

**CONSTITUTION**

**OF**

**COMMONWEALTH BANK OF AUSTRALIA**

**A.C.N. 123 123 124**

**Incorporating amendments up to and including all amendments  
passed at the Annual General Meeting on 26 October 2000**

**Corporations Law**

**Company Limited by Shares**

**CONSTITUTION**

**OF**

**COMMONWEALTH BANK OF AUSTRALIA**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this constitution, unless the contrary intention appears:

"article" means a provision of this constitution as amended or added to from time to time;

"associate" means an associate within the meaning of Division 2 of Part 1.2 of the Corporations Law;

"auditor" means the auditor or auditors for the time being of the company;

"the board" or "the directors" means the whole or any number of the directors for the time being or any number of them assembled at a duly convened meeting of directors (not being less than a quorum);

"business day" means a day on which the home exchange is open;

"business rules" means the business rules of the Securities Clearing House as amended and effective from time to time;

"capital" or "share capital" means the share capital for the time being of the company;

"company" means Commonwealth Bank of Australia;

"constitution" means this constitution as amended or added to from time to time and a reference to the memorandum and articles of association of the company as in existence prior to the commencement of the Company Law Review Act 1997 shall be taken to be a reference to this constitution;

"the Corporations Law" means the Corporations Law of the Territory;

"director" means a director for the time being of the company;

"Exchange" means Australian Stock Exchange Limited;

"executive director" means a director who is appointed to that office pursuant to article 11.6(a);

"home exchange" means the stock exchange designated to the company as such by the Exchange;

"listing rules" means the official listing rules of the Exchange as amended and in force from time to time;

"managing director" means a person appointed as managing director pursuant to article 11.6(a) and includes an acting managing director;

"marketable parcel" means, in respect of any shares, that number of shares which would be a marketable parcel as defined in the listing rules;

"member" means a person entered in the register as a shareholder of the company;

"month" means calendar month;

"official list" means the official list of the Exchange;

"official representative" means a representative appointed by a body corporate under article 10.1(b);

"paid up" includes credited as paid up;

"proper SCH transfer" means an SCH regulated transfer that is effected in accordance with the business rules or that is taken by section 1097D of the Corporations Law to be a proper SCH transfer;

"register" means the register of members to be kept pursuant to the Corporations Law and where appropriate includes:

- (i) a sub-register conducted by or for the company under the Corporations Law; and
- (ii) a branch register;

"registered address" means the address of a member in the register or such other address as the member may from time to time in writing notify to the company as the member's address for the service of notices;

"registered office" means the registered office for the time being of the company;

"related body corporate" means any body corporate which by virtue of section 50 of the Corporations Law would be deemed to be related to the company;

"restricted securities" has the meaning given to that expression in the listing rules;

"SCH regulated transfer" means a transfer of a quoted security or a quoted right that is regulated under the business rules;

"seal" means the common seal or the certificate seal of the company;

"secretary" means a person or persons appointed by the directors pursuant to article 14.1 to perform the duties of secretary of the company and includes an acting secretary;

"Securities Clearing House" and "SCH" mean ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532 or such other body as is approved under section 779B of the Corporations Law from time to time;

"share" means a share in the capital of the company;

"Territory" means the Australian Capital Territory;

"voting member" means, in reference to a meeting of the company, any person who is or was the registered holder of a voting share at the time prescribed for this purpose in the notice convening the meeting, except as provided in article 10.12;

"voting share" means any issued share in the capital of the company that confers a right to vote, not being a right to vote that is exercisable only in limited circumstances as described in the definition of "voting share" in section 9 of the Corporations Law.

## **1.2 Interpretation**

In this constitution, unless a contrary intention appears:

- (a) headings are inserted for convenience only and do not affect the construction of this constitution;
- (b) words importing any gender include the other genders, words importing persons include bodies corporate and words importing the singular include the plural and vice versa;
- (c) a reference to a statute (or to a provision of a statute) means the statute or provision as modified or amended and in operation for the time being, or any statute or provision enacted in lieu thereof and includes any by-law, order, regulation, rule or other statutory instrument for the time being in force under the statute or provision;
- (d) a word or expression in this constitution that deals with a matter dealt with by a provision of the Corporations Law has the same meaning as in that provision.

## **1.3 Replaceable rules**

The provisions of the Corporations Law relating to a company's internal management which are described as replaceable rules do not apply to the company except insofar as they are repeated in this constitution.

## **2. SHARE CAPITAL AND VARIATION OF RIGHTS**

### **2.1 Company's power to convert shares into larger or smaller number**

Subject to the Corporations Law, the company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

### **2.2 Reduction of capital**

The company may reduce its share capital in any manner permitted by the Corporations Law.

### **2.3 Company buying shares in itself**

- (a) Subject to the Corporations Law, the company may buy shares in itself on such terms and at such times as determined by the directors.
- (b) This article does not affect the company's power to buy any other securities in or issued by the company.

### **2.4 Variation of rights**

- (a) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

- (b) The provisions of this constitution relating to general meetings (including article 10.2) apply so far as they are capable of application and mutatis mutandis to every such separate meeting except that a poll may be demanded:
- (i) by the chairman of the meeting;
  - (ii) by not less than 10 holders of shares of the class present in person or by official representative, proxy or attorney;
  - (iii) by a holder or holders of shares of the class present in person or by official representative, proxy or attorney and representing not less than 10 percent (10%) of the total voting rights of all the holders of shares of the class; or
  - (iv) by a holder or holders of shares of the class present in person or by official representative, proxy or attorney, being shares on which an aggregate sum has been paid up equal to not less than 10 percent (10%) of the total sum paid up on all the shares of the class.
- (c) The rights conferred upon the holders of the shares of any class shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed not to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

### **3. ISSUES OF SHARES**

#### **3.1 Directors to issue shares**

- (a) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Corporations Law, shares in the company shall be under the control of the directors who may allot, issue or grant rights or options in respect of, or otherwise dispose of, shares to such persons, for such price, upon such conditions, at such times and with such preferred, deferred or other special rights or restrictions, whether with regard to dividends, voting, return of capital or otherwise as the directors determine.
- (b) The directors may issue shares paid up in full on allotment or partly paid in such amounts as the directors think fit.
- (c) The directors shall have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.
- (d) No director or any person who is or would after the issue be an associate of a director shall participate in an issue by the company of shares, options or rights to acquire shares unless the issue is made:
- (i) pursuant to an offer of shares to substantially all the holders of ordinary shares in the company generally in proportion to their shareholdings;
  - (ii) pursuant to an underwriting agreement, under which the director or the associate is underwriter or sub-underwriter and of which all material particulars have been disclosed to shareholders;
  - (iii) pursuant to a scheme in accordance with article 3.3;
  - (iv) pursuant to a plan in accordance with article 16.6 or 16.7; or
  - (v) with the prior approval of shareholders by special resolution at a general meeting, where the notice convening the meeting has advised the number of, and the terms of issue of, the securities to be issued to the director or

the associate and the director and his or her associates abstain from exercising their voting rights on the resolution.

