

CORPORATIONS ACT

CONSTITUTION

of

JERVOIS MINING LIMITED
(ACN 007 626 575)

(As adopted on 22 August 2002 and thereafter amended at the 2008 Annual General Meeting held on 26 November 2008)

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CORPORATIONS ACT
COMPANY LIMITED BY SHARES
CONSTITUTION
OF
JERVOIS MINING LIMITED
(ACN 007 626 575)

PRELIMINARY

1 Definitions and interpretation

1.1 In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise:

'**Alternate Director**' means a person appointed as an alternate Director under clause 69.

'**Auditor**' means the Company's auditor.

'**business day**' has the same meaning as in the Listing Rules.

'**Chairperson**' means the person appointed to chair:

- (a) Directors' meetings pursuant to clause 72; or
- (b) general meetings pursuant to clause 38.

'**CHESS**' has the same meaning as in section 21 of the SCH Business Rules.

'**CHESS Approved Securities**' means securities of the Company which are approved by SCH in accordance with the SCH Business Rules.

'**CHESS Rules**' means the SCH Business Rules and the provisions of the Corporations Act and Listing Rules concerning the electronic share registration and transfer system as and to the extent that they apply to the Company.

'**Company**' means Jervois Mining Limited (ACN 007 626 575).

'**Constitution**' means the constitution of the Company as amended from time to time.

'**Corporations Act**' means the Corporations Act 2001 (Cwlth).

'**Director**' means a person appointed to and acting in the position of a director of the Company.

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'Directors' means all or some of the Directors acting as a Board.

'dividend' includes bonus.

'Escrow Period' has the same meaning as in the Listing Rules.

'Exchange' means Australian Stock Exchange Limited or the Company's Home Branch, as the context requires, and includes any body corporate succeeding to all or most of the powers, functions and duties of Australian Stock Exchange Limited.

'Executive Director' means a person appointed or holding office as an Executive Director under **clause 77.1**.

'Home Branch' has the same meaning as in the Listing Rules.

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

'Managing Director' means a person appointed as managing director under **clause 77.1**.

'Marketable Parcel' has the same meaning as in the Business Rules of the Exchange.

'Member' means a person entered in the Register as the holder of Shares.

'Non-Marketable Parcel' means a parcel of securities which is less than a Marketable Parcel.

'Offeror' means an offeror under a Proportional Takeover Bid.

'Office' means the Company's registered office.

'Proportional Takeover Resolution' means a resolution passed in accordance with **clause 25**.

'Proportional Takeover Bid' means a takeover bid in accordance with paragraph 618 (1) (b) of the *Corporations Act*.

'Register' means the register of Members of the Company.

'Registered Address' means the last known address of a Member as noted in the Register.

'Representative' means a person authorised by a Member to act as its representative under **clause 53.1**.

'**Relevant Day**' in relation to a Proportional Takeover Bid means the day that is 14 days before the last day on which offers under the relevant Proportional Takeover Bid remain open.

'**Restricted Securities**' has the same meaning as in the Listing Rules.

'**Restriction Agreement**' means a restriction agreement within the meaning and for the purposes of the Listing Rules.

'**SCH**' means ASX Settlement and Transfer Corporation Pty. Limited.

'**SCH Business Rules**' means the Business Rules made by SCH.

'**Seal**' means the Company's common seal (if any).

'**Secretary**' means any person appointed by the Directors to perform any of the duties of a secretary of the Company.

'**Shares**' means shares in the capital of the Company.

1.2 In this Constitution, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) words importing natural persons include corporations;
- (d) words and expressions defined in the Corporations Act have the same meaning in this Constitution;
- (e) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (f) a reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.

1.3 Unless the contrary intention appears in this Constitution, an expression in a clause has the same meaning as in a provision of the Corporations Act which deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.

1.5 If the Company is admitted to the Official List of the Exchange, the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;

- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

SHARES

2 Rights

Subject to this Constitution and to the terms of issue of Shares, all Shares in the capital of the Company attract the following rights, privileges and conditions:

- (a) The right to receive notice of and to attend and vote at all General Meetings of the Company; and
- (b) The right to receive dividends.

3 Issue of Shares

3.1 Subject to the Corporations Act, the Listing Rules and this Constitution, all unissued Shares are under the control of the Directors who may issue and allot, or dispose of, the Shares to persons:

- (a) on terms determined by the Directors;
- (b) at the issue price or without any consideration as the Directors may determine; and
- (c) at the time that the Directors determine.

3.2 The Directors' power under **clause 3.1** includes the power to issue options over unissued Shares and the power to issue and allot preference shares that are liable to be redeemed.

3.3 Subject to the Corporations Act and the Listing Rules, the Directors may issue and allot Shares with:

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- (a) any preferential, deferred or special rights, privileges or conditions; or
- (c) any restrictions in regard to dividend, voting, return of capital or otherwise.

4 Buy-backs

The Company may, in accordance with the Corporations Act and the Listing Rules, buy ordinary Shares in itself on terms and at times determined by the Directors.

5 Commission and Brokerage

5.1 The Company may exercise the power conferred by the Corporations Act to make payments by way of brokerage or commission in respect of subscriptions for Shares in the Company.

5.2 Payments in accordance with this Clause may be made in cash, by the allotment of Shares, by the grant of options over Shares, or by a combination of any of those methods, or otherwise.

6 Trusts not recognised

6.1 Except as required by law, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.

6.2 This **clause 6** applies even if the Company has notice of the relevant trust, interest or right.

7 Joint Holders

7.1 If two or more persons are registered as the holders of a Share, they are deemed to hold the Share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.

7.2 Any one of the joint holders of a Share may give an effectual receipt for any dividend or return of capital payable to the joint holders.

8 Share certificates

8.1 (a) Subject to this **clause 8** and **clause 24.3**, every Member is entitled free of charge to one certificate for all Shares registered in his name.

(b) A Member may request two or more certificates in reasonable denominations for different portions of its holding.

