

# **CONSTITUTION**

**ASCIANO LIMITED**

**ABN 26 123 652 862**

*[Approved by Asciano Limited shareholders at the Annual General Meeting held on 10 November 2011.]*

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**CONSTITUTION**  
**ASCIANO LIMITED**

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**1 Preliminary**

**1.1 Definitions**

<b>Term</b>	<b>Meaning</b>
<b>Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>AGM</b>	an annual general meeting of the Company that the Act requires to be held.
<b>Business Day</b>	has the meaning given to that term in the Listing Rules.
<b>Company</b>	Asciano Limited ABN 26 123 652 862.
<b>Exchange</b>	ASX Limited (ACN 008 624 691) or such other body corporate that is declared by the directors to be the Company's primary stock exchange for the purposes of this definition.
<b>Liabilities</b>	includes losses, liabilities, costs, charges and expenses of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.
<b>Listing Rules</b>	the listing rules of the Exchange as they apply to the Company.
<b>member present</b>	(a) a member present in person; (b) a member present by proxy, attorney or Representative; or (c) except in any rule which specifies a quorum, a member who has duly lodged a valid direct vote in relation to the general meeting under rule 8.8(b).
<b>Record Time</b>	(a) in the case of a meeting for which the caller of the meeting has decided, under the Act, that shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and (b) in any other case, the time of the relevant meeting.
<b>Representative</b>	in relation to a member which is a body corporate and in relation to a meeting means a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.

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<b>Term</b>	<b>Meaning</b>
<b>Seal</b>	any common seal of the Company.
<b>Securities</b>	includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity.
<b>Transmission Event</b>	<p>(a) for a member who is an individual, the member's death, the member's bankruptcy or the member becoming of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; and</p> <p>(b) for a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.</p>

## **1.2 Interpretation**

- (a) The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:
- (i) the singular includes the plural and conversely;
  - (ii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (iii) a word or phrase given a meaning in the Act has the same meaning in this Constitution;
  - (iv) a reference to a statute or regulation, or to any provision of them includes any modification or re-enactment of it; and
  - (v) a reference to the Listing Rules includes any variation, consolidation or replacement of those rules and is taken to be subject to any waiver or exemption.
- (b) Headings and bold type used in this Constitution are only for convenience and do not affect the meaning of this Constitution.

## **1.3 Replaceable Rules**

The rules that apply as replaceable rules to companies under the Act do not apply to the Company.

## **1.4 Currency**

Any amount payable in respect of a share may be made in Australian dollars or any other currency determined by the directors in their discretion. If a payment is made in a currency other than Australian dollars, the directors determine the appropriate exchange rate and the time of calculation of the amount payable in the relevant currency.

## **1.5 Transitional provisions**

This Constitution must be interpreted in such a way that:

- (a) 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;

- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution;
- (c) any seal adopted by the Company immediately before this Constitution is adopted is taken to be a seal which the Company has under a relevant authority given by this Constitution;
- (d) unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the Constitution of the Company in force before this Constitution is adopted, continue to have the same status, operation and effect after this Constitution is adopted; and
- (e) except where expressly stated to the contrary, the adoption of this Constitution does not alter the rights attaching to any class of shares which exist at the date this Constitution is adopted.

## **2 Share capital**

### **2.1 Securities**

Subject to this Constitution, the directors may issue or grant options for, or otherwise dispose of, shares or other securities in the Company and may decide the following:

- (a) the persons to whom shares or other securities are issued or options are granted;
- (b) the terms on which shares or other securities are issued or options are granted; and
- (c) the rights and restrictions attached to those shares or options or other securities.

### **2.2 Preference shares**

- (a) The Company may issue preference shares including preference shares which are, or at the option of either or both the Company and the holder are, liable to be redeemed or convertible into ordinary shares.
- (b) Each preference share confers a right on the holder:
  - (i) to receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at the rate and on the basis decided by the directors at the time of issue. The preferential dividend may only be cumulative if and to the extent the directors determine at the time of issue, and will otherwise be non-cumulative;
  - (ii) in a winding up and on redemption, to payment in priority to the ordinary shares of:
    - (A) the amount of any dividend accrued but unpaid at the date of winding up or at the date of redemption; and
    - (B) any additional amount specified at the time of issue;
  - (iii) in addition to the preferential dividend and rights on winding up set out in rule 2.2(b)(ii), if and to the extent decided by the directors at the time of issue, to participate with the ordinary shares in profits and assets of the Company; and
  - (iv) if and to the extent decided by the directors at the time of issue, to a bonus issue or capitalisation of profits in favour of the holder.
- (c) A preference share does not confer any right on the holder to participate in the property of the Company except as set out above.
- (d) The holder of a preference share has a right to receive notices, reports and accounts and to attend and be heard at all general meetings, but is not entitled to vote at a general meeting except as follows:

- (i) on a proposal:
    - (A) to reduce the share capital of the Company;
    - (B) that affects the rights attached to the preference shares;
    - (C) to wind up the Company; or
    - (D) for the disposal of the whole of the property, business and undertakings of the Company;
  - (ii) on a resolution to approve the terms of a buy-back agreement;
  - (iii) during a period in which a dividend on the preference shares is in arrears;
  - (iv) during the winding up of the Company; or
  - (v) in any other circumstances which the Listing Rules require holders of preference shares to be entitled to vote.
- (e) The holder of a preference share who is entitled to vote under rule 2.2(d) is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the terms of issue for the share.

### **2.3 Alteration of share capital**

Subject to the Act, the Company may reduce, alter or buy-back its share capital in any manner. The directors may do anything required to give effect to any resolution authorising reduction or alteration of the share capital of the Company, including, where a member becomes entitled to a fraction of a share:

- (a) making cash payments;
- (b) ignoring a fractional entitlement;
- (c) appointing a trustee to deal with any fractions on behalf of members; and
- (d) rounding up a fractional entitlement to the nearest whole share.

### **2.4 Conversion or reclassification of shares**

Subject to the Act and this Constitution, the Company may by resolution convert or reclassify shares from one class to another.

### **2.5 Variation of class rights**

- (a) Subject to the Act and the terms of issue of the shares in a particular class, the Company may vary or cancel rights attached to shares in that class:
  - (i) by a special resolution passed at a meeting of the holders of the shares in that class; or
  - (ii) with the written consent of the holders who are entitled to at least 75% of the votes that may be cast in respect of shares in that class.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings.
- (c) Unless otherwise provided by the terms of issue or required by applicable laws, the issue of new shares ranking equally, or any conversion of existing securities to shares ranking equally,

with existing shares is not a variation of the rights conferred on the holders of the existing shares.

- (d) *[This paragraph can be removed if no preference shares are currently on issue.]* The issue of any new shares ranking in priority, or any conversion of existing securities to shares ranking in priority, to a class of preference shares existing as at the date this Constitution is adopted is a variation of the rights conferred on the holders of the existing preference shares unless the issue or conversion is expressly permitted by the terms of the existing preference shares.