## **3.2 Preference shares**

### **3.2.1**

Subject to the Corporations Law, the directors may issue preference shares:

- (a) which are, or at the option of the company are to be, liable to be redeemed by the company on such terms and conditions and in such manner as the directors determine before the issue thereof; and
- (b) whether the shares are redeemable or non-redeemable, with any of the rights set out in this article 3.2 and with such other rights, not inconsistent with this article, as are conferred by the terms of issue of the preference shares.

### **3.2.2 Terms of issue**

Prior to the allotment of any preference shares the directors shall determine with respect to such shares the following matters or the manner in which such matters shall be determined:

- (a) where the preference shares are redeemable,
  - (i) the amount payable on redemption;
  - (ii) the redemption date;
  - (iii) the time, place and manner of redemption; and
  - (iv) the conditions for exercise of the rights of redemption by the holder or by the company;
- (b) in any case,
  - (i) the rate or amount of dividends (including any additional dividends) at any time or from time to time, the basis (if any) upon which the amount of a dividend will be increased to take account of tax or other fiscal impost and the basis (if any) upon which the amount of any dividend otherwise payable in respect of the shares reduces by reference to other amounts paid to the holder of the shares;
  - (ii) the times or circumstances for payment of dividends on the shares;
  - (iii) the periods in respect of which the dividends are payable;
  - (iv) the funds out of which the dividends are to be payable;
  - (v) the premium (if any) payable;
  - (vi) the currency in which dividends or capital or both are to be paid;
  - (vii) whether or not the issue of further shares ranking equally with the preference shares in any or in any stated respect is permitted;

- (viii) whether the preference shares are convertible into shares of another class and, if so, in what circumstances;
- (ix) if required under article 3.2.7(b)(ii), the market value, or the mechanism for determining the market value, of an ordinary share at the date of allotment of the preference share;
- (x) if the preference share has the rights set out in article 3.2.3(d), any right of the holder of the preference share on redemption or in a winding up to payment of an amount equal to a dividend of the type described in article 3.2.4(d);
- (xi) if the preference share has the rights set out in article 3.2.6(b)(iii), the sum or the mechanism for determining the sum to which the holder of the preference share has the right to payment in a winding up;
- (xii) if applicable, any reference rate for the purposes of article 3.2.8; and
- (xiii) such other matters as the directors may determine.

### **3.2.3 Dividend rights**

The directors may issue preference shares with such rights to dividends as set out below:

- (a) a right to cumulative dividends with or without any further right to participate in profits available for dividends;
- (b) a right to non-cumulative dividends with or without any further right to participate in profits available for dividends;
- (c) a right to non-cumulative dividends and a right to additional preference shares in accordance with article 3.2.5 but with no further right to participate in profits available for dividends;
- (d) a right to non-cumulative dividends and, to the extent (if any) specified in the terms of issue, to additional dividends in connection with the conversion of a preference share into an ordinary share and to additional dividends in circumstances where a dividend contemplated by the terms of issue has not been paid in full on the preference shares and:
  - (i) a dividend has been, or is sought to be, declared or paid on shares ranking *pari passu* with or junior to the preference shares or a sum is, or is sought to be, set aside for the payment thereof; or
  - (ii) shares in the company have been, or are sought to be, repurchased, redeemed or beneficially acquired by the company, or a sum is, or is sought to be, set aside or a sinking fund is, or is sought to be, established for such a purpose,
 but with no further right to participate in profits available for dividends; or
- (e) no right to dividends.

The terms of issue of preference shares may provide that to the extent that an amount is paid to a holder of preference shares other than by way of dividend paid by the company, the amount of any dividend otherwise payable to the holder in respect of the preference shares reduces in a manner specified in the terms of issue.

### **3.2.4 Entitlements and priority as to payment of dividends**

The holders of preference shares will rank for payment of dividends to which they are entitled in accordance with the provisions set out below:

- (a) Holders of preference shares shall rank equally for payment of dividends and in priority to all holders of other classes of shares.
- (b) Where the holder of a preference share has a right to cumulative dividends, the holder shall have the right on redemption or in a winding up to payment of an amount equal to all arrears of or accrued dividends down to the date of redemption or of commencement of the winding up (as the case may be), whether earned or declared or not, with the same priority in relation to other shares or other classes of preference shares determined pursuant to article 3.2.4(a).
- (c) Where the holder of a preference share has a right to non-cumulative dividends under article 3.2.3(b) or (c) the holder shall have the right on redemption or in a winding up to payment of an amount equal to the dividend entitlement for any dividend date which has then most recently occurred (and which has not been paid by the company) prior to the date of redemption or of commencement of the winding up (as the case may be), only if a dividend has been declared by the directors, and with the same priority in relation to other shares or other classes of preference shares as determined pursuant to article 3.2.4(a).
- (d) The holder of a preference share which has the right to a non-cumulative dividend set out in article 3.2.3(d) shall have, to the extent (if any) determined by the directors prior to allotment of the preference share, the right on redemption or in a winding up to payment of an amount equal to any dividend (whether earned or declared or not) which, pursuant to the terms of issue of the preference share, the company was required to pay to the holder or, if there had been sufficient distributable profits, would have been required to pay to the holder, prior to redemption or the commencement of the winding up (as the case may be), with the same priority in relation to other shares or other classes of preference shares as determined pursuant to article 3.2.4 (a). Except to the extent provided pursuant to this article 3.2.4(d), the holder of such preference share shall not have a right on redemption or in a winding up to payment of an amount equal to or in respect of arrears of, or accrued but unpaid, dividends.