8.2 A Member may by notice in writing to the Company irrevocably waive any entitlement he may have to a certificate.

- 8.3 Share certificates will be issued under the Seal or under a facsimile duplicate of the Seal with the addition on its face of 'Share Seal' or 'Certificate Seal'.
- 8.4
- (a) Joint holders are only entitled to a single certificate in their joint names in respect of each portion of their holding.
 - (b) The certificate will be sent to the joint holder whose name appears first in the Register.
 - (c) Only the joint holder whose name appears first in the Register may make the request referred to in **clause 8.1(b)**.
 - (d) A waiver of entitlement to a certificate for jointly held Shares must nbe made by all of the joint holders.
- 8.5 Subject to **Clause 24.3**, the Company must issue a replacement certificate for Shares in accordance with the Corporations Act and the Listing Rules if:
- (a) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
 - (b) the Member has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Member.
- 8.6 Every certificate for Shares must be issued and dispatched in accordance with the Corporations Act and the Listing Rules.
- 8.7 The Company may elect in accordance with the Listing Rules that all Shares or any class of Shares may only be held as uncertificated holdings on the CHES register.

9 **Replacement of Certificate**

The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

10 **Variation of Class Rights**

- 10.1 The rights attached to any class of Shares may, unless their terms of issue state otherwise, be varied or cancelled:
- (a) with the written consent of the holders of 75% of the issued Shares of the class; or
 - (b) with the sanction of a special resolution passed at a separate general meeting of the holders of Shares of the class.
- 10.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:

- (a) a quorum is two persons holding or representing by proxy at least one-third of the issued Shares of the class or, if there is one holder of Shares in a class, that person; and
- (b) any holder of Shares of the class present in person or by proxy may demand a poll.

10.3

The rights conferred on the holders of Shares which are not ordinary Shares and which have preferential or other special rights will, unless otherwise expressly provided by their respective terms of issue, be deemed to be varied or abrogated by:

- (a) the issue of more Shares, or
- (b) the conversion of securities to new securities,

which rank equally with or in priority to those Shares.

11

Non-Marketable Parcels

11.1

(a) If at any time (as at a record date determined by the Directors) the number of Shares registered in the name of a Member is less than a Marketable Parcel (**'Eligible Member'**), the Directors may cause a written notice (**'Notice'**) to be dispatched to the Eligible Member, requiring the Eligible Member to advise the Company by a specified date (**'Relevant Date'**) whether the Eligible Member elects that the provisions of this clause are not to apply to the Shares.

(b) The Relevant Date must be not less than 6 weeks after the date of service of the Notice.

11.2

(a) At the time of or prior to the Notice being dispatched, the Directors may cause a notice to be dispatched to each Member who holds less than a Marketable Parcel of Shares on the CHESS subregister, advising each of those Members of the Directors' invoking or intention to invoke the procedure provided for in this **clause 11 ('Procedure')**.

(b) That notice must state that if the Member wishes to have his holding sold in accordance with the Procedure, that Member must arrange for conversion of his holding to the certificated subregister or the issuer sponsored subregister before a specified date and that if conversion of its holding to one of those subregisters is not effected before that specified date and the Member's holding is liable to be sold under this clause 11, the Company may move that holding to a certificated subregister or an issuer sponsored subregister in accordance with the SCH Business Rules.

11.3

At the time the Procedure is invoked a Notice must be dispatched to each and every Eligible Member.

- 11.4 The Notice must state that the Shares referred to in the Notice will be liable to be sold unless, by the Relevant Date, the Member advises the Company that the provisions of this clause are not to apply to the Shares.
- 11.5 Every Eligible Member on whom a Notice has been served may by notice in writing to the Company and delivered to the Office before the Relevant Date require the Company not to sell that Member's Shares in accordance with this clause in which event no sale of that Member's Shares will take place.
- 11.6 If the Eligible Member does not advise the Company by the Relevant Date that the provisions of this clause are not to apply to the Shares referred to in the Notice, any of those Shares which are held on or moved onto (in accordance with the SCH Business Rules) the certificated subregister or the issuer sponsored subregister may be sold by the Company.
- 11.7 Any Shares to be sold pursuant to this clause may be sold on the terms, in the manner and at the time determined by the Directors and for the purposes of a sale pursuant to this clause each Eligible Member:
- (a) appoints the Company the Eligible Member's agent for sale;
 - (b) authorises the Company to effect on the Eligible Member's behalf a transfer of the Shares sold;
 - (c) appoints the Company and its Directors jointly and severally as the Eligible Member's attorneys in the Eligible Member's name and on the Eligible Member's behalf to execute any instrument or take any other steps as they or any of them may consider appropriate to transfer the Shares sold.
- 11.8 The title of the transferee to Shares acquired pursuant to this clause is not affected by any irregularity or invalidity in connection with the sale of Shares to the transferee.
- 11.9
- (a) The proceeds of any sale of Shares pursuant to this clause less any unpaid calls and interest (**'Sale Consideration'**) will be paid to the relevant Member or as that Member may direct.
 - (b) The Sale Consideration received by the Company in respect of all Shares sold pursuant to this clause will be paid into a bank account opened and maintained by the Company for the purposes of this clause.
 - (c) The Company will hold the Sale Consideration in trust for the Member whose Shares are sold pursuant to this clause and will forthwith notify the Member in writing that the Sale Consideration in respect of the Member's Shares has been received by the Company and is being held by the Company pending instructions from the Member as to how it is to be dealt with. If the Member has been issued with a share certificate or certificates, the Member's instructions, to be effective, must be accompanied by the share certificate or certificates to which the Sale Consideration relates or, if the certificate or certificates has or have been lost or destroyed, by a statement and undertaking pursuant to Sub-Section 1070D (5) of the Corporations Act.

11.10 Subject to the Corporations Act, the Company and/or the purchaser will bear all costs, including brokerage and stamp duty, associated with the sale of any Shares pursuant to this clause.

11.11 The Procedure may only be invoked once in any 12 month period after its adoption or renewal.

11.12 If the Procedure has been invoked and there is an announcement of a takeover bid for Shares, no more sales of Shares may be made under this clause 11 until after the close of the offers made under the takeover. The Procedure may then be invoked again.

12 Calls

12.1 Subject to the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.

12.2 A call is made when the resolution of the Directors authorising it is passed. The Directors may require it to be paid by instalments, and may revoke the call after it has been made.

12.3 The Company must comply with the Listing Rules in relation to the dispatch and content of notices to Members on whom a call is made.

12.4 A Member to whom notice of a call is given in accordance with this **clause 12** must pay to the Company the amount called in accordance with the notice.

12.5 Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.

12.6 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

13 Instalments

Where the Directors require a call to be payable by instalments or an amount becomes payable by the terms of issue of Shares on allotment or at a time or in circumstances specified in the terms of issue :

- (a) the amount is payable as if it were a call made by the Directors and as if they had given notice of it; and
- (b) the consequences of late payment or non-payment of the amount are the same as the consequences of late payment or non-payment of a call.

