Dividend, shares in another body corporate:
  - (i) the Members shall be deemed to have agreed to become members of that body corporate; and
  - (ii) each of the Members appoints the Company or any of the Directors as its agent to execute any transfer of shares or other document required to give effect to the distribution of shares to the Member.
- (c) If a dispute arises in relation to a distribution under this clause 11.12, the Board may:
  - (i) settle the matter as they consider (acting reasonably) expedient;
  - (ii) fix the value for distribution of the specific assets or any part of those assets;
  - (iii) determine that cash payments must be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
  - (iv) vest any specific assets in trustees as the Board considers expedient.
- (d) If the distribution of specific assets to a particular Member is illegal or, in the Board's reasonable opinion, impracticable, the Board may make a cash distribution to that Member equal to the cash value of the proposed distribution of specific assets.

#### **11.13 Capitalisation of reserves and profits**

The Board may:

- (a) resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) resolve to apply the sum in any of the ways mentioned in clause 11.14 for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of Dividend.

#### **11.14 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under clause 11.13 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 11.14(a) and partly as mentioned in clause 11.14(b).

### 11.15 Implementing the resolution

The Board may do all things necessary to give effect to a resolution made under clause 11.13 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,
 and any agreement made is effective and binding on all the Members concerned;
- (c) fix the value of specific assets; and
- (d) vest property in trustees.

## 12 Inspection

- (a) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (b) Subject to the Corporations Act, a majority of the Directors or the Members by special resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (c) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the law.

## 13 Service and payments

### 13.1 Service

#### (a) Document includes notice

In clauses 13.1(b) to 13.1(h), a reference to a document includes a notice.

#### (b) Giving a document to Members

- (i) The Company may give a document to a Member:
  - (A) in person;
  - (B) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
  - (C) by sending it to the fax number or electronic address (if any) nominated by that Member;
  - (D) by sending it to the Member by other electronic means (if any) nominated by the Member; or

- (E) by notifying the Member in accordance with section 249J(3A) of the Corporations Act.
- (ii) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by air-mail, air courier or by fax or any other means permitted by the Listing Rules.
- (iii) The Company must give any document to Members who are joint holders of a share to the person named first in the Register of Members in respect of that share, and that document is deemed received by all holders of that share.
- (c) Giving a document to a person entitled to shares**
- A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with clause 13.1(b) to the person from whom that person derives title prior to registration of that person's title in the Register of Members.
- (d) Evidence of service of a document on a Member**
- A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.
- (e) Giving a document to a Director**
- The Company may give a document to a Director:
- (i) in person;
- (ii) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (iii) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (iv) by any other means agreed between the Company and that person.
- (f) Giving a document to the Company**
- A person may give a document to the Company:
- (i) by leaving it at the Registered Office;
- (ii) by sending it by post to the Registered Office;
- (iii) by sending it to the fax number at the Registered Office;
- (iv) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (v) by any other means prescribed by the Corporations Act.
- (g) Time of service of a document**
- (i) A document sent by post to an address within Australia is taken to be given:
- (A) in the case of a notice of meeting, one Business Day after it is posted; or
- (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (ii) A document sent by post or air-mail to an address outside Australia is taken to be given:

- (A) in the case of a notice of meeting, five Business Days after it is posted; or
- (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (iii) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (iv) A document sent by fax or to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic address.
- (v) A document given to a Member under clause 13.1(b)(i)(E) is taken to be given on the day on which the Member is notified that the document is available.

**(h) Signatures**

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Corporations Act relating to electronic transmissions or in any other manner approved by the Directors.

**13.2 Payments**

**(a) Form of payments**

The Company may pay a person entitled to an amount payable in respect of a share (including a Dividend) by:

- (i) crediting an account nominated in writing by that person; or
- (ii) any other manner as the Directors resolve.

**(b) Payment by cheque**

If the Directors resolve to pay by cheque, the Company may post a cheque to:

- (i) the address in the Register of Members of the Member in respect of the share;
- (ii) if that share is jointly held, the address in the Register of Members of the Member named first in respect of the share; or
- (iii) any other address which that person directs in writing.

**(c) Receipt**

Any joint holder of a share may give effective receipt for an amount (including a Dividend) paid in respect of the share.

**14 Proceedings involving officers**

**14.1 Indemnity**

**(a) Company to indemnify officers**

- (i) Subject to clause 14.1(a)(ii), the Company must indemnify any current or former Director, Secretary or executive officer of the Company or of a related body corporate of the Company, out of the property of the Company against:

- (A) every liability incurred by the person in that capacity (except a liability for legal costs) to another person (other than the Company or a related body corporate of the Company); and
  - (B) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.
- (ii) Clause 14.1(a)(i) does not apply to the extent that:
- (A) the Company is forbidden by the Corporations Act or other statute to indemnify the person against the liability or legal costs; or
  - (B) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by the Corporations Act or other statute.

**(b) Company may indemnify employee**

The Company may indemnify any employee of the Company at the discretion of Directors.

**14.2 Payments and advances to officer**

**(a) Payment of costs, losses and expenses**

Subject to this Constitution, the Corporations Act, or other statute, the Company may pay all costs, losses and expenses which any a person referred to in clause 14.1(a)(i) might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in discharge of their duties.

**(b) Advances on account of costs, losses and expenses**

- (i) Subject to the Corporations Act or other statute, the Company may make an advance, on account of anticipated costs, losses and expenses, to a person referred to in clause 14.1(a)(i) to assist the officer in defending any proceeding brought against the person in that capacity.
- (ii) If the Company makes an advance to an officer under clause 14.2(b)(i) the person must repay that advance if:
  - (A) judgment is not given in the person's favour;
  - (B) the person is not acquitted; or
  - (C) a court subsequently determines that the indemnification is not permitted.

**14.3 Insurance**

**(a) Company may pay premium**

Subject to clause 14.3(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a related body corporate of the Company, or any person who takes or has taken part in, or is or has been concerned with, management of the Company or a related body corporate of the Company, against liability incurred by the person in that capacity, including a liability for legal costs.

**(b) Payment of premium prohibited in certain circumstances**

Clause 14.3(a) does not apply to the extent that:

- (i) the Company is forbidden by the Corporations Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Corporations Act or other statute.

## 15 Winding up

### 15.1 Rights of Members on winding up

Subject to this Constitution, the Corporations Act and the rights and restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares, provided that a Member who is in arrears in the payment of a call on a share, but whose share has not been forfeited, is not entitled to participate in the distribution on the basis of holding that share until the amount owing in respect of the call has been fully paid and satisfied; and
- (b) for the purpose of calculating the excess referred to in clause 15.1(a), any amount unpaid on a share is to be treated as property of the Company.

### 15.2 Division of assets

- (a) If the Company is wound up, the liquidator, with the sanction of a special resolution of the Members:
  - (i) may divide among the Members, in specie or in kind, any part of the assets of the Company available and may for that purpose set the value as the liquidator considers fair on any assets to be divided; and
  - (ii) may vest the whole or any part of the assets of the Company in a trustee or trustees on trust for the benefit of any of the Members as the liquidator thinks fit but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If the liquidator considers it expedient, any division of assets under clause 15.2(a) may be otherwise than in accordance with the legal rights of the Members and any class may be given preferential or special rights or may be excluded altogether or in part from a division of assets.
- (c) If any division is otherwise than in accordance with the legal rights of the Members, any Member who would be prejudiced by the division has a right to dissent under the law.
- (d) If a division involves shares that have a liability to a call, the Members may direct the liquidator to satisfy the call out of the proportion of assets due to the Member and to pay any balance to the Member.