### **3.2.5 Right to additional preference shares**

- (a) If:
  - (i) a preference share is issued with the rights set out in article 3.2.3(c); and
  - (ii) all or any part of a dividend otherwise payable to the holders of those preference shares on a particular dividend date has become not payable because, under the terms of issue applicable to those shares a dividend is not payable or is payable only in part, either:
    - (A) where in the opinion of the directors the distributable profits of the company are insufficient to permit the payment in full of the dividend on those preference shares on that dividend date and also the payment in full of dividends stated to be payable on that dividend date on other preference shares ranking *pari passu* therewith; or

- (B) where in the opinion of the directors the payment of the whole or part of the dividend otherwise payable on that dividend date would constitute or cause a breach of the capital adequacy requirements for banks then applicable to the company or any of its subsidiaries; and
- (iii) at the relevant dividend date the amount (if any) standing to the credit of the company's profit or loss account and the amount of the reserves of the company available for the purpose are in aggregate sufficient to be applied and capable of being applied in paying up in full at such price determined by the directors in the terms of issue additional preference shares of that class on the basis provided below;

then on the relevant dividend date the directors shall, subject to any applicable law and to the listing rules, allot and issue credited as fully paid to each holder of those preference shares such additional nominal amount of preference shares of that class (rounded to the nearest whole number of preference shares) as equals the cash amount of the dividend which would have been payable to the holder but for the operation of the terms described in paragraph (ii) above multiplied by a factor determined by the directors in the terms of issue of the preference shares.

### **3.2.6 Repayment of capital and priority as to payment**

- (a) Subject to this constitution, where any preference shares are or may be redeemable by the company, such preference shares shall be redeemed by the company in accordance with the terms of issue determined by the directors pursuant to article 3.2.2.
- (b) The company may issue preference shares with any of the rights with respect to payment of capital in a winding up set out below:
  - (i) a right to payment in cash of the capital paid thereon;
  - (ii) a right to payment in the applicable currency for those preference shares (as specified in the terms of issue pursuant to article 3.2.2 (b)(vi)) of an amount equal to the amount in that applicable currency received by the company as the subscription moneys for those preference shares;
  - (iii) a right in respect of a preference share to payment in cash of a sum fixed by the directors prior to allotment or capable of determination pursuant to a mechanism adopted by the directors prior to allotment but no further or other right to participate in the assets of the company or a return of capital. (Without limitation, the mechanism adopted by the directors may provide for payment in Australian currency of an amount equal to a sum denominated in a currency other than Australian currency calculated by applying a reference rate (as specified by the directors in the terms of issue) on the date of payment of the purchase of the relevant foreign currency with Australian currency plus an amount estimated by the liquidator in his discretion to be equal to the charges and expenses likely to be incurred in purchasing the relevant foreign currency with Australian currency).
- (c) Holders of preference shares shall rank equally for the payment of the amount payable on redemption of the preference shares and in a winding up of the company.
- (d) Holders of preference shares shall have the right in a winding up of the company to payment, in priority to all holders of other classes of shares, of the amount payable on redemption of the preference shares and of dividends and any other

amount to which the holder is entitled in accordance with the provisions of this constitution but shall not participate in any further or other distribution of profits or assets of the company.

### **3.2.7 Voting rights**

- (a) The holder of a preference share shall have the right to vote in the following circumstances:
- (i) during a period during which a dividend (or part of a dividend) in respect of the preference share is in arrears;
  - (ii) on a proposal to reduce the company's share capital;
  - (iii) on a proposal that affects rights attached to the preference share;
  - (iv) on a resolution to approve the terms of a buy-back agreement;
  - (v) on a proposal to wind up the company;
  - (vi) on a proposal for the disposal of the whole of the company's property, business and undertaking; and
  - (vii) during the winding up of the company.
- (b) Notwithstanding any other provision of this constitution, the holder of a preference share:
- (i) on a show of hands shall be entitled to exercise one vote when entitled to vote under any of the circumstances set out in paragraph (a) of this article; and
  - (ii) on a poll shall be entitled to one vote for each fully paid preference share or if the directors so determine in the terms of issue, the number of votes per preference share which equals the sum subscribed for the preference share divided by the market value of an ordinary share (as determined by the directors or pursuant to a mechanism adopted by the directors) on the date of allotment of the preference (rounded to the nearest number of votes). If a preference share is not fully paid, the holder shall be entitled to a fraction of a vote for each partly paid preference share equivalent to the proportion which the amount paid is of the total amount paid and payable.

### **3.2.8 Payments denominated in foreign currency**

Where any sum is payable by the company to the holder of a preference share in a currency other than Australian dollars, and such sum is not paid when due or the company has commenced winding up, the holder may elect by notice in writing to the company to require instead payment of an amount in Australian dollars equal to that foreign currency amount calculated by applying the relevant reference rate (being such rate applicable in such market and at such time as determined by the directors prior to allotment of those preference shares) on the date of payment for the sale of the relevant currency for Australian dollars.

### 3.2.9 Conversion

A preference share which, in accordance with its terms of issue may be converted into an ordinary share shall, at the time of conversion and without any further act, have (subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion) the same rights as a fully paid ordinary share and rank pari passu with other fully paid ordinary shares then on issue.

### 3.2.10 Variation of rights

- (a) Where the company proposes to issue preference shares or to convert issued shares into preference shares:
  - (i) If those preference shares are to rank in priority to preference shares already issued, unless that is expressly permitted by the conditions of issue of the preference shares already issued, the issue or conversion shall be deemed to be a variation of the rights attached to the preference shares already issued and article 2.4 (a) and (b) shall apply; and
  - (ii) if those preference shares are to rank equally with preference shares already issued, article 2.4(c) shall apply.
- (b) If the most recent dividend entitlement as set out in the terms of issue of any preference shares has been paid or provided for in full, the consent of any holders of preference shares, or any class of preference shares shall not be required for the reduction, redemption or buy back of share capital of the company ranking as regards dividends and as to rights on winding up equally with or after the preference shares or class of preference shares, except where such consent is required by the Corporations Law or by this constitution.

### 3.2.11 Additional rights of preference shares

Holders of preference shares shall be entitled to the same rights as a holder of ordinary shares of the company in relation to receiving notices, reports and financial statements, and attending and being heard at all general meetings of the company.