14 Interest and expenses

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment,

but the Directors may waive payment of the interest and expenses in whole or in part.

15 **Recovery of amounts due**

On the hearing of any action for the recovery of money due for any call, proof that:

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued

will be conclusive evidence of the debt.

16 **Differentiation**

The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

17 **Payment of calls in advance**

17.1 The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called.

17.2 The Company may:

- (a) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
- (b) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.

17.3 Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage, other than the payment of interest under this **clause 17**, to which the Member would not have been entitled if it had paid the amount when it became due.

LIEN AND FORFEITURE**18. Lien**

18.1 To the extent permitted by the Listing Rules, the Company has a first and paramount lien on every partly paid Share for all money:

- (a) called, or payable to the Company at a fixed time, in respect of the Share;
- (b) presently payable by a or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
- (c) which the Company is required by law to pay (and has paid) in respect of the Share.

18.2 The Company's lien extends to all dividends payable in respect of the Share and to reasonable interest and expenses incurred because the amount is not paid.

18.3 If any law for the time being of any country purports to impose an immediate or contingent liability upon the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares or dividends or other moneys accruing due to the Member who holds the Shares:

- (a) the Member indemnifies the Company in respect of any such payment or liability;
- (b) subject to the Listing Rules, the Company:
 - (i) has a lien on the Shares and dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person, in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
 - (ii) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise.
 - (iii) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in **clause 18.3(b)(i)**.

18.4 The Company may do all things which the Directors think it necessary or appropriate to do under the SCH Business Rules and the Listing Rules to enforce or protect the Company's lien.

18.5 Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.

18.6 The Directors may declare a Share to be wholly or partly exempt from a lien.

19 Lien Sale

If:

- (a) the Company has a lien on a Share for money presently payable; and
- (c) the Company has given the Member who holds the Share written notice demanding payment of the money,

then 14 or more days after giving the notice, the Directors may, if the Listing Rules permit, sell the Share in any manner determined by them.

20 Forfeiture Notice

20.1 The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of the non-payment.

20.2 The notice under **clause 20.1** must:

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (b) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

21 Forfeiture

21.1 If a Member does not comply with a notice served under **clause 20**, then any or all of the Shares in respect of which the notice was given may be forfeited pursuant to a resolution of the Directors.

21.2 Dividends declared and unpaid in respect of forfeited Shares will also be forfeited.

- 21.3 On forfeiture, Shares become the property of the Company and forfeited Shares must be:
- (a) disposed of or, subject to the approval of holders of ordinary Shares in accordance with the Listing Rules, cancelled on terms determined by the Directors; or
 - (b) offered by public auction in accordance with any requirement of the Listing Rules.
- 21.4 The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.
- 21.5 Promptly after a Share has been forfeited:
- (a) notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture; and
 - (b) the forfeiture and its date must be noted in the Register.

22 Liability of former member

- 22.1 The interest of a person who held Shares which are forfeited is extinguished but the former Member remains liable to pay:
- (a) all money (including interest and expenses) that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares; and
 - (b) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).
- 22.2 A former Member's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the person in respect of the Shares. The liability may only be released or waived in accordance with the Listing Rules.

23 Sale

- 23.1 The Company may:
- (a) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share; and
 - (b) effect a transfer of the Share in favour of a person to whom the Share is sold or disposed of.
- 23.2 The purchaser of the Share:

- (a) is not bound to check the regularity of the sale or the application of the purchase price;
- (b) obtains title to the Share despite any irregularity in the sale; and
- (c) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.

23.3 A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or re-issued, or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.

23.4 The net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts secured by the lien or all money that was payable in respect of the forfeited Share; and
- (c) in payment of any surplus to the former Member whose Share was sold.

TRANSFER OF SHARES

24 General

24.1 Subject to this Constitution, a Member may transfer the Shares held by that Member.

24.2 Subject to **clause 24.3**, Shares may be transferred by:

- (a) a written transfer instrument in any usual or common form; or
- (b) any other form approved by the Directors.

24.3 (a) The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Corporations Act, the Listing Rules and the SCH Business Rules.

- (b) If the Company participates in a system of the kind described in **clause 24.3(a)**, then despite any other provision of this Constitution:
 - (i) Shares may be transferred, and transfers may be registered, in any manner required or permitted by the Listing Rules or the SCH Business Rules applying in relation to the system;
 - (ii) the Company must comply with and give effect to those Rules; and
 - (iii) the Company may, in accordance with those Rules, decline to issue certificates for holdings of Shares.

- 24.4 A written transfer instrument must be:
- (a) a proper instrument of transfer within the meaning of the Corporations Act;
 - (b) executed by or on behalf of both the transferor and the transferee unless it is a sufficient instrument of transfer within the meaning of the Corporations Act; and
 - (d) left for registration at the share registry of the Company, accompanied by the information the Directors properly require to show the right of the transferor to make the transfer,

and in that event the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

- 24.5 Except as provided by the CHES Rules:
- (a) a transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.
 - (b) a transfer of Shares does not pass the right to any unpaid dividends or dividends declared on the Shares until such registration.

25 Proportional Takeover Bid

25.1 Subject to **clause 24.3**, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid is prohibited unless and until a Proportional Takeover Resolution is passed.

25.2 A person (other than the Offeror or a person associated with the Offeror) who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held Shares of the class which are the subject of the Proportional Takeover Bid:

- (a) may vote on a Proportional Takeover Resolution; and
- (b) has one vote for each of the Shares.

25.3 Where offers have been made under a Proportional Takeover Bid, the Directors must ensure that a Proportional Takeover Resolution is voted on at a meeting of the persons described in **clause 25.2** before the Relevant Day.

25.4 A Proportional Takeover Resolution is passed if more than one half of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.

25.5 The provisions of this Constitution that apply in relation to a general meeting of the Company apply, with any modifications that circumstances require, in

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relation to a meeting that is convened under this Clause as if the meeting was a general meeting of the Company.

25.6 Where a Proportional Takeover Resolution is voted on in accordance with this clause before the Relevant Day the Company must, on or before the Relevant Day:

- (a) give to the Offeror; and
- (b) serve on the Company's Home Exchange,

a notice in writing stating that the Proportional Takeover Resolution has been voted on and that it has been passed, or has been rejected, as the case requires.