## **2.6 Joint holders of shares**

Where 2 or more persons are registered as the holders of any shares, they are considered to hold them as joint tenants with rights of survivorship, subject to the following conditions:

- (a) the Company is not bound to register more than 3 persons as joint holders of the shares;
- (b) the joint holders are liable individually as well as jointly for all payments in respect of the shares;
- (c) on the death of any one of the joint holders, the remaining joint holder or holders (as the case may be) is the only person or persons the Company will recognise as having any title to the shares; and
- (d) any one of the joint holders may give a receipt for any dividend, bonus or other payment in respect of the shares.

## **2.7 Recognition of equitable interests**

The Company may treat the registered holder of a share as the absolute owner of that share and need not:

- (a) recognise a person as holding a share on trust; or
- (b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person, except an absolute right of ownership in the registered holder, even if the Company has notice of that claim or interest.

## **2.8 Restricted securities**

If, at any time, any of the share capital of the Company is classified by the Exchange as 'restricted securities', then despite any other provision of this Constitution:

- (a) the restricted securities must not be disposed of during the escrow period except as permitted by the Listing Rules or the Exchange;
- (b) the Company must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period except as permitted by the Listing Rules or the Exchange; and
- (c) 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.

## **2.9 Certificates**

Subject to applicable laws, no certificates for shares or other securities will be issued unless the directors determine otherwise.

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### **3 Calls on shares**

#### **3.1 Power to make calls**

- (a) Subject to the terms of issue of a share, the directors may:
  - (i) make calls on the members for any amount unpaid on their shares (which is not, by the terms of issue of that share, payable at fixed times);
  - (ii) require a call to be paid by instalments;
  - (iii) on the issue of shares, differentiate between members as to the amount of calls to be paid and the time for payment; and
  - (iv) revoke or postpone a call or extend the time for payment.
- (b) A call is made at the time of or as specified in the resolution of the directors authorising the call.

#### **3.2 Notice of calls**

- (a) The directors must send members notice of a call at least 10 Business Days (or such longer period required by the Listing Rules) before the amount called is due, specifying the time and place of payment.
- (b) Omission or neglect to give notice, or if a member does not receive the notice, will not affect the validity of the call.

#### **3.3 Payment of calls**

- (a) Each member must pay to the Company the amount of each call in the manner specified in the notice of the call.
- (b) If the terms of issue of a share require an amount to be paid in respect of a share on a fixed date, the holder of that share must pay that amount to the Company at that time and that amount is treated under this Constitution as if a call for that amount had been properly made by the directors.

#### **3.4 Interest on unpaid amounts**

- (a) If an amount called on a share is not paid in full by the time specified for payment, the person who owes the amount must pay:
  - (i) interest on the unpaid part from the date payment is due to the date payment is made, at a rate the directors decide; and
  - (ii) any costs or expenses the Company incurs due to the failure to pay or late payment.
- (b) The directors may, to the extent permitted by law, waive payment of some or the entire amount of interest payable under rule 3.4(a).

#### **3.5 Prepayment of calls and interest**

The directors may:

- (a) accept from a member the whole or part of the amount unpaid on a share even if no part of that amount has been called;

- (b) authorise payment by the Company of interest on the whole or any part of an amount accepted under rule 3.5(a) until the amount becomes payable, at a rate agreed between the directors and the member paying the amount; and
- (c) repay to a member any amount accepted under rule 3.5(a).

### **3.6 Proceedings to recover calls**

In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, conclusive evidence of the obligation to pay the call is established by proof that:

- (a) the name of the person is entered in the register as the holder or one of the holders of the share on which the call was made;
- (b) the resolution making the call is recorded in the minute book; and
- (c) notice of the call was given or taken to be given to the person in accordance with this Constitution.

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## **4 Forfeiture, Liens and Surrender**

### **4.1 Liability to forfeiture**

- (a) If a member fails to pay any sum payable on a call by the time specified for payment, the directors may serve a notice on that member requiring payment of the unpaid part of the call, together with interest accrued and all costs and expenses the Company has incurred due to the failure to pay.
- (b) The notice must:
  - (i) specify a day (at least 10 Business Days after the date of the notice) by which, and a place at which, the amount payable must be paid; and
  - (ii) state that, if payment is not made by the time and at the place specified, the shares on which the call was made will be liable to be forfeited.

### **4.2 Power to forfeit**

- (a) If a notice served under rule 4.1 has not been complied with by the date specified in the notice, the directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice is made.
- (b) A forfeiture under rule 4.2(a) includes all dividends, interest and other amounts payable by the Company on the forfeited share and not paid before the forfeiture.
- (c) At any time before a forfeited share has been sold, reissued or otherwise disposed of, the directors may cancel the forfeiture on the conditions they decide.

### **4.3 Notice of forfeiture**

- (a) Where a share has been forfeited:
  - (i) notice of the resolution must be given to the member holding the share immediately before the forfeiture; and
  - (ii) an entry of the forfeiture, with the date, must be made in the register.
- (b) Any failure to give notice or enter the forfeiture in the register does not invalidate the forfeiture.

#### 4.4 Consequences of forfeiture

- (a) A forfeited share becomes the property of the Company and may be cancelled, sold, reissued or otherwise disposed of on such terms as the directors decide.
- (b) A person whose shares have been forfeited:
  - (i) ceases to be a member in respect of the forfeited shares;
  - (ii) has no claims, demands or other rights against the Company in respect of or incidental to those shares, except as provided by the Act or this Constitution; and
  - (iii) remains liable to pay to the Company all amounts that are owing on the shares at the time of the forfeiture, including calls, instalments, interest, costs and expenses.

#### 4.5 Lien on shares

- (a) Unless the terms of issue provide otherwise, the Company has first lien on a share and on the proceeds of sale and dividends payable on, and any bonus or other share entitlements arising from, that share for:
  - (i) any due and unpaid calls and instalments in respect of that share;
  - (ii) any amount the Company is required by law to pay and has paid in respect of that share;
  - (iii) any amount which is outstanding under loans made by the Company to acquire a share under an employee incentive scheme; and
  - (iv) all interest and expenses due and payable to the Company in respect of unpaid amounts on that share.
- (b) The directors may sell a share on which the Company has a lien as they think fit and with or without giving any notice to the member in whose name the shares are registered.
- (c) The directors may do anything necessary or desirable to protect a lien or other interest in shares to which the Company is entitled under this Constitution or a law.
- (d) When the Company registers a transfer of shares on which the Company has a lien without giving the transferee notice of its claim, the Company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (e) The directors may at any time exempt a share wholly or in part from the provisions of this rule 4.5.