### 3.2.12 Listing rules

Notwithstanding this article 3.2, the company may not issue preference shares which confer upon the holders rights which are inconsistent with those specified in the listing rules, except to the extent of any express written waiver of the listing rules by the Exchange.

## 3.3 Employee shares

- (a) Subject to any requirement for special resolution and any other requirements in the listing rules (insofar as those rules bind the company but subject to such waivers as may be agreed to by the Exchange) the company in general meeting may establish a scheme or schemes for the allotment, issue or grant of shares, options, rights or convertible securities in the company to or for the benefit of some or all of the directors or employees of the company or of a related body corporate on such terms and conditions as are established by the scheme pursuant to which they are issued.
- (b) A scheme or schemes established pursuant to article 3.3(a) may provide for the allotment, issue or grant of shares, options, rights or convertible securities to a trustee to be held by or for the benefit of directors or employees of the company

or any related body corporate or some of them with such discretions in the trustee and such terms as to the entitlement of any employee or director to interests in the shares or securities so held as are established by the scheme or schemes.

- (c) The number of shares on issue to, or to a trustee for, directors or employees of the company or any related body corporate pursuant to this article 3.3 in respect of which any loan is outstanding or which are not fully paid up must not at any time exceed in aggregate five percent (5%) of the fully paid up shares in the company then on issue.
- (d) The directors may implement any scheme or schemes approved by the company in general meeting pursuant to article 3.3(a) on the terms of that scheme and may for this purpose allot, issue or grant shares, options or convertible securities pursuant to those terms and for the purposes of the scheme.

### **3.4 Commission and brokerage**

- (a) The company may exercise the power to pay commission conferred by the Corporations Law if:
  - (i) the rate or the amount of the commission paid or agreed to be paid is disclosed in the manner required by the Corporations Law; and
  - (ii) the commission does not exceed 10 percent (10%) of the price at which the shares in respect of which the commission is paid are issued.
- (b) The commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or other securities or partly by the payment of cash and partly by the allotment of fully or partly paid shares or other securities.
- (c) The company may, on any issue of shares, also pay such brokerage as is lawful.

### **3.5 Recognition of equitable and other claims**

- (a) Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
  - (i) compelled in any way to recognise a person as holding a share upon any trust, even if the company has notice of that trust; or
  - (ii) compelled in any way to recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right to ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) Shares held by a trustee, may, with the consent of the directors, be marked in the register in such a way as to identify them as being held subject to the relevant trust, but nothing in this article 3.5(b) limits the operation of article 3.5(a).

### **3.6 Right to and delivery of share certificate**

- (a) Where the company is required by the Corporations Law or the listing rules to issue share certificates, a member is entitled without payment to receive a certificate under a seal in respect of the shares registered in the member's name but, in respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate. Likewise, the company shall also issue certificates to the holders of options and such certificates shall be under the seal.

- (b) Where several persons are jointly entitled to any share -
- (i) in the absence of any express direction from them to the contrary, the company shall enter their names as members in the register in the order in which their names appear on the application for shares or the instrument or other evidence of transfer or the notice of death or bankruptcy given to the company to establish their entitlement to the share;
  - (ii) it shall be a sufficient discharge of any of the company's obligations to them if the company discharges that obligation in relation to the firstnamed holder of the share in the register; and
  - (iii) they shall be jointly and severally liable to pay all calls, interest and other amounts in respect of the share,

provided that nothing in this article 3.6(b) shall prevent the company from differentiating between the joint holders of any share in any respect as provided for in this constitution.

- (c) Delivery of a certificate for a share shall be effected by delivering it personally to the holder or by posting it in a prepaid envelope addressed to the holder at the holder's registered address or by delivering or posting the certificate in accordance with the written instruction of the holder. Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all of them.
- (d) Where a certificate is stolen, lost or destroyed, upon application to the company by the holder thereof in accordance with section 1089 of the Corporations Law and payment of such fee as the directors require, the directors shall subject to that section, and in any other case may, issue a replacement certificate.
- (e) Where a certificate for shares previously issued has been worn out or defaced and has been surrendered to the company for cancellation, and such fee as the directors require has been paid, the company shall cancel the certificate and issue a replacement certificate.

### **3.7 Denomination and contents of share certificate**

- (a) The directors may determine the number of shares to be issued in any one certificate.
- (b) Every certificate for shares shall be issued in accordance with the Corporations Law.

## **4. CALLS ON SHARES**

### **4.1 Calls**

Subject to the terms of issue upon which any shares may be issued, the directors may from time to time make calls as they shall think fit upon the members in respect of all or any of the moneys unpaid on their shares, which is not by the terms of issue of those shares made payable at fixed times. At least 21 days' notice, specifying the time and place for payment and the person (if any be appointed) to whom such call shall be paid, shall be given of each call and each member shall pay the amount of every call so made to the company or person (if any) appointed for the purpose and at the times and places appointed by the directors. The directors may require a call to be paid by instalments or may revoke a call.

#### **4.2 Interest on calls**

If a sum called in respect of a share is not paid on or before the day appointed for payment of the sum, the registered holder of the share in respect of which the call has been made must pay any expenses incurred by the company in relation to the non-payment or late payment and must pay interest on the sum at the rate of 15 percent (15%) per annum (or such other rate as the directors may determine) which interest accrues daily from the day appointed for the payment thereof to the time of actual payment and may be capitalised monthly or at such other intervals as the directors think fit. The directors may however waive payment of interest due under this article wholly or in part.

#### **4.3 Sums due on allotment are calls**

If by the terms or conditions of allotment or issue of a share any amount is payable in respect of the share on allotment or at a specified time, every such amount shall be payable by the member in respect of such shares as if it were a call duly made by the directors, and of which due notice had been given, and all provisions of this constitution as to payment of calls and of interest and expenses, forfeiture of shares for non-payment of calls and otherwise shall apply to such amounts not paid and the shares in respect of which they are payable.

#### **4.4 Power to differentiate**

The directors may, on the allotment or issue of shares, and subject to their terms of allotment or issue, differentiate between the holders as to the amount of calls to be paid and the times of payment.