25.7 If at the end of the day before the Relevant Day no Proportional Takeover Resolution has been voted on in accordance with this clause, a resolution to approve the Proportional Takeover Bid will, for the purposes of this clause, be taken to have been passed.

25.8 This clause 25 will, unless renewed in accordance with the Corporations Act, automatically cease to have effect three years after the date of its adoption or renewal or last renewal (as the case may require).

26 **Transfer Procedure**

26.1 For a transfer of Shares that is not a SCH - regulated transfer:

- (a) the written transfer instrument must be left at the Office or the office of the Company's Share Registrar;
- (b) the instrument must be accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
- (c) the Directors may require other evidence of the transferor's right to transfer the Shares.

26.2 For a transfer of Shares that is a SCH-regulated transfer a Share transfer must be effected in accordance with the applicable Listing Rules and SCH Business Rules.

27 **Refusal of registration**

27.1 If permitted to do so by the Listing Rules the Directors may:

- (a) request SCH to apply a holding lock to prevent a transfer of CHESSE Approved Securities registered on the CHESSE subregister; or
- (b) refuse to register a transfer of other shares in the Company.

- 27.2 The Directors must:
- (a) request SCH to apply a holding lock to prevent a transfer of CHES Approved Securities registered on the CHES subregister; or
 - (b) refuse to register any transfer of other shares in the Company,
- if:
- (c) the Listing Rules require the Company to do so; or
 - (d) the transfer is in breach of the Listing Rules or a Restriction Agreement.
- 27.3 If in the exercise of their rights under clauses 27.1 and 27.2 the Directors request application of a holding lock to prevent a transfer of CHES Approved Securities or refuse to register a transfer of a security they must give written notice of the request or refusal to the holder of the security, the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.
- 27.4 The Company must retain every instrument of transfer which is registered for such period as the Directors determine.
- 27.5 If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made 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.
- 28 Closure of Register**
- 28.1 Subject to the Corporations Act, the Listing Rules and the SCH Business Rules, the transfer books and the Register may be closed for up to 30 days in each year.
- 28.2 The Company must, in accordance with the Listing Rules, give the Exchange notice of any intended closure.

TRANSMISSION OF SHARES

- 29 Title on Death**
- 29.1 The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 29.2 If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 29.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.

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29.4 The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

30 Transmission

30.1 A person who becomes entitled to a Share in consequence of the death, mental illness or bankruptcy of a Member may, subject to producing to the Directors evidence of his entitlement which is satisfactory to the Directors, elect to:

- (a) be registered as the holder of the Share; or
- (b) transfer the Share to some other person nominated by him.

30.2 If the person who has become entitled to a Share:

- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him; or
- (b) elects to transfer the Share, then the person must effect a transfer of the Share.

30.3 An election to be registered as a holder of a Share under **clause 30.1(a)** or a transfer of a Share from a Member or deceased Member under this **clause 30** will be subject to the same restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member himself.

30.4 A person who:

- (a) has become entitled to a Share by operation of law; and
- (b) has produced evidence of his entitlement which is satisfactory to the Directors,

is entitled to the dividends and other rights of the registered holder of the Share.

30.5 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be deemed to be joint holders of the Share.

CHANGES TO SHARE CAPITAL

31 Conversion of Shares

31.1 The Company may by resolution passed at a General Meeting convert all or any of its shares into a larger or smaller number of shares but so that any amount unpaid on shares being converted is divided equally among the replacement shares.

- 31.2 For the purpose of giving effect to any consolidation or subdivision of Shares, the Directors may, subject to the SCH Business Rules, settle any difficulty which arises as they think expedient.

32 Reduction of Capital

- 32.1 Subject to the Corporations Act and the Listing Rules, the Company may reduce its share capital in any way, including, without limitation, by the distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.

- 32.2 Subject to the Corporations Act and the Listing Rules, if a difficulty arises in making a distribution of specific assets, the Directors may do all or any one or more of the following:

- (a) deal with the difficulty as they consider expedient;
- (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
- (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of the Members;
- (d) invest any specific assets in trustees as the Directors consider expedient.

- 32.3 Subject to the Corporations Act and the Listing Rules, if a distribution of specific assets to a particular Member or Members is illegal or in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the reduction in share capital instead of the distribution of specific assets.

33 POWERS OF ATTORNEY

- 33.1 If a Member executes or proposes to execute any document or do any act by or through an attorney, that Member must deliver the instrument appointing the Attorney to the Company for notation. If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request. The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

- 33.2 Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:

- (a) be taken and deemed to continue and will remain in full force and effect; and
- (b) may be acted upon,

unless express notice in writing of its revocation or of the death of the Member who granted it is lodged at the Office.

GENERAL MEETINGS

34 Convening

34.1 A Director may, at any time, convene a general meeting.

34.2 The Directors must convene annual general meetings in accordance with the Corporations Act, to be held at times to be determined by the Directors.

34.3 Members may also requisition or convene general meetings in accordance with the procedures for member-initiated meetings set out in the Corporations Act.

35 Notice

35.1 Members must be given at least 21 or, if the Company is admitted to the Official List of the Exchange, at least 28 days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of a general meeting.

35.2 General meetings may be called on shorter notice in accordance with the procedures set out in the Corporations Act.

35.3 A notice convening a general meeting must:

- (a) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used);
- (b) state the general nature of the business to be transacted at the meeting;
- (c) specify a place and facsimile number and may specify an electronic address for the purpose of proxy appointments;
- (d) specify particulars of any determination made under regulation 7.11.37 of the Corporations Regulations 2001; and
- (e) comply with any other requirement of the Corporations Act.

35.4 The business of an annual general meeting will be to:

- (a) consider the annual financial report and reports of the Directors and Auditor required by the Corporations Act;
- (b) elect directors;
- (c) where relevant, appoint and fix the remuneration of the Auditor; and
- (d) transact any other business which under this Constitution may be transacted at a general meeting.

- 35.5 The Chairperson of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to:
- (a) ask questions about or make comments on the management of the Company;
 - (b) ask the Auditor or his or her representative questions relevant to the conduct of the audit and the preparation and contents of the Auditor's report for the Company.
- 35.6 (a) The Directors may postpone or cancel any general meeting (other than a meeting convened as the result of a requisition under **clause 34.3**) at any time before the day of the meeting;
- (b) The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 35.6 An accidental omission to send a notice of a general meeting or the postponement of a general meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

36 Member

In **clauses 37, 38, 40 and 44**, 'Member' includes a Member present in person or by proxy, attorney or Representative.