#### 4.6 Surrender of shares

- (a) The directors may accept a surrender of shares by way of compromise of a claim.
- (b) Any shares surrendered may be sold, reissued or otherwise disposed of in the same manner as a forfeited share.

#### 4.7 Sale of shares by the Company

- (a) Where the Company sells a share under rules 4.4(a), 4.5(b) or 7, the directors may:
  - (i) effect a transfer of the share;
  - (ii) receive the consideration given for the share; and

- (iii) register as the holder of the share the person to whom the share is sold.
- (b) The validity of the sale of shares may not be questioned by any person after the transfer has been registered.
- (c) The title of the purchaser is not affected by any irregularity in relation to the sale.
- (d) The proceeds of a sale of shares under rules 4.4(a) or 4.5(b) must be applied in paying:
  - (i) first, the expenses of the sale; and
  - (ii) second, all amounts due and unpaid in respect of the shares, and
 any balance must be paid to the person listed on the register as being entitled to the shares immediately prior to the sale.
- (e) The proceeds of a sale under rule 7 must not be applied in payment of the expenses of the sale and must be paid to the person listed on the register as being entitled to the shares immediately prior to the sale.
- (f) Until the proceeds of a sale of a share sold by the Company are claimed or otherwise disposed of according to law, the directors may invest or use those proceeds in any other way for the benefit of the Company.
- (g) The only remedy of any person aggrieved by the sale of shares is a claim for damages against the Company.

#### **4.8 Members' indemnity**

- (a) If the Company becomes liable for any reason under a law to make a payment in any way for, on account of or relating to a member, then the member or, if the member is dead, the member's legal personal representative must, on demand, reimburse the Company for any payment made.
- (b) The directors may waive or compromise all or part of any payment due to the Company under this rule 4.8.

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## **5 Dividends and profits**

### **5.1 Determination and calculation of dividends**

- (a) The directors may from time to time decide that a dividend is payable and fix the amount, record date, time for payment and method of payment. A decision to pay a dividend may be revoked at any time before the payment date.
- (b) Interest is not payable by the Company on a dividend.
- (c) Subject to any special rights or restrictions attached to any shares and unless otherwise decided by the directors, the person entitled to a dividend on a share is entitled to:
  - (i) if the share is fully paid and was fully paid during the whole period in respect of which the dividend is to be paid, the entire dividend; and
  - (ii) if the share is partly paid, a proportion of that dividend equal to the proportion which the amount paid (not credited) on the share bears to the total issue price of that share.
- (d) For the purposes of rule 5.1(c)(ii), an amount paid on a share in advance of a call is taken as not having been paid until it becomes payable, unless the directors decide otherwise.

## 5.2 Payment and crediting of dividends

- (a) A dividend must be paid to the person who is registered, or entitled under rule 6.1(b) to be registered, as the holder of the share, or otherwise in accordance with the person's instructions, either:
  - (i) where the directors have fixed a record date in respect of the dividend, on that date; or
  - (ii) where the directors have not fixed a record date in respect of the dividend, on the date fixed for payment of the dividend.
- (b) Subject to any special rights or restrictions attached to any shares, the directors may resolve that dividends will be paid out of a particular source or sources and may direct payment of the dividend wholly or partly by the distribution of specific assets (including by the issue or transfer of shares or other financial products) either generally or to specific members.
- (c) The directors may retain from any dividend payable to a member any amount presently payable by that member to the Company and apply the retained amount to the payment of the amount owing.
- (d) The Company may make a payment to a person entitled to an amount payable in respect of a share (including a dividend) by any of the following means, at the discretion of the directors, at the sole risk of the member:
  - (i) by electronic funds transfer to an account nominated in writing by the member or the joint holders and acceptable to the Company;
  - (ii) by cheque sent to the address shown in the register or, in the case of joint holders, to the address shown in the register of any of the joint holders, or to such other address as the member or joint holders in writing direct; or
  - (iii) in any other manner as the directors resolve.
- (e) If a member does not have a registered address or the Company believes that a member is not known at the registered address, the Company may credit an amount payable to an account of the Company to be held until the member claims the amount payable or nominates an account into which a payment may be made.
- (f) If payment is to be made in accordance with rule 5.2(d)(i), but no such account is nominated by the member or the electronic funds transfer into a nominated account is rejected or refunded, the Company may credit the amount payable to an account of the Company to be held until the member nominates a valid account.
- (g) An amount credited to an account under rules 5.2(e) or 5.2(f) is treated as having been paid to the member at the time it is credited to that account. The Company will not be taken to be a trustee of the money and no interest will accrue on the money.

## 5.3 Unclaimed dividends

- (a) If:
  - (i) an amount is held in an account under rules 5.2(e) or 5.2(f) for 11 calendar months; or
  - (ii) a cheque for an amount payable under rule 5.2(d)(ii) is not presented for payment for 11 calendar months after issue,

the directors may reinvest the amount, after deducting reasonable expenses, into shares in the Company on behalf of, and in the name of, the member concerned and may stop payment on the cheque.

- (b) The shares may be acquired on market or by way of a new issue at a price the directors accept is market price at the time.
- (c) Any residual sum which arises from the reinvestment under rule 5.3(a) may be carried forward or donated to a charity as the directors decide.
- (d) The directors may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 5.3.
- (e) The Company's liability to pay the relevant amount is discharged by an application under this rule 5.3.
- (f) The directors may determine other rules to regulate the operation of this rule 5.3 and may delegate their power under this rule to any person.

#### **5.4 Capitalising profits**

- (a) Subject to any rights or restrictions attached to any shares, the Company in general meeting or the directors may resolve:
  - (i) to capitalise any amount, being the whole or part of profits of the Company or an amount otherwise available for distribution to members; and
  - (ii) to distribute that amount among those members who would be entitled to receive a dividend, in the same proportions, in full satisfaction of their interest in the capitalised amount.
- (b) A sum under rule 5.4(a) may be applied for the benefit of members in either or both of the following ways, or in any other way permitted by law:
  - (i) to pay up in full any amounts unpaid on shares held by members; or
  - (ii) to pay up in full unissued shares to be issued to members as fully paid.
- (c) Rules 5.1(c) and 5.2(a) apply, so far as they can and with any necessary changes, to capitalising an amount under this rule 5.4 as if references in those rules to:
  - (i) a dividend were references to capitalising an amount; and
  - (ii) a record date were references to the date the directors resolve to capitalise the amount under this rule 5.4.