#### **4.5 Payment of calls in advance**

The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called. The directors may authorise payment by the company of interest upon the whole or any part of an amount accepted under this article 4.5 until the amount becomes payable, at such rate as may be agreed upon between the member paying the sum in advance and the directors. The directors may repay to any member all or any of the amount accepted under this article 4.5 and as from the date of such repayment interest (if any) shall cease to be payable in respect of the amount so paid.

#### **4.6 Proof of liability**

On the trial or hearing of any action for recovery of any sum due in respect of any call it shall be sufficient to prove that:

- (a) the name of the person sued is entered in the register as the holder or one of the holders of the shares in respect of which such debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of such call was duly given to the member sued in pursuance of this constitution,

and it shall not be necessary to prove the appointment or qualification of the directors who made such call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt. If the action relates to a sum of the kind described in article 4.3, proof of the terms of the allotment shall be deemed to be satisfaction of paragraphs (b) and (c) above.

## 5. FORFEITURE, LIEN AND DIVESTMENT

### 5.1 Forfeiture of shares

- (a) If a member fails to pay any call or any instalment of a call on the day appointed for payment thereof, the directors may, at any time while it remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all expenses that may have been incurred by the company by reason of non-payment or late payment of the call or instalment.
- (b) That notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) by which and a place at which the payment required by the notice is to be made, and shall state that in the event of non-payment on or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
- (c) If the requirements of a notice served under article 5.1(a) are not complied with the directors may by resolution forfeit any share in respect of which the notice has been given at any time after the day named in the notice and before the payment required by the notice has been made.
- (d) Any share so forfeited shall be deemed to be the property of the company and the directors may sell or re-allot the share on such terms and in such manner as they think fit and in the case of re-allotment with or without any money paid on the share by the former holder being credited as paid up.
- (e) The directors may before a forfeited share has been sold or re-allotted annul the forfeiture upon such terms and conditions as they may approve.
- (f) In the event that any forfeited shares are sold within 12 months of the date of forfeiture any residue after the satisfaction of the unpaid calls, instalments, premiums and accrued interest and expenses shall be paid to the member in whose name such share or shares stood immediately prior to the forfeiture.
- (g) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall remain liable to pay and must immediately pay to the company all moneys which at the date of forfeiture were presently payable to the company in respect of the shares.
- (h) On the forfeiture of any share the directors shall cause a note of such forfeiture and the date thereof to be entered in the register and shall cause notice of such forfeiture and the date thereof to be given to the member in whose name it stood immediately prior to the forfeiture and shall upon the disposal of any forfeited share cause a note of the manner and date of such disposal to be similarly entered.
- (i) An entry in the minute book of the company that a share in the company has been duly forfeited on a date stated in the minute shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may if necessary execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of and may receive the consideration therefor.
- (j) In the case of re-allotment the person to whom the share shall have been re-allotted and in the case of sale or other disposition the person or persons to whom the share shall be sold or disposed of, shall be entered upon the register as the holder of the share and shall not be bound to see to the application of the purchase moneys nor shall the new member's title to the share be affected by any

irregularity or invalidity in the proceedings in reference to the forfeiture, re-allotment sale or other disposal of the share.

## **5.2 Surrender of shares**

The directors may accept from any member a surrender of a share which is liable to forfeiture or any part thereof upon such terms as may be agreed upon between such member and the company.

## **5.3 Lien on shares**

- (a) The company has a first and paramount lien upon each share registered in the name of each member whether solely or jointly with others, for all unpaid calls, instalments and premiums due and payable in respect of such share and for such amounts as the company is required to pay (and has paid) under any statute in respect of the shares of a deceased member or other member and no equitable interest in any share shall be created except upon the footing and condition that article 3.5 is to have full effect.
- (b) The company's lien on a share extends to all dividends declared or payable in respect of the share and to the proceeds of its sale.
- (c) The registration of a transfer of shares on which the company has any lien, unless notice to the contrary shall first be given to the transferee, shall operate as a waiver of the lien so far as it relates to sums owing by the transferor or any predecessor in title.
- (d) Subject to the business rules, the company may sell, in such manner as the directors think fit, any share on which the company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share.
- (e) The proceeds of any sale shall be received by the company and applied first in payment of all costs and expenses of such sale or any attempted sale, and next in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares as at the date of the sale.
- (f) To give effect to any such sale the directors may execute or effect a transfer of the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and thereupon shall be the holder of such shares discharged from all calls due prior to such purchase. The purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by such sale shall be against the company exclusively and in damages only.

## **5.4 Divestment of Shares**

### **5.4.1 Procedure when a holding is less than a marketable parcel**

- (a) If a member holds less than a marketable parcel of shares, the company may divest the member of those shares in accordance with the provisions of this article 5.4.1 except in the circumstance where article 5.4.2 is applicable.

- (b) The company may send at any time a notice in writing to a member who holds less than a marketable parcel of shares stating that the company intends to sell or arrange the sale of the member's shares unless by the date specified in the notice being a date not earlier than six weeks after the date of service of the notice ("the specified date"):
  - (i) the shareholding of the member increases to at least a marketable parcel and the member has notified the company in writing of the increase;
  - (ii) the relevant shares are sold by the member; or
  - (iii) the member gives to the company a written notice that the member wishes to retain the relevant shares.
- (c) Subject to article 5.4.4(g), the company may not give more than one divestment notice under this article 5.4.1 to a particular member in any 12 months period.
- (d) If the member complies with any one of paragraphs (b)(i), (ii) or (iii) above by the specified date, the company may not sell the shares the subject of the notice. If the member does not comply with any of these requirements by the specified date, the company may sell or arrange the sale of the shares within the period of fourteen days from the specified date without further notice.
- (e) If shares are sold under this article, the company must:
  - (i) within a reasonable time after completion of the sale, inform the former member of the sale and total sale proceeds received by the company; and
  - (ii) within thirty days after completion of the sale, cause the proceeds of sale to be sent to the former member (or, in the case of joint holders, to the holder whose name appeared first in the register in respect of the joint holding) provided that in the case where the company issues certificates for shares, any certificate for the shares the subject of the transfer has been received by the company (or the company is satisfied that the certificate has been lost or destroyed or that its production is not essential). Payment may be made in any manner and by any means as determined by the company and is at the risk of the former member.
- (f) The company shall bear the costs and expenses of sale (including brokerage and stamp duty) of the transferor of shares sold under this article 5.4.1 (but is not liable for any tax on income or capital gains of the former member).