37 Quorum

- 37.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 37.2 A quorum of Members is two Members.
- 37.3 If a quorum is not present within 30 minutes after the time appointed for a meeting:
- (a) if the meeting was convened by or on the requisition of Members, it is automatically dissolved; or
 - (d) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and

- (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

38 Chairperson

38.1 The Chairperson, or in the Chairperson's absence the deputy Chairperson, of Directors' meetings will be the Chairperson at every general meeting.

38.2 If:

- (a) there is no Chairperson or deputy Chairperson; or
- (b) neither the Chairperson nor deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) the Chairperson and deputy Chairperson are unwilling to act as Chairperson of the meeting,

the Directors present may elect a Chairperson.

38.3 If no appointment is made pursuant to **clause 38.2**, then:

- (a) the Members may elect one of the Directors present as Chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as Chairperson.

38.4 If there is a dispute at a general meeting about a question of procedure, the Chairperson may determine the question.

38.5 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the Chairperson, including the procedure for the conduct of the election of the Directors.

39 Adjournment

39.1 The Chairperson of a meeting at which a quorum is present:

- (a) in his or her discretion may adjourn a meeting with the meeting's consent; and
- (b) must adjourn a meeting if the meeting directs him or her to do so.

39.2 An adjourned meeting may take place at a different venue from the initial meeting.

39.3 The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.

39.4 Notice of an adjourned meeting need only be given if a general meeting has been adjourned for more than 30 days.

39.5 No poll may be demanded on the question of adjournment of a meeting except by the Chairperson.

40 Decisions

40.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

40.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:

- (a) the Chairperson;
- (b) any five Members who have the right to vote at the meeting;
- (c) any Member or Members who can vote not less than 5% of all votes held by Members who have the right to vote on the resolution; or
- (d) any Member or Members who can vote Shares on which an amount has been paid up or credited as paid up equal to not less than 5% of the total amount paid up on all Shares conferring the right to vote on the resolution.

40.3 Unless a poll is demanded:

- (a) a declaration by the Chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

40.4 The demand for a poll may be withdrawn.

40.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

41 Taking a Poll

41.1 A poll will be taken when and in the manner that the Chairperson directs.

41.2 The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.

- 41.3 The Chairperson may determine any dispute about the admission or rejection of a vote.
- 41.4 The Chairperson's determination, if made in good faith, will be final and conclusive.
- 41.5 No poll may be demanded on the election of the Chairperson.
- 41.6 A poll demanded on the adjournment of a meeting must be taken immediately.
- 41.7 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

42 Casting Vote of Chairperson

The Chairperson has a casting vote on a show of hands and on a poll (in addition to the Chairperson's votes as a Member, proxy, attorney or Representative).

43 Offensive Material

The Chairperson may refuse admission to, or require the person to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the Chairperson considers to be dangerous, offensive or liable to cause disruption.

44 Entitlement to Vote

- 44.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
- (a) every Member may vote;
 - (b) on a show of hands every Member has one vote;
 - (c) on a poll every Member has:
 - (i) for each fully paid Share held by the Member, one vote; and
 - (ii) for each partly paid Share held by the Member, a fraction of a vote equivalent to the proportion which the amount paid up (ignoring any amount paid in advance of a call) bears to the total issue price of the Share.

- 44.2 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 voting rights in respect of the relevant Restricted Securities.

45 **Unpaid Calls**

A Member is not entitled to vote or to be counted in a quorum in respect of Shares on which all calls and other sums payable by the Member have not been paid.

46 **Joint Holders**

If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

47 **Objections**

- 47.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.

- 47.2 An objection must be referred to the Chairperson of the meeting, whose decision is final.

- 47.3 Subject to **clause 47.4**, a vote which the Chairperson does not disallow pursuant to an objection is valid for all purposes.

- 47.4 A vote which the Listing Rules require the Company to disregard is not valid.

48 **Votes by Operation of Law**

A person who has satisfied the Directors not less than 24 hours before a general meeting that he is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a general meeting, as if the person were the registered holder of the Share.

49 **VOTES OF MEMBERS - Votes by Proxy**

- 49.1 A Member who is entitled to attend and cast a vote at a general meeting of the Company may appoint not more than two other persons as that Member's proxy or proxies to attend and vote at the meeting on that Member's behalf.

- 49.2 If a Member appoints one proxy, that proxy may vote on a show of hands.

- 49.3 If a Member appoints two proxies neither proxy may vote on a show of hands.

49.3 A proxy may demand or join in demanding a poll.

50 Instrument Appointing Proxy

50.1 A Member who is a natural person may appoint a proxy by a written appointment signed by the appointor or the appointor's attorney.

50.2 A Member who is a corporation may appoint a proxy by a written appointment executed in accordance with section 127 of the Corporations Act or signed by a director, secretary or attorney of the appointor.

50.3 A proxy need not be a Member.

50.4 If a Member appoints two proxies, the appointment may specify the proportion or number of votes that each proxy may exercise. If the appointment does not specify a proportion or number, each proxy may exercise half of the votes in which case any fraction of votes will be disregarded.

50.5 An appointment of a proxy must be in a form approved by the Directors.

50.6 A proxy may vote or abstain as he or she chooses except to the extent that appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.

50.7 A proxy's appointment is valid at an adjourned meeting.

51 Lodgment of Proxy

51.1 The written appointment of a proxy or attorney must be received by the Company, not less than 48 hours before:

- (a) the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
- (b) the taking of a poll on which the appointee proposes to vote.

51.2 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be deposited with the appointment.

51.3 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:

- (a) the Office;
- (b) a facsimile number at the Office; or
- (c) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

52 Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became of unsound mind;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless any written notification of the death, unsoundness of mind, revocation or transfer was received at the Office before the relevant meeting or adjourned meeting.

53 Representatives of corporations

53.1 Any Member which is a corporation may authorise a natural person to act as its representative as provided by the Corporations Act.

53.2 The Chairperson of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the Chairperson of the general meeting his or her status as a Representative within a period prescribed by the Chairperson of the general meeting.

APPOINTMENT AND REMOVAL OF DIRECTORS**54 Number of Directors**

There will not be less than three or more than twelve Directors unless otherwise determined by the Company in general meeting.

55 Qualification

Neither a Director nor an Alternate Director has to hold any Shares.