#### **5.5 Ancillary powers**

To give effect to any resolution to satisfy a dividend as set out in rule 5.2(b) or to capitalise an amount under rule 5.4(a), the directors may:

- (a) if a difficulty arises in making the distribution or capitalisation, settle the matter as they decide;
- (b) fix the value for distribution of any specific assets;
- (c) pay cash or issue shares or other securities to any member in order to adjust the rights of all parties;
- (d) vest any specific assets, cash, shares or other securities in a trustee; and
- (e) authorise any person to make, on behalf of all the members entitled to any specific assets, cash, shares or other securities as a result of the distribution or capitalisation, an agreement with the Company (or other relevant body corporate) providing for:

- (i) the issue or transfer to those members of any further shares or other securities; or
- (ii) the payment by the Company on their behalf of the whole or any part of the amounts remaining unpaid on their existing shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised, and

any such agreement made is effective and binding on all members concerned.

## **5.6 Reserves and profits carried forward**

- (a) The directors may:
  - (i) set aside out of the Company's profits such sums as they decide, to be applied at the discretion of the directors for any proper purpose; and
  - (ii) carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve.
- (b) Any amount set aside under rule 5.6(a)(i) may be used in the business of the Company or invested as the directors decide.

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## **6 Transfer and Transmission**

### **6.1 Transferring shares**

- (a) Subject to this Constitution and any rights or restrictions attached to any shares, a member may transfer any of the member's shares in any manner approved by the directors and permitted by law.
- (b) If a duly completed instrument of transfer:
  - (i) is used to transfer a share in accordance with rule 6.1(a); and
  - (ii) is left for registration at the Company's registered office, accompanied by any information the directors require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the directors by this Constitution, register the transferee as the holder of the shares.
- (c) A transferor of shares remains the holder of the shares until the transferee's name is entered in the register as the holder of the shares.
- (d) The Company may retain a registered transfer for any period the directors decide.
- (e) The directors may do anything necessary or desirable to facilitate involvement by the Company in any clearing and settlement facility provided under any applicable law for the transfer of financial products.

### **6.2 Power to refuse to register transfers**

- (a) Unless precluded by law or the Listing Rules, the directors may refuse to register, or apply a holding lock to prevent, a transfer of shares.
- (b) The decision of the directors relating to the registration of a transfer is absolute.
- (c) If the directors decline to register a transfer, the Company must give notice of the refusal as required by the Act and the Listing Rules. Failure to give that notice will not invalidate the decision of the directors to decline to register the transfer.

### 6.3 Transmission of shares

- (a) On a member's death, the only persons the Company will recognise as having any title to the member's shares or any benefits accruing on those shares are:
  - (i) where the member was a sole holder, the member's legal personal representative; and
  - (ii) where the member was a joint holder, the surviving member or members.
- (b) The estate of a deceased member is not released from any liability on a share registered in the name of that member, whether that share was held solely or jointly.
- (c) The directors may register a transfer of shares signed by a member before a Transmission Event even though the Company has notice of the Transmission Event.
- (d) A person who establishes to the satisfaction of the directors that they are entitled to a share because of a Transmission Event may:
  - (i) elect to be registered as the holder of the share by giving the Company written notice; or
  - (ii) transfer that share to another person.
- (e) A transfer under rule 6.3(d) is subject to all provisions of this Constitution relating to transfers of shares.
- (f) Where 2 or more persons are jointly entitled to a share because of a Transmission Event they will, on being registered as the holders of the share, be taken to be joint holders of that share.

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## 7 Sale of Small Holdings

- (a) Subject to the Act and Listing Rules, the Company may sell the shares of a member in accordance with rule 7(e) if:
  - (i) that member holds less than a marketable parcel of shares in a particular class at the date specified in a notice in writing given by the Company (being not less than 6 weeks after the notice is sent);
  - (ii) the notice explains that the Company intends to sell the shares;
  - (iii) the notice advises that the member may elect to retain the holding and includes a form of election for that purpose; and
  - (iv) the Company has not received a notice from the member that the member elects to retain the holding by the time and date specified in the notice or the member has not increased the holding to a marketable parcel.
- (b) The Company may only give one notice under rule 7(a) to a particular member in any 12 month period.
- (c) In addition to initiating a sale by sending a notice under rule 7(a), the directors may also initiate a sale in accordance with rule 7(e) where a member holds less than a marketable parcel by giving notice in writing explaining that intention, if:
  - (i) the member's holding was created by a transfer of a parcel of securities effected on or after 1 September 1999; and
  - (ii) the transfer was of a number 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 document, the time the document was lodged with the Company.

- (d) If a holding under rule 7(c) was created after the adoption of this rule, the directors may remove or change the member's rights to vote or receive dividends in respect of those shares. After the sale of those shares, the Company must pay to the person entitled any dividends withheld.
- (e) The Company may, and the member is taken to have irrevocably appointed the Company as agent to:
  - (i) sell the shares constituting less than a marketable parcel as soon as practicable at a price which the directors consider is the best price reasonably available for the shares when they are sold; and
  - (ii) deal with the proceeds of sale under rule 4.7.
- (f) The costs and expenses of any sale of shares are payable by the purchaser or by the Company.
- (g) If a takeover bid is announced after a notice is given but before an agreement for the sale of shares is entered into, this rule 7 ceases to operate for those shares. However, despite rule 7(b), a new notice may be given after the close of the offer period under the takeover bid.
- (h) The sole remedy of any person aggrieved by a sale of shares under this rule 7 is in damages only and is against the Company exclusively.
- (i) Before a sale is effected under this rule 7, the directors may revoke a notice given or suspend or terminate the operation of this rule either generally or in specific cases.
- (j) If a member is registered in respect of more than one parcel of shares, the directors may treat the member as a separate member in respect of each of those parcels.

## **8 General Meetings**

### **8.1 Calling general meetings**

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the Act.

### **8.2 Cancellation and postponement**

- (a) Subject to the Act, where a general meeting is convened by the directors, they may by notice change the venue for, cancel or postpone the meeting prior to the date on which it is to be held.
- (b) The directors may give notice of the cancellation or postponement as they determine, but any failure to give notice does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.
- (c) Subject to the Act, where a general meeting is convened by a person or persons other than the directors, this person or these persons may cancel or, with the consent of the directors, postpone the meeting prior to the date on which it is to be held.

### **8.3 Notice of general meetings**

- (a) Notice of a general meeting must be given to each person who, at the time of giving the notice, is a person entitled to receive the notice under the Act, in the form and manner the directors decide.

- (b) The non-receipt of a notice convening a general meeting or the accidental omission to give notice to any person entitled to receive the notice does not invalidate anything done or any resolution passed at the general meeting.
- (c) Unless the Act provides otherwise, no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting.
- (d) Except with the approval of the directors or the chairman, no person may move to amend a proposed resolution set out in the notice calling the meeting or a document which relates to such a resolution.