#### **5.4.2 Divestment of newly created holdings of shares of less than a marketable parcel**

- (a) In the circumstance where a new holding of shares is created after the date on which this article 5.4.2 comes into effect by the transfer of a parcel of shares that was less than a marketable parcel at the time a proper SCH transfer was initiated or a paper-based instrument of transfer was lodged for registration, the company may divest the member of those shares in accordance with the provisions of this article 5.4.2.

- (b) The company may send a notice in writing to such member ("the divestment notice") stating that the company intends to sell or arrange the sale of the member's shares unless by the date specified in the divestment notice being a date not earlier than fourteen days after the date of service of the notice ("the divestment date"):
  - (i) the shareholding of the member increases to at least a marketable parcel and the member has notified the company in writing of the increase; or
  - (ii) the relevant shares are sold by the member.
- (c) If the requirements of the divestment notice are not complied with by the member by the divestment date, the company may sell or arrange the sale of the shares held by such member which are specified in such notice within the period of fourteen days from the divestment date without further notice.
- (d) The proceeds of such sale shall be received by the company and applied first in payment of all costs and expenses of such sale (including brokerage and stamp duty) and the residue (together with any dividends which may have been withheld pursuant to paragraph (e) of this article) shall then be paid to the former member. The company shall not be liable for any tax on income or capital gains of the former member. Any payment may be made in any manner and by any means as determined by the company and is at the risk of the former member.
- (e) All dividend and voting rights attaching to shares which are the subject of a divestment notice under this article 5.4.2 shall be suspended if the requirements of the notice are not complied with by the divestment date and shall continue to be suspended until the disposal of the shares by the company except that such dividend and voting rights shall not be suspended if, as at the divestment date, the relevant holding has for any reason ceased to be a holding of less than a marketable parcel. If the company withholds payment of any dividends during a suspension of dividend rights, it shall pay those dividends to the former member following completion of the sale.

#### **5.4.3 Sale procedure**

- (a) Any shares to be sold pursuant to article 5.4.1 or article 5.4.2 may be sold on-market on the Exchange at the price, on the terms, in the manner and at the time determined by the company, and for the purposes of a sale pursuant to this article, the member:
  - (i) appoints the company as the member's agent for sale;
  - (ii) authorises the company to instruct a stockbroker (which may be a related body corporate of the company) to effect the sale;
  - (iii) authorises the company to initiate a holding adjustment to move the shares from a CHESSE holding to an issuer-sponsored holding maintained by the company;
  - (iv) appoints the company as the member's attorney in the member's name and on the member's behalf to effect a transfer of the shares or take any other steps as it may consider appropriate to transfer the shares so sold.

- (b) The company may register a transfer of shares whether or not any certificate for the shares has been delivered to the company.
- (c) If the shares of two or more members to whom this article applies are sold to one purchaser, the transfer may be effected by one transfer.

#### **5.4.4 General provisions**

For the purposes of this article 5.4:

- (a) Any divestment notice sent by the company under article 5.4.1 or article 5.4.2 shall comply with any requirements of the listing rules and the business rules.
- (b) A certificate signed by the secretary stating that shares sold under this article have been properly sold discharges the purchaser of those shares from all liability in respect of the purchase of those shares.
- (c) When a purchaser of shares is registered as the holder of the shares, the purchaser:
  - (i) is not bound to see to the regularity of the actions and proceedings of the company under this article or to the application of the proceeds of sale; and
  - (ii) has title to the shares which is not affected by any irregularity or invalidity in the actions and proceedings of the company.
- (d) Any remedy of any member to whom this article applies in respect of the sale of the member's shares is limited to a right of action in damages against the company to the exclusion of any other right, remedy or relief against any other person.
- (e) The member shall not be entitled to make any claim against the company for any costs or expenses occurred in connection with the disposal of any shares by the member under the provisions of this article.
- (f) All money payable to former members under this article which is unclaimed for one year after payment may be invested or otherwise made use of by the company for the benefit of the company until claimed or otherwise disposed of according to law. No money payable under this article by the company to former members bears interest as against the company.
- (g) On the day on which there is announced a Takeover (as defined in the listing rules) the power of sale under this article lapses until the close of offers under the Takeover. On the close of offers under the Takeover the company may invoke the procedures set out in this article and in the case of article 5.4.1, notwithstanding article 5.4.1(c).

## **6. INDEMNITY FOR TAXATION**

If any law of any country, state or place imposes any liability upon the company to make any payment:

- (a) in respect of shares held solely or jointly by a member;

- (b) in respect of a transfer or transmission of shares by a member;
- (c) in respect of dividends, bonuses or other money due or payable or which may become due and payable in respect of the shares of a member; or
- (d) otherwise for or on account of or in respect of the shares of a member,

whether as a consequence of:

- (e) the death of that member;
- (f) the non-payment of any duty, penalty, tax or other imposition by that member or the legal personal representative of that member; or
- (g) any other act or thing,

then, in addition to any right or remedy that law may confer on the company:

- (h) the member or, if the member is dead, the member's legal personal representative must:
  - (i) fully indemnify the company against that liability;
  - (ii) reimburse the company for any payment made under or as a consequence of that law immediately on demand by the company; and
  - (iii) pay interest from the date the company makes a payment under or as a consequence of that law until the date the company is reimbursed for that payment under article 6(h)(ii), at a rate determined by article 4.2;
- (i) the company has a lien upon all dividends in respect of the shares held solely or jointly by that member or that member's legal personal representative for all money that the company is required to pay (and has paid) under this article 6; and
- (j) the company may recover as a debt due from that member or from that member's legal personal representative any money payable to the company under this article 6.

## **7. TRANSFER OF SHARES**

### **7.1 Instrument of transfer**

- (a) Subject to this constitution, a member may transfer all or any of that member's shares by instrument in writing in registrable form or, subject to the Corporations Law, the listing rules and business rules, by electronic means or any other means that the directors approve.
- (b) A transfer referred to in article 7.1(a) shall be executed by or on behalf of the transferor (but need not be executed by the transferee) or may be executed, effected or validated otherwise in accordance with the Corporations Law, the listing rules and the business rules and if required by law to be stamped it shall be stamped.