56 Appointment and Removal of Directors

56.1 The Company may, subject to the Corporations Act, by resolution passed in general meeting:

- (a) remove any Director before the end of the Director's term of office; and
- (b) appoint another person in the Director's place.

56.2 A person appointed under **clause 56.1 (b)** will hold office for the term for which the Director replaced would have held office if the Director had not been removed.

57 Additional and casual Directors

57.1 Subject to **clause 54**, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

57.2 A Director appointed under **clause 57.1** will hold office until the next annual general meeting of the Company when the Director may be re-elected but will not be taken into account in determining the number of Directors who must retire by rotation. This provision does not apply to a Managing Director appointed under **clause 77.1(a)**.

58 Filling vacated office

58.1 If a Director retires at a general meeting, the Company may by ordinary resolution elect a person to fill the vacated office.

58.2 If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be deemed to have been re-elected unless, at the meeting at which he or she retires:

- (a) it is resolved not to fill the vacated office; or
- (b) the resolution for the re-election of the Director is put and lost.

59 Retirement by rotation

59.1 Subject to **clause 77.8** and the Listing Rules, at each annual general meeting one third of the Directors or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third of the Directors must retire from office.

59.2 (a) The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last election or appointment.

(b) Directors elected or appointed on the same day may agree among themselves or determine by lot which of them must retire.

59.3 Subject to **clause 77.8** a Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected, even if his or her retirement results in more than one-third of all Directors retiring from office.

59.4 A retiring Director will be eligible for re-election.

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60 Nomination of Director

60.1 A person other than a Director retiring by rotation is not eligible for election as a Director at a general meeting unless the person, or a Member who intends to propose the person, has left at the Office a written notice signed by him or her:

- (a) giving the person's consent to the nomination; and
- (b) stating either that the person is a candidate for the office of Director or that the Member intends to propose the person for election.

60.2 A notice given in accordance with **clause 60.1** must be left at the Office more than 21 days before the relevant general meeting unless the candidate was recommended for election by the Directors, in which case the notice must be left at the Office more than 14 days before the relevant general meeting.

60.3 A written notice referring to all Director vacancies and each candidate for election, must be sent to all Members not less than seven days before every general meeting at which an election of a Director will take place.

61 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Director by virtue of the Corporations Act;
- (b) is prohibited by the Corporations Act or an order made under the Corporations Act from continuing as a Director;
- (c) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (d) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns by notice in writing to the Company;
- (f) is removed by a resolution of the Company; or
- (g) not being engaged abroad on the business of the Company, is absent from Directors' meetings for 3 consecutive months without leave of absence from the Directors.

REMUNERATION OF DIRECTORS**62 Remuneration of Non-Executive Directors**

62.1 Subject to the Listing Rules, the Directors (other than the Managing Director or an Executive Director) may collectively be paid as remuneration for their services a fixed sum not exceeding the aggregate maximum sum from time to time determined by the Company in general meeting.

- 62.2 The notice convening a general meeting at which it is proposed that Members approve an increase of the aggregate maximum sum must state the amount of the increase and the aggregate maximum sum, and any other matters required by the Listing Rules.
- 62.3 Subject to the Listing Rules, the aggregate maximum sum will be divided between the non-executive Directors in such proportion and manner as they agree and, in default of agreement, equally.
- 62.4 Non-Executive Directors may not be paid a commission on or a percentage of profits or operating revenue.
- 62.5 If a Non-Executive Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, then the Company may pay the Director a fixed sum determined by the Directors in addition to or instead of the Director's remuneration under **clause 62.1**. No payment may be made under this **clause 62.5** if the effect of the payment would be to exceed the aggregate amount of Directors' remuneration determined by the Company in general meeting.
- 62.6 The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.
- 62.7 The Company may also pay a premium in respect of a contract insuring a person who is or has been a Non-Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.

63 Remuneration of Executive Directors

- 63.1 The remuneration of a Managing Director or of an Executive Director may from time to time be fixed by the Directors. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but may not be by commission on, or a percentage of, operating revenue.
- 63.2 The Company may pay a premium in respect of a contract insuring a person who is or has been a Managing Director or Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.

64 Payment to former Directors

- 64.1 Subject to the Corporations Act, the Directors may:
- (a) pay a gratuity, pension or allowance, on retirement or other vacation of office, to or for the benefit of a Director or to any relative of a Director; and
 - (b) make contributions to any fund and pay any premiums for the purchase or provision of any such gratuity, pension or allowance.

64.2 The Directors may enter into a contract or arrangement with a prospective, present or former Director for the payment of benefits or the making of contributions of the kinds referred to in **clause 64.1**.

64.3 The Directors may establish or support or assist in the establishment or support of funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to the Directors.

POWERS AND DUTIES OF DIRECTORS

64.4 Directors to manage Company

65.1 The business of the Company is managed by or under the direction of the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act or the Listing Rules do not require to be exercised by the Company in general meeting.

65.2 Without limiting the generality of **clause 65.1**, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company or all or any of its uncalled capital; and
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

65.3 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 the Listing Rules;
 - (iii) when requested to disclose information by the Directors, to the auditors of the Company or a general meeting of the Company;
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company except as required by the Listing Rules.

PROCEEDINGS OF DIRECTORS

66 Directors' meetings

66.1 (a) A Director may at any time, and the Secretary must on the requisition of a Director, convene a Directors' meeting.

(b) A Directors' meeting must be convened by not less than 48 hours written notice of a meeting to each Director and each Alternate Director.

- 66.2 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.
- 66.3 An accidental omission to send a notice of meeting of Directors to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings at or any resolution passed at the meeting.
- 66.4
- (a) A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
 - (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
 - (c) A Director who participates in a meeting held in accordance with this **clause 66.4** is deemed to be present and entitled to vote at the meeting.
- 66.5 **Clause 66.4** applies to meetings of Directors' committees as if all committee members were Directors.
- 66.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 66.7 A quorum for meetings of Directors may be fixed by the Directors and, unless so fixed, is two.

67 Decisions

- 67.1 Questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting.
- 67.2 The Chairperson of a meeting has a casting vote in addition to his or her deliberative vote except where only two Directors are present and entitled to vote.
- 67.3
- (a) An Alternate Director has one vote for each Director for whom he or she is an alternate.
 - (b) If the Alternate Director is a Director, he or she also has a vote as a Director.