#### **8.4 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum is 2 members present at the meeting and entitled to vote.
- (c) If there is no quorum within 30 minutes after the time appointed for the meeting:
  - (i) where the meeting was called other than by a directors' resolution, the meeting is dissolved; or
  - (ii) in any other case, the meeting stands adjourned to the same day, time and place in the next week, or to such other day, time and place as the directors present decide. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

#### **8.5 Chairman of general meetings**

- (a) Subject to rule 8.5(b) and unless the directors decide otherwise, the chairman of directors or, in his or her absence, the deputy chairman of directors is entitled to preside as chairman at the meeting.
- (b) The directors present may choose one of their number to preside as chairman of the meeting if:
  - (i) there is no chairman or deputy chairman of directors; or
  - (ii) the chairman or deputy chairman of directors is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act.
- (c) If the directors do not choose a chairman under rule 8.5(b), the members present may elect one of their number to preside as chairman of the meeting.
- (d) The chairman may, for any item of business or part of the meeting, vacate the chair in favour of another person nominated by him or her.

#### **8.6 Conduct of general meetings**

- (a) Subject to the Act, the chairman of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (b) The chairman may:
  - (i) adopt any procedures for the proper and orderly conduct of the meeting and for the casting or recording of votes at the meeting;

- (ii) take any action considered appropriate for the orderly conduct of the meeting and may refuse admission or require to leave any person who the chairman considers to be disruptive to the meeting; and
  - (iii) impose a limit on the time that a person may speak on a motion or item of business being considered by the meeting and may, if necessary for the proper conduct of the meeting, terminate debate or discussion.
- (c) If the chairman of the meeting considers that there is not enough room for the members who wish to attend the meeting, the chairman may arrange for any person whom the chairman considers cannot be seated in the main meeting place to observe or attend the general meeting in a separate meeting place. Even if the members present in the separate meeting place are not able to participate in the conduct of the meeting, the meeting will nevertheless be treated as validly held in the main meeting place.
- (d) If a separate meeting place is linked to the main place of a general meeting by technology which, by itself or in conjunction with other arrangements:
- (i) gives the general body of members in the separate meeting place a reasonable opportunity to participate in proceedings in the main meeting place;
  - (ii) enables the chairperson to be aware of proceedings in the other place; and
  - (iii) enables the members in the separate meeting place to vote on a show of hands or on a poll,
- a member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main meeting place.
- (e) If, before or during the meeting, any technical difficulty occurs whereby one or more of the matters set out in rule 8.6(d) is not satisfied, the chairman may:
- (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under rule 8.6(d)) and transact business, and no member may object to the meeting being held or continuing.
- (f) Any decision by the chairman on matters of procedure is final. Any challenge to a decision must be made at the meeting and may be determined by the chairman whose decision is final.
- (g) Nothing contained in this rule limits the powers conferred on a chairman by law.

## **8.7 Suspensions and adjournments**

- (a) At any time during the course of the meeting, the chairman may, for the purpose of allowing a poll to be taken or determined, suspend the proceedings of the meeting for such period as the chairman decides without effecting an adjournment.
- (b) At any time during the course of the meeting, the chairman may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either:
  - (i) to a later time at the same meeting; or
  - (ii) to an adjourned meeting to be held at a time and place determined by the chairman.
- (c) The chairman's rights under rules 8.7(a) and 8.7(b) are exclusive and, unless the chairman requires otherwise, no vote may be taken or demanded by the members present in respect of any suspension or adjournment of proceedings.

- (d) Only unfinished business may be transacted at a meeting resumed after an adjournment under this rule 8.7.
- (e) Where a meeting is adjourned under this rule 8.7, notice of the adjourned meeting need only be given to the Exchange.

## **8.8 Voting rights**

- (a) Subject to rule 8.8(b), votes may be given either personally or by proxy or attorney under power or in the case of a body corporate by its duly appointed representative.
- (b) A member who is entitled to attend and vote on a resolution at a meeting may, where the directors so determine, vote by electronic or other means at that meeting. Any vote so admitted is referred to as a 'direct vote'. The directors may, in their absolute discretion, determine the means by which a direct vote may be cast and, without limiting the means for voting that may be determined by the directors, a direct vote may include a vote delivered to the Company by:
  - (i) post;
  - (ii) fax; or
  - (iii) other electronic means, and

if the directors determine that a member may give a direct vote, the notice convening the meeting must specify the form, method and timing of giving such a direct vote.
- (c) Subject to any rights or restrictions attached to any shares and to this Constitution:
  - (i) on a show of hands, each member present has one vote; and
  - (ii) on a poll, each member present has one vote for each share held as at the Record Time, except for partly paid shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the share bears to the total issue price of that share and excludes amounts paid in advance of a call.
- (d) If a share is jointly held and more than one joint holder tenders a vote in respect of the relevant shares, only the vote of the member whose name appears first in the register counts.
- (e) A person entitled to a share because of a Transmission Event may vote at a meeting in respect of that share as if that person were the registered holder of the share if, not more than 48 hours before the meeting, or such shorter time as the directors decide, the directors:
  - (i) admitted that person's right to vote; or
  - (ii) were satisfied of that person's right to be registered as the holder of the share, and

any vote duly tendered by that person must be accepted to the exclusion of any vote tendered by the current registered holder.
- (f) A member is not entitled at a general meeting to cast a vote attached to a share:
  - (i) on which a call or other amount is due and payable and has not been paid; or
  - (ii) if the notice convening the meeting specified that the member must not vote on a resolution or that any vote cast on the resolution by that member would be disregarded.
- (g) An objection to the validity of a vote tendered at a meeting must be:
  - (i) raised before or immediately after the result of the vote is declared; and

- (ii) referred to the chairman of the meeting, whose decision is final, and a vote not disallowed under the objection is valid for all purposes.

### **8.9 Decisions at general meetings**

- (a) Except where a resolution requires a special majority, a resolution is taken to be passed if a simple majority of the votes cast by members present are in favour of the resolution.
- (b) If the votes on a proposed resolution are equal, the chairman does not have a casting vote in addition to any deliberative vote either on a show of hands or on a poll.
- (c) A poll may be demanded by a member in accordance with the Act or by the chairman. Unless the chairman otherwise determines, no poll may be demanded on the election of a chairman or the adjournment of a meeting. The demand for a poll may be withdrawn with the chairman's consent.
- (d) The chairman may determine that a resolution be determined by a poll without first submitting the resolution to the meeting to be decided by a show of hands.
- (e) A demand for a poll does not prevent a meeting continuing to transact any business other than the question on which the poll is demanded.
- (f) Where demanded, a poll must be taken in the manner and at the time the chairman decides. The result of the poll as declared by the chairman is the resolution of the meeting at which the poll was demanded.
- (g) Unless a poll is demanded, a declaration by the chairman following a vote on a show of hands that a resolution has either been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **8.10 Representation at general meetings**