### **7.2 Registration procedure**

- (a) Except in the case of a SCH regulated transfer, the instrument or other evidence of transfer must be delivered or lodged for registration at the registered office or such other place as the directors may from time to time determine, accompanied by any certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the

transfer, and thereupon the company shall, subject to the powers vested in the directors by this constitution, register the transferee as a shareholder.

- (b) Subject to the business rules, 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 and a transfer of shares shall not pass the right to any dividends declared on those shares until registration.
- (c) Subject to the directors' power to levy a fee in the circumstances described in articles 3.6(d) and 3.6(e), the company shall register all transfers, elections or renunciations, issue certificates and transmission receipts and mark or note transfer forms without charge.
- (d) On registration of a transfer of shares, the company shall cancel the old certificate (if any) and, if so required by the Corporations Law or the listing rules, issue new certificates in the name of the transferee for the shares transferred and in the name of the transferor for the balance of shares retained (if any).

### **7.3 Directors may decline to register**

- (a) The directors may decline to register any transfer of shares, other than a proper SCH transfer, where the company has a lien on the shares the subject of the transfer in the circumstances permitted by the listing rules and where otherwise permitted by the listing rules.
- (b) If in the exercise of their rights under this article 7.3, the directors refuse to register a transfer of any shares they shall give written notice in accordance with the listing rules of the refusal to the transferee and the broker delivering or lodging the transfer.

### **7.4 Suspension and closure of the register**

Except in the case of proper SCH transfers, the directors may close the register in accordance with the listing rules.

### **7.5 Company to retain instrument of transfer**

- (a) The company shall retain every instrument or other record of transfer which is registered for such period as the directors determine.
- (b) Where the directors refuse registration of a transfer the instrument of transfer (if any) shall 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.

### **7.6 Branch register**

The company may, in accordance with the Corporations Law, cause to be kept in any place outside the Territory a branch register of members and the directors may at their discretion, subject to the Corporations Law and the listing rules, make provisions for transfer of shares of the company between the register and branch registers.

### **7.7 Automated security transfer systems**

- (a) The company may participate in any computerised or electronic system established or recognised by law or by the listing rules or the business rules for the purpose of facilitating dealings in shares.

- (b) Where the company participates in any such system, then notwithstanding any other provision of this constitution relating to the transfer of shares and the issue of certificates for shares:
- (i) shares may be transferred and the transfers registered in a manner permitted or recognised by law or the listing rules or the business rules; and
  - (ii) the directors may decide not to issue certificates for shares or may decide to cancel such certificates without issuing any replacement certificates wherever such a practice is not contrary to applicable law or the requirements of the listing rules or the business rules.

## **8. TRANSMISSION OF SHARES**

### **8.1 Transmission of shares on death of holder**

In the case of the death of a member, the survivor or survivors of a deceased member who was a joint holder, and the legal personal representatives of a deceased member who was a sole holder, shall be the only persons recognised by the company as having any title to the member's interest in the shares, but this article does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held with other persons.

### **8.2 Right of registration on death or bankruptcy**

- (a) Subject to the Bankruptcy Act 1966, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered as holder of the share or to nominate some other person to be registered as the transferee of the share.
- (b) A person becoming so entitled who elects to be registered shall deliver or send to the company a notice in writing signed by that person advising of the election.
- (c) A person who elects to have another person registered shall execute or effect a transfer of the share to that other person.
- (d) All the limitations, restrictions and provisions of this constitution relating to the right to transfer, and the registration of transfers of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

### **8.3 Effect of transmission**

- (a) Where a member dies or becomes bankrupt, the member's legal personal representative or the trustee of the member's estate, as the case may be, is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt.
- (b) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall, for the purpose of this constitution, be deemed to be joint holders of the share.

## **9. GENERAL MEETINGS**

### **9.1 Annual general meeting**

The company shall in addition to any other meeting held by it, hold a general meeting to be called the "annual general meeting", at least once in every calendar year and within five months of the end of each of the company's financial years.

### **9.2 General meeting**

- (a) The directors, or any director to the extent permitted by the Corporations Law from time to time, may whenever they think fit convene a general meeting.
- (b) The rights of members to requisition or to convene a general meeting of the company shall be as set out in the Corporations Law.

### **9.3 Persons entitled to notice of general meeting**

- (a) Notice of every general meeting shall be given in a manner authorised by article 17 and in accordance with the Corporations Law and the listing rules to:
  - (i) every member;
  - (ii) every director;
  - (iii) the secretary (unless the secretary despatches the notice);
  - (iv) the auditor; and
  - (v) the home exchange.
- (b) No other person is entitled to receive notices of general meetings, except a person entitled to receive notice by law or pursuant to any other obligation of the company.

### **9.4 Notice of general meeting**

- (a) A notice of a general meeting shall specify the place, the day and the time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting), the general nature of the business to be conducted at the meeting, the day and the time before (but not more than 48 hours before) the meeting at which attendance and voting rights for the meeting (and any adjournment thereof for less than 30 days) will be fixed and such other particulars as may be required by the Corporations Law or this constitution from time to time.
- (b) A general meeting shall be convened by notice in writing of not less than the period prescribed by the Corporations Law or may be convened by shorter notice in the circumstances permitted by the Corporations Law.
- (c) The non-receipt of notice of a general meeting or of a proxy form by, or the accidental or erroneous omission to give notice of a general meeting or a proxy form to, a person entitled to receive notice of a general meeting shall not invalidate any resolution passed at the general meeting.

### **9.5 Member's resolutions and statements**

The rights of member to:

- (a) give the company a notice of resolution (including a resolution for the election or removal of director) that they propose to move at a general meeting; or
- (b) request the company to give to all its members a statement provided by the members making the request about:
  - (i) a resolution that is proposed to be moved at a general meeting; or
  - (ii) any other matter that may be properly considered at a general meeting

shall be as set out in the Corporations Law.

## **10. PROCEEDINGS AT GENERAL MEETINGS**

### **10.1 Representation of member**

- (a) A member may be represented by a proxy or attorney.
- (b) A member which is a body corporate may authorise such person as it thinks fit to act as its official representative either at a particular general meeting or at all general meetings of the company or of any class of members. An authorising member may also designate an alternate official representative who may act in the absence of the official representative but only one representative may exercise the authorising member's powers at any one time. If an authorising member appoints its official representative by reference to a position held, the authority must identify that position.
- (c) An official representative is, in accordance with his or her authority and until it is revoked by the authorising member, entitled to exercise the same powers on behalf of the authorising member as the member could exercise if it were a natural person.
- (d) A reference to a voting member in the succeeding provisions of this article 10 includes a proxy, attorney or official representative.