68 Directors' interests

- 68.1 A Director who has a material personal interest in a matter that is to be considered at a meeting of Directors must not:
- (a) vote on the matter or be present while the matter is being considered at the meeting; and
 - (b) be counted in the quorum in relation to that matter;

if to do so would be contrary to the Corporations Act.

68.2 Each Director must disclose to the Company particulars of:

- (a) any material contract in which the Director is interested, including the names of the parties to the contract, particulars of the contract, and the Director's interest in the contract; and
- (b) any material personal interest in a matter that is being considered at a meeting of the board or of Directors.

68.3 Voting by a Director contrary to this **clause 68**, or failure by a Director to make disclosure under this clause, does not render void or voidable a contract in which the Director has an interest.

68.4 A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
- (c) act in a professional capacity, other than as auditor, for the Company,

and, provided that he or she makes disclosure as required by this **clause 68**, may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.

69 **Alternate Directors**

69.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate.

69.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

69.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.

69.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled in that capacity to any remuneration from the Company.

- 69.5 (a) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.

69.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

70 Associate Directors

70.1 The Directors may appoint a person to be an associate director and may remove a person so appointed.

70.2 The Directors may define and limit the duties and powers of associate directors and their remuneration for their services as associate directors, but that remuneration must be by a fixed sum and not a commission on, or a percentage of, profits or operating turnover.

70.3 A person appointed as an associate director is not a Director for any of the purposes of this Constitution or of the Corporations Act and accordingly:

- (a) is not a member of the board of Directors or of any committee of Directors;
- (b) is not entitled to be present at any meeting of the Directors or of any committee of the Directors except at the request of the Directors or of a committee of Directors; and
- (c) if present at such request, may not vote or form part of a quorum.

71 Remaining Directors

71.1 The Directors may act even if there are vacancies on the board.

71.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Director or Directors may act only to:

- (a) appoint a Director; or
- (b) convene a general meeting.

72 Chairperson

72.1 The Directors may elect a Director as Chairperson of Directors' meetings and may determine the period for which the Chairperson will hold office.

72.2 If no Chairperson is elected or if the Chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be Chairperson of the meeting.

72.3 The Directors may elect a Director as deputy Chairperson to act as Chairperson in the Chairperson's absence.

73 Directors' committees

- 73.1 (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- (b) The Directors may at any time revoke any delegation of power to a committee.
- 73.2 At least one member of each committee must be a Director.
- 73.3 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is deemed to have been exercised by the Directors.
- 73.4 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 73.5 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

74 Written Resolutions

- 74.1 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is deemed to have been passed at a Directors' meeting held on the day on which the document was signed by the last Director.
- 74.2 For the purposes of **clause 74.1**, two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by all those Directors on the days on which they signed the separate documents.
- 74.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- 74.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this **clause 74**.
- 74.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

75 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or

- (b) a person appointed to one of those positions was disqualified;

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

76

Minutes

76.1

The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all appointments of officers;
- (d) all orders made by the Directors and Directors' committees; and
- (e) all disclosures of interests made pursuant to **clause 68**.

76.2

Minutes must be signed by the Chairperson of the meeting or by the Chairperson of the next meeting of the relevant body.

EXECUTIVE DIRECTORS

77

Appointment

77.1

- (a) The Directors may appoint a Director to the office of Managing Director on such terms as they think fit.
- (b) The Directors may appoint a Director to any other full-time or substantially full-time executive position in the Company on such terms as they think fit.
- (c) A Director appointed under **clause 77.1(a)** or **(b)**, and a Director (however appointed) occupying for the time being a full-time or substantially full-time executive position in the Company or a related body corporate, is referred to in this Constitution as an Executive Director.

77.2

The position of Chairperson of Directors may be a full-time executive position if the Directors so resolve.

77.3

If the appointment of an Executive Director is for a fixed term, the term must not exceed five years.

77.4

The Directors may, subject to the terms of the Executive Director's employment contract, suspend, remove or dismiss him or her from executive office and appoint another Director in that place.

- 77.5 If the Managing Director or the Chairperson (if appointed to a full-time executive position) ceases to be a Director, his or her executive office terminates automatically.
- 77.6 Except in the case of the Managing Director and the Chairperson, the executive office of an Executive Director may be independent of his or her office as Director or may be dependent on its continuance.
- 77.7 If an Executive Director is suspended from executive office, he or she will not be entitled to attend or vote at any meeting of Directors.
- 77.8 A sole Managing Director is not subject to retirement by rotation and is not to be taken into account in determining the rotation of retirement of Directors. If there is more than one Managing Director, only one Managing Director is not subject to retirement by rotation and is not to be taken into account in determining the rotation of retirement by Directors, and the Directors shall determine the Managing Director not so subject.
- 77.9 If the Managing Director ceases to hold his or her office as Managing Director otherwise than pursuant to **clause 78.3**, he or she will, subject to the terms of his or her employment contract, remain in his or her office as Director and will be subject to rotation in accordance with **clause 59** as if he or she was appointed to the office of Director on the day that he or she ceased to hold his or her office as Managing Director.

78 Powers

- 78.1 The Directors may confer on a Managing Director or Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- 78.2 Any power conferred pursuant to this Clause may be concurrent with but not to the exclusion of the Directors' powers.
- 78.3 The Directors may at any time withdraw or vary any of the powers conferred on a Managing Director or Executive Director.
- 78.4 The provisions of **clauses 77.5** and **77.6** regarding the automatic termination of the position of an Executive Director, and the powers of the Directors set out in this **clause 78** apply notwithstanding anything in any contract between the Company and any Director, but if the termination of a position or the exercise of a power amounts to a breach of contract by the Company, the Director has a right to damages for breach of contract.

LOCAL MANAGEMENT

79 General

- 79.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

- 79.2 Without limiting **clause 79.1** the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
 - (b) delegate to any person appointed under **clause 79.2 (a)** any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

- 79.3 The Directors may at any time revoke or vary any delegation under this **clause 79**.

80 **Appointment of attorneys and agents**

- 80.1 The Directors may from time to time by resolution or power of attorney under the Seal appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

- 80.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

- 80.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

- 80.4 An attorney or agent appointed under this **clause 80** may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

81 SECRETARY

- 81.1 There must be at least one secretary of the Company appointed by the Directors on conditions determined by them.
- 81.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 81.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

SEALS**82 Common seal**

- 82.1 The Directors must provide for the safe custody of the Seal, if the Company has one.
- 82.2 The Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal.
- 82.3 Every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.
- 82.4 The Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

83 Duplicate seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal which:

- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
- (b) must only be used with the authority of the Directors or a Directors' committee.