- (a) Subject to this Constitution, each member entitled to vote at a meeting may, in accordance with the Act:
  - (i) vote in person or, where a member is a body corporate, by its Representative; or
  - (ii) appoint not more than 2 proxies or attorneys to vote for the member.
- (b) A proxy, attorney or Representative need not be a member of the Company.
- (c) An instrument appointing a proxy is valid if it is in accordance with the Act or in any form (including electronic) approved by the directors.
- (d) A proxy appointment received at an electronic address specified in the notice of meeting for the receipt of a proxy appointment is taken to have been received at the registered office and validated by the member if the requirements set out in the notice are complied with.
- (e) Unless otherwise provided in the appointment of proxy, attorney or Representative, an appointment will be taken to confer authority to vote on any amendment moved to the proposed resolution and on any other motions (including procedural) as if the member was present in person.
- (f) A proxy form issued by the Company must allow for the insertion of the name of the person to be appointed as proxy and may provide that, in circumstances and on conditions specified in the form, the chairman (or another person specified in the form) is appointed as proxy.
- (g) A proxy or attorney may not vote at a meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, together with the authority under which the instrument is signed, is received by the Company at least 48 hours (or any shorter period as

specified by the Act or as the directors permit) before the commencement of the meeting or adjourned meeting or taking the poll, as applicable.

- (h) Where a member appoints 2 proxies or attorneys to vote at the same meeting:
  - (i) if the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each may exercise half of the votes;
  - (ii) if both proxies or attorneys attend, neither may vote on a show of hands; and
  - (iii) on a poll, each proxy or attorney may only exercise votes in respect of those shares or voting rights the proxy or attorney represents.
- (i) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the occurrence of a Transmission Event;
  - (ii) the revocation of the instrument or the power (or of the authority under which a third party appointed the proxy or attorney); or
  - (iii) the transfer of the share in respect of which the instrument or power is given,

if no notice in writing of the Transmission Event, revocation or transfer (as the case may be) has been received by the Company at its registered office at least 48 hours (or any shorter period as specified by the Act or as the directors permit) before the commencement of the meeting or adjourned meeting.
- (j) A proxy is not revoked by the appointer attending and taking part in the meeting, unless the appointer actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (k) The chairman of a meeting, or his or her delegate, may require a person acting as a proxy, attorney or Representative to establish to the chairman's satisfaction that the person is duly appointed to act and may, if the person fails to do so, exclude the person from attending or voting at the meeting.

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## **9 Directors**

### **9.1 Appointment**

- (a) The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors from time to time, but may not exceed 10 unless the Company in general meeting resolves otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- (b) The directors may appoint any individual to be a director, either as an addition to the existing directors holding office from time to time or to fill a casual vacancy, but so that the total number of directors does not exceed the maximum number fixed under this Constitution.
- (c) A director appointed under rule 9.1(b), and who is not a managing director, holds office until the conclusion of the next AGM following his or her appointment and is eligible for election at that meeting.

### **9.2 Retirement and election**

- (a) No director who is not a managing director may hold office beyond the third AGM following the meeting at which the director was last elected or re-elected (whichever is the later).

- (b) Where required by the Act or Listing Rules to do so, the Company must hold an election of directors each year. If there would otherwise not be a vacancy on the board, and no director is required to retire under rule 9.1(c) or rule 9.2(a), then the director who has been longest in office since their last election or appointment must retire. As between directors who were last elected or appointed on the same day, the one to retire must (unless they can agree among themselves) be decided by lot.
- (c) The list of directors to retire under rule 9.2(a) is decided having regard to the composition of the board of directors at the date of the notice calling the AGM. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (d) If there is more than one managing director, only one of them (as nominated by the directors) is entitled not to be subject to vacation of office under rule 9.1(c) or retirement under rule 9.2(a).
- (e) A retiring director holds office until the conclusion of the meeting at which that director retires, but is eligible for re-election.

### **9.3 Eligibility for election**

- (a) A person is eligible for election to the office of a director at a general meeting only if:
  - (i) the person is in office as a director immediately before that meeting;
  - (ii) the person has been nominated by the directors for election at that meeting; or
  - (iii) a notice in writing of the director's nomination is given to the Company at least 45 Business Days before the meeting, accompanied with a notice signed by the nominee consenting to the nomination.
- (b) A partner, employer or employee of an auditor of the Company may not be appointed or elected as a director.

### **9.4 Director need not be a member**

- (a) A director is not required to hold shares in the Company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings and at meetings of the holders of a class of shares, even if he or she is not a member or a holder of shares in the relevant class.

### **9.5 Vacating office**

In addition to the circumstances prescribed by the Act and this Constitution, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors;
- (d) resigns by notice in writing to the Company; or
- (e) being an executive director (including the managing director), ceases to be an employee of the Company, unless determined otherwise by the directors.

## 9.6 Remuneration

- (a) Each director (excluding any director who is an executive) is entitled to such remuneration from the Company as the directors decide, the total amount of which in any year may not exceed an amount fixed by the Company in general meeting.
- (b) Remuneration under rule 9.6(a) may be provided in cash or in any other manner that the directors decide (including by way of non cash benefit) and will include any superannuation contribution made by the Company for the benefit of a director so that the Company is not liable to pay the superannuation guarantee charge or similar statutory charge. The remuneration to which a director is entitled is taken to accrue from day to day.
- (c) For the purposes of rule 9.6(a), the amount fixed by the Company as remuneration for the directors does not include any amount paid by the Company or a related body corporate:
  - (i) under paragraphs (d), (e), (f) or (g) of this rule 9.6; or
  - (ii) in the form of any insurance premium paid or agreed to be paid for a director under rule 11.3.
- (d) The directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any general meetings of the Company or of the directors or of committees of the directors.
- (e) If a director, with the approval of the directors, performs extra services or makes any special exertions for the benefit of the Company, the Company may pay such additional remuneration or provide benefits to that director as the directors decide, having regard to the value to the Company of the extra services or special exertions.
- (f) Any person (including an officer of the Company) may be paid a benefit (including a prescribed benefit) in connection with their retirement from office.
- (g) Subject to the Act, a director may be engaged by the Company in any other capacity (other than an auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the directors.

## 9.7 Interested directors

- (a) A director who has a material interest in a matter that relates to the affairs of the Company must comply with any applicable provisions of the Act relating to disclosure of that interest or any rules relating to disclosure adopted by the directors from time to time.
- (b) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with rule 9.7(a).
- (c) A director is not disqualified, by reason only of being a director, from:
  - (i) holding any office or place of profit in the Company, or a related body corporate of the Company, except that of auditor;
  - (ii) holding any office or place of profit in any other company, body corporate, trust or entity promoted by or otherwise associated with the Company;
  - (iii) contracting or entering into an arrangement with the Company as vendor, purchaser or in another capacity;
  - (iv) being present and being counted in a quorum for any meeting, or voting on a resolution or decision at a meeting, where the director has an interest in a matter that is being considered by the directors, unless that is prohibited by the Act; or

- (v) signing or participating in the execution of a document by or on behalf of the Company.
- (d) Notwithstanding the fiduciary obligations arising from the director's office and provided the director has complied with rule 9.7(a), the director may do any of the things referred to in rule 9.7(c):
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the director; and
  - (ii) without affecting the validity of any contract, arrangement, instrument, resolution or other thing.