### **10.2 Quorum**

No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. Five voting members of the company personally present shall constitute a quorum for a meeting.

### **10.3 Failure to achieve quorum**

- (a) Where a general meeting is convened upon the requisition of members and a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.
- (b) Where a general meeting is convened in any other way and a quorum is not present within half an hour from the time appointed for the meeting:
  - (i) the meeting shall stand adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by them, to the same day in the next week at the same time and place; and
  - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the voting members present shall constitute a quorum.

#### **10.4 Appointment and powers of chairman of general meeting**

- (a) While a person holds office as chairman of directors, that person shall preside as chairman at general meetings. During any absence or vacancy in that office, the person (if any) who holds office as deputy chairman of directors shall preside as chairman at general meetings.
- (b) Where a general meeting is held and:
  - (i) there is no chairman entitled to preside under article 10.4(a); or
  - (ii) the chairman so entitled is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the directors present shall elect one of their number to be chairman of the meeting, or, if no director shall be present or if all directors present decline to take the chair, the voting members present shall elect one of their number to be chairman of the meeting.

- (c) The chairman of the meeting shall be responsible for the general conduct of a general meeting and may make rulings and in addition to any general power to adjourn may adjourn the meeting without putting the question to the vote if such action is required to ensure the orderly conduct of the meeting.

#### **10.5 Adjournment of general meeting**

- (a) Subject to article 10.5(c) the chairman of the meeting may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting or any business, motion, question or resolution or any debate or discussion in relation thereto from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) The chairman of the meeting may also in his or her discretion during a general meeting adjourn any business, motion, question or resolution or any debate or discussion in relation thereto to a later time at the same meeting.
- (c) After any motion to adjourn a general meeting has been defeated, the chairman of the meeting shall have an absolute discretion as to whether to put to the meeting any further motion to adjourn the meeting.
- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (e) Except as provided by article 10.5(d) it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- (f) Any voting members may attend an adjourned meeting.

#### **10.6 Voting at general meeting**

- (a) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
  - (i) by the chairman of the meeting;
  - (ii) by at least 5 voting members present who are entitled to vote on the resolution; or

- (iii) by a voting member or voting members present with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) Unless a poll is so demanded, a declaration by the chairman of the meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **10.7 Poll**

- (a) If a poll is duly demanded, it shall be taken in such manner and (subject to article 10.7(b)) either at once or after an interval or adjournment or otherwise as the chairman of the meeting directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman of the meeting or on a question of adjournment shall be taken forthwith.
- (c) The demand for a poll may be withdrawn.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) If a poll is taken the chairman shall appoint tellers to count the votes.
- (f) In the case of any dispute as to the admission or rejection of a vote, the chairman shall determine the same and such determination made in good faith shall be final and conclusive.

### **10.8 Equality of votes**

In the case of equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a casting vote in addition to any votes to which he or she may be entitled as a voting member.

### **10.9 Entitlement to vote**

- (a) Subject to any rights or restrictions for the time being attached to any class or classes of shares and subject to this article 10.9:
  - (i) on a show of hands every person present who is a voting member has one vote; and
  - (ii) on a poll, every person present who is a voting member shall have one vote for each voting share that the voting member holds or represents (as the case may be).
- (b) If a member is present in person, any proxy or attorney of such member shall not be entitled to vote.
- (c) If more than one official representative or attorney for a member is present at any meeting of the company then no such official representative or attorney shall be entitled to vote on a show of hands and on a poll only one official representative may exercise the member's voting rights and the vote of each attorney shall be of no effect unless each such person is appointed to represent a specified proportion

of the member's voting rights, not exceeding in the aggregate 100 percent (100%) of those rights.

- (d) If a member appoints two proxies and both are present at any meeting of the company and the appointment does not specify the proportion or the number of the member's votes each proxy may exercise, then neither proxy shall be entitled to vote on a show of hands and on a poll each proxy may exercise one half of the member's votes.
- (e) A voting member holding or representing a partly paid voting share has on a poll that fraction of a vote for each such voting share as equals the fraction generated by dividing the total amount paid on the voting share by the issue price of the voting share.

#### **10.10 Joint shareholders' vote**

In the case of joint holders of a share the vote of the senior who tenders a vote, whether in person or by proxy, official representative or attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register, but the other or others of the joint holders are entitled to be present at general meetings.

#### **10.11 Votes of certain members**

- (a) A parent or guardian of a voting member who is a minor may vote instead of the minor at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the directors may require.
- (b) If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the committee or trustee or such other person as properly has the management of the member's estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

#### **10.12 No entitlement**

A member is not entitled to vote at a general meeting unless all calls and other amounts presently payable in respect of the member's shares have been paid.

#### **10.13 Objection to voting qualification**

- (a) A voting member may object to the qualification of a voter but only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection shall be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

#### **10.14 Appointment of proxy**

- (a) An instrument appointing a proxy shall be in writing under the hand of the appointer or of the appointer's attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised. An appointment of a proxy may be a standing appointment.
- (b) A proxy need not be a member.

- (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (d) An instrument appointing a proxy shall, unless the instrument expressly provides otherwise, be deemed to confer authority to agree to a meeting being convened by shorter notice than is required by the Corporations Law or by this constitution and to a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given and authority to demand or join in demanding a poll.
- (e) An instrument appointing a proxy shall be in such form as the directors determine from time to time in accordance with the requirements of the Corporations Law and the listing rules.
- (f) The directors shall issue with the notice of a general meeting a form of proxy in blank as to the first proxy but which may include the name of any suggested alternative or other proxy.

#### **10.15 Deposit of proxy and other instruments**

- (a) An instrument appointing a proxy, attorney or official representative shall not be treated as valid unless:
  - (i) the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified copy of that power or authority is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll, at the registered office or at such other place as is specified for that purpose in the notice convening the meeting; and
  - (ii) the instrument, the power of attorney or other authority is or are given by a member who would be a voting member at that meeting or