84 Certificate seal

If the Company has a Seal, the Company may have a certificate seal which:

- (a) may be affixed to Share, option or other certificates;
- (b) must be a facsimile of the Seal with the addition on its face of the words 'Certificate Seal'; and

- (c) must only be used with the authority of the Directors or a Directors' committee.

INSPECTION OF RECORDS

85 Times for inspection

- 85.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 85.2 A Member other than a Director does not have the right to inspect any accounting records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

DIVIDENDS AND RESERVES

86 Fix a time for payment of dividends

- 86.1 The Directors may authorise the Company to pay interim and final dividends and fix:
- (a) the amount;
 - (b) the time for payment; and
 - (c) the method of payment.

87 Amend resolution

The Directors may amend or revoke a resolution to pay a dividend before the date which is nine Business Days before the record date notified to the Exchange for determining entitlements to a dividend.

88 Interest

The Company must not pay interest on any dividend.

89 Reserves

- 89.1 The Directors may set aside out of profits such amounts by way of reserves as they think appropriate to pay a dividend.
- 89.2 The Directors may apply the reserves for any purpose for which profits may be properly applied.
- 89.3 Pending any application of the reserves, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.

89.4 The Directors may carry forward any undistributed profits without transferring them to a reserve.

90 Dividend Entitlement

90.1 Subject to the rights of persons (if any) entitled to Shares with special rights as to dividend, a dividend must be declared and paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.

90.2 All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but, if a Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.

90.3 An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of **clauses 90.1 and 90.2**.

90.4 Subject to the Corporations Act and the SCH Business Rules, a transfer of Shares registered after the record date notified to the Exchange for determining entitlements to a dividend or interim dividend paid or payable in respect of the transferred Shares does not pass the right to that dividend or interim dividend.

91 Restricted securities

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 in respect of the Restricted Securities.

92 Deductions from dividends

The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

93 Distribution of assets

93.1 On declaring a dividend the Directors may resolve that the dividend will be paid wholly or partly by the distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.

93.2 The Directors, when authorising the payment of an interim dividend, may direct payment wholly or partly by the distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.

93.3 If a difficulty arises in making a distribution of specific assets, the Directors may:

- (a) deal with the difficulty as they consider expedient;
- (b) fix the value of all or any part of the specific assets for the purposes of the distribution;

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- (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

93.4 If a distribution of specific assets to a particular Member or Members is illegal or, in the Directors opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

94 Payment

94.1 Any dividend or other money payable in respect of Shares may be paid by cheque sent through the mail directed to:

- (a) the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
- (b) an address which the Member or joint holders has in writing notified the Company as the address to which dividends should be sent.

94.2 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

95 Election to reinvest dividend

Subject to the Listing Rules, the Directors may:

- (a) grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for Shares on such terms and conditions as the Directors think fit;
- (b) vary, suspend or terminate the arrangements established under **clause 95(a)**.

96 Election to accept Shares in lieu of dividend

Subject to the Listing Rules, the Directors may determine, in respect of any dividend which it is proposed to pay on any Shares, that holders of the Shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to instead receive an issue of Shares credited as fully paid on such terms as the Directors think fit.

97 Unclaimed dividends

All dividends unclaimed for one year after the time for payment has passed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed money.

98 Capitalisation of profits

98.1 The Directors may resolve to capitalise profits, with or without issuing Shares.

98.2 If the capitalisation is to be accompanied by the issue of Shares or debentures, the Directors may apply the sum capitalised:

- (a) in the proportions in which the Members would be entitled if the sum was distributed by way of dividend; or
- (b) in connection with an employee share scheme adopted by the Company, by applying the sum in paying up in part or full unissued Shares and issuing them in accordance with the rules of that scheme.

98.3 For the purposes of this **clause 98**, 'employee share scheme' has the same meaning as in section 9 of the Corporations Act.

98.4 To the extent necessary to adjust the rights of the Members among themselves, the Directors may:

- (a) subject to **clause 24.3**, issue certificates for Shares rounded up or down to the nearest whole number or make cash payments in cases where Shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the Members entitled to a benefit on the capitalisation, an agreement with the Company providing for:
 - (i) the issue to them, credited as fully paid up, of any such further Shares or debentures; or
 - (ii) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under the authority of **clause 98.4(b)** is effective and binding on all the Members concerned.

NOTICES

99 Service of Notices

99.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person;

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- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

99.2 A notice sent by post is deemed to be served:

- (a) by properly addressing, pre-paying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

99.3 A notice sent by facsimile transmission or electronic notification is deemed to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (c) on the day of its transmission except if transmitted after 5.00 p.m. in which case it is taken to be served on the next day.

99.4 If a Member has no registered address a notice will be deemed to be served on that Member 24 hours after it was posted on a notice board at the Office.

99.5 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.

99.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is deemed to receive any notice served in accordance with this clause on the person from whom he derives its title.

99.7 A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:

- (a) in the case of a Member who does not have a registered address in Australia, by airmail post; and
- (b) in any other case by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

99.8 A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this clause.

99.9 A certificate in writing signed by a Director, Secretary or other officer of the Company, or by any person the Company has engaged to maintain the Register, that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

99.10 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

99.11 All notices sent by post outside Australia must be sent by pre-paid airmail post.

100 Persons Entitled to Notice

100.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director and Alternate Director;
- (c) the Exchange; and
- (d) the Auditor.

100.2 No other person is entitled to receive notice of a general meeting.

AUDIT AND ACCOUNTS

101 Company to keep financial records

101.1 The Directors must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the requirements of the Corporations Act and the Listing Rules.

101.2 The Directors must cause the financial records and financial documents of the Company to be audited in accordance with the requirements of the Corporations Act and the Listing Rules.

WINDING UP

102 Winding up

102.1 Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.

102.2 If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

102.3 The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories, 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.

INDEMNITY AND INSURANCE

103 Indemnity

Every person who is or has been:

- (a) a director; or
- (b) a secretary, or
- (c) an executive officer,

of the Company or of a related body corporate of the Company is entitled to be indemnified out of the property of the Company against:

- (d) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (e) 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,

except to the extent that:

- (f) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (g) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

104 Insurance

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 against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

RESTRICTED SECURITIES

105 Disposal during Escrow Period

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

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.