## **9.8 Powers and duties**

- (a) The directors are responsible for managing the business of the Company and may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of rule 9.8(a), the directors may exercise all the powers of the Company to:
  - (i) borrow or raise money;
  - (ii) charge any of the Company's property or business or any of its uncalled capital; and
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the Company.
- (d) The directors may:
  - (i) appoint any person to be an attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the directors decide;
  - (ii) authorise an attorney or agent to delegate any of the powers, discretions and duties vested in the attorney or agent; and
  - (iii) revoke or vary any power delegated to the attorney or agent, or remove or dismiss the attorney or agent with or without cause.
- (e) A power of attorney granted under rule 9.8(d) may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors decide.

## **9.9 Committees and delegates**

- (a) The directors may from time to time delegate any of their powers to a committee of directors, one director, an employee or any other person on any terms the directors decide. A delegate of the directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the directors.
- (c) Any power delegated in accordance with this rule 9.9 may be revoked, withdrawn, altered or varied as the directors decide.

- (d) Subject to the terms of appointment or reference of a committee, the provisions of this Constitution applying to meetings and resolutions of directors apply, so far as they can and with the necessary changes, to meetings and resolutions of a committee.
- (e) Nothing in this rule 9.9 limits the powers of the directors to delegate.

#### **9.10 Meetings of directors**

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum constitutes a meeting of the directors.
- (c) A meeting by telephone or other electronic means is taken to be held at the place where the chairman of the meeting is, or at such other place the chairman of the meeting decides, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

#### **9.11 Calling meetings of directors**

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A secretary must, if requested by a director, call a meeting of the directors.

#### **9.12 Notice of meetings of directors**

- (a) Notice of a meeting of directors must be given to each person who is at the time the notice is given:
  - (i) a director, except a director on leave of absence approved by the directors; or
  - (ii) an alternate director appointed under rule 9.17(a) by a director on leave of absence approved by the directors.
- (b) A notice of meeting of directors:
  - (i) must specify the time and place of the meeting;
  - (ii) should, but need not, state the nature of the business to be transacted at the meeting;
  - (iii) may, if necessary, be given immediately before the meeting; and
  - (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (c) Accidental failure or omission to give a director or alternate director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting.

#### **9.13 Quorum at meetings of directors**

- (a) Unless the directors decide otherwise, 2 directors present at commencement of a meeting constitute a quorum.
- (b) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may only act in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the Company.

#### 9.14 Chairman and deputy chairman of directors

- (a) The directors may elect one of their number to the office of chairman and one or more to the office of deputy chairman of directors. The directors may decide the period for which those offices will be held.
- (b) If, at a meeting of directors:
  - (i) there is no chairman; or
  - (ii) the chairman is either not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the deputy chairman (if any) is entitled to be chairman of the meeting or, if the circumstances described by rules 9.14(b)(i) or (ii) apply to the deputy chairman, the directors present must elect one of their number to chair the meeting.

#### 9.15 Decisions of directors

- (a) Subject to this Constitution, questions arising at a meeting of directors are decided by a majority of votes cast by the directors present and voting, and each director has one vote.
- (b) In the case of an equality of votes, the chairman of the meeting has a casting vote in addition to the chairman's deliberative vote, unless only 2 directors are present and entitled to vote.

#### 9.16 Written resolutions

- (a) If:
  - (i) 75% of the directors (other than any director on leave of absence approved by the directors, any director who disqualifies himself from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
  - (ii) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of directors held to consider that resolution,

then the resolution is taken to have been passed by a meeting of the directors.

- (b) A director may consent to a resolution by:
  - (i) signing the document containing the resolution (or a copy of that document);
  - (ii) giving to the Company at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the chairman of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (iii) telephoning the secretary or the chairman of directors and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution may consist of several documents in the same form each signed or consented to by one or more directors. The resolution is passed when the last director required to constitute the majority required in rule 9.16(a) signs or consents to the resolution.

#### 9.17 Alternate directors

- (a) A director may, with the approval of a majority of the other directors, appoint another director to be his or her alternate director for such a period as the director decides.

- (b) The appointment may be terminated or suspended at any time by the appointor or by a majority of the other directors.
- (c) An appointment, or the termination or suspension of an appointment, of an alternate director must be in writing and signed and takes effect only when the Company has received notice in writing of the appointment, termination or suspension.
- (d) The alternate director:
  - (i) may, but need not, be a member of the Company;
  - (ii) may act as alternate director to more than one director;
  - (iii) is entitled to receive notice of meetings of the directors;
  - (iv) in the absence of the appointor, may exercise any powers of the appointor, except the power under rule 9.17(a);
  - (v) in the absence of the appointor, is entitled to attend and vote in place of and on behalf of the appointor and is to be counted in the quorum at the meeting of directors;
  - (vi) is an officer of the Company and not the agent of the appointor, and is responsible to the Company for his or her own acts and defaults; and
  - (vii) except under rule 9.6(d), is not entitled to receive any remuneration or benefit from the Company.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents, in addition to any vote the alternate director may have as a director in his or her own right.
- (f) An alternate director is not to be taken into account in determining the number of directors or the rotation of directors under this Constitution.
- (g) The office of an alternate director is vacated if and when the appointor vacates office as a director.

### **9.18 Validity of acts**

An act done at a meeting of directors, or of a committee or a person acting as a director is not invalidated by:

- (a) a defect in the appointment of a person as a director or a member of a committee; or
- (b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the directors, committee or person when the act was done.

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## **10 Executive Officers**

### **10.1 Managing directors and executive directors**

- (a) The directors may appoint one or more persons to the office of managing director or other executive director. Subject to the terms of any agreement entered into, the directors may at any time vary or revoke the appointment, with or without cause.
- (b) Unless the directors decide otherwise, a managing director's or other executive director's appointment as an employee automatically terminates if the managing director or other executive director ceases to be a director.

## 10.2 Secretary

The directors must appoint at least one secretary and may appoint additional secretaries.

## 10.3 Executive Officers

- (a) A reference in this rule 10.3 to an Executive Officer is a reference to a managing director, executive director or secretary appointed under this rule 10.
- (b) An Executive Officer may be appointed on terms as to remuneration, tenure of office and otherwise as the directors decide.
- (c) The directors may:
  - (i) delegate or give to an Executive Officer any powers, discretion and duties they decide;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an Executive Officer; and
  - (iii) authorise the Executive Officer to delegate any of the powers, discretions and duties given to the Executive Officer.
- (d) An act done by a person acting as an Executive Officer is not invalidated by a defect in the person's appointment, or the person being disqualified or having vacated office, if the person was not aware of such defect, disqualification or vacation when the act was done.

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## 11 Indemnity, insurance and access

### 11.1 Persons to whom rules 11.2 and 11.3 apply

For the purposes of rules 11.2 and 11.3, an Officer includes:

- (a) each person who is or has been a director, alternate director or Executive Officer (within the meaning of rule 10.3(a)) of the Company or a subsidiary of the Company; and
- (b) such other persons, including officers or former officers of the Company or its related bodies corporate, as the directors in each case decide.

### 11.2 Indemnity

- (a) The Company may, to the extent permitted by law:
  - (i) indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all Liabilities incurred by the person as an Officer; and
  - (ii) execute a documentary indemnity in any form in favour of an Officer on such terms as the directors think fit and which are not inconsistent with this rule 11.
- (b) The indemnity in rule 11.2(a):
  - (i) is enforceable without the Officer having to first incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by a person to whom rule 11.2(a) applies even though that person has ceased to be an Officer; and
  - (iii) applies to Liabilities incurred both before and after the adoption of this Constitution.

### 11.3 Insurance

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance or pay or agree to pay a premium for insurance for each Officer against any Liability incurred by the Officer where the directors consider it appropriate to do so; and
- (b) bind itself in any contract or deed with any Officer to make payments on such terms as the directors think fit which are not inconsistent with this rule 11.

### 11.4 Access

Without limiting the rights of a director or former director to access the books of the Company, the Company may:

- (a) give a former director access to papers, including documents provided to or available to the directors and other papers referred to in those documents;
- (b) bind itself in any contract or deed with a director or former director agreeing to give the access to such papers; and
- (c) procure that its subsidiaries provide access to papers similar to that set out in rule 11.4(a).

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## 12 Winding up

### 12.1 Distributing surplus

Subject to this Constitution and any rights or restrictions attached to any shares:

- (a) any surplus assets remaining after satisfaction of the debts and liabilities of the Company and the charges and expenses of winding up will be available for distribution among the members, in proportion to the number of shares held by the members, irrespective of the amounts paid or credited as paid on the shares; and
- (b) for the purposes of this rule 12.1 at the time of the winding up, any amount unpaid on a share is to be treated as property of the Company. When such an amount is unpaid the Company may:
  - (i) reduce the amount of the payment to be made to that member under rule 12.1(a) by the amount owing; or
  - (ii) if the amount owed by a particular member is greater than the distribution to which that member is entitled under rule 12.1(a), retain the full amount of that distribution in partial repayment of the amount owing.

### 12.2 Dividing property

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
  - (i) divide among all or any of the members as the liquidator thinks fit any part of the assets of the Company; and
  - (ii) vest any part of the assets of the Company in trustees of any trusts for the benefit of all or any of the members at the liquidator thinks fit.
- (b) Any division under rule 12.2(a) need not accord with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division is otherwise than in accordance with the legal rights of the

members, a member is entitled to dissent and to exercise the same rights as if the determination were a special resolution passed under section 507 of the Act.

- (c) If any shares to be divided include securities with a liability to call, any person entitled under the division to any of the shares may, by notice in writing within 10 Business Days after passing of the special resolution, direct the liquidator to sell the person's proportion and pay to the person the net proceeds. The liquidator must, if practicable, act accordingly.
- (d) Rule 5.5 applies, so far as it can and with any necessary changes, to a division by a liquidator under rule 12.2(a) as if references in rule 5.5 to:
  - (i) the directors, were references to the liquidator; and
  - (ii) a distribution or capitalisation, were references to the division under rule 12.2(a).

## **13 Seals**

- (a) If the Company has a common seal:
  - (i) it may be used only by the authority of the directors; and
  - (ii) every document to which it is affixed must be signed by 2 directors, a director and a secretary or a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.
- (b) The directors must provide for the safe custody of any seal of the Company.

## **14 Notices**

### **14.1 Notices by the Company to members**

- (a) Subject to the Act and the Listing Rules, the Company may give a notice to a member by:
  - (i) delivering it personally to the member;
  - (ii) sending it by post to the address for the member in the register or alternative address nominated by the member; or
  - (iii) sending it by fax or other electronic means to the fax number or electronic address nominated by the member.
- (b) The Company may give notice to the joint holders of a share by giving it to the joint holder first named in the register in respect of the share.
- (c) By written notice to the secretary left at or sent to the registered office, a member may request that all notices to be given by the Company or the directors be served on the member's attorney at an address specified in the notice and the Company may do so in its discretion.
- (d) Where a member does not have a registered address or where the Company believes a member is not known at the member's registered address, all notices are taken to be given to the member if they are exhibited at the Company's registered office for a period of 48 hours, unless and until the member informs the Company of the member's address.
- (e) A person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member, is taken to have received every notice which, prior to that person's name and address being entered in the register for those shares, was properly given to that member.

### **14.2 Notice to the Company**

A notice shall be given to the Company by:

- (a) delivering it personally to the Company;
- (b) sending it by post to the registered address; or
- (c) sending it by fax or other electronic means to the fax number or electronic address nominated by the Company, and

in any such case, the notice will be deemed to have been received when it is actually received by the Company.

### **14.3 Time of service**

- (a) A notice properly addressed and posted is taken to have been served on the day after the date of its posting, regardless of whether the address for service is in or outside of Australia.
- (b) A notice sent by fax or electronic transmission is taken to be served when the transmission is sent.
- (c) A certificate signed by a secretary or other officer of the Company stating that a notice was duly sent to a member by post or by fax or electronic transmission on a particular date under this Constitution is conclusive evidence of that fact.
- (d) Where a given number of days' notice or other specified period of notice must be given, the day of service is not to be counted in the number of days or other period.

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## **15 Proportional Takeover Bids**

- (a) Unless the context otherwise indicates or requires, expressions in this rule 15 have the meaning given to them by the Act.
- (b) Where offers have been made under a proportional takeover bid for the securities of the Company:
  - (i) the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution to approve the bid (in this rule 15 referred to as an 'approving resolution') is passed in accordance with the provisions of this rule 15;
  - (ii) a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the bid was made, held bid class securities is entitled to vote on an approving resolution;
  - (iii) an approving resolution must be voted on at a meeting of the persons entitled to vote on the resolutions convened and conducted by the Company, and the provisions of this Constitution relating to general meetings will apply with such modifications as the directors decide are required in the circumstances;
  - (iv) the approving resolution is taken to have been passed if the number of votes in favour of the resolution is greater than 50%, and otherwise is taken to have been rejected; and
  - (v) this rule 15 ceases to have effect at the end of 3 years beginning on the date this rule 15 was last renewed in accordance with the Act or, where this rule 15 has not been renewed, at the end of 3 years beginning on the date that this rule was adopted by the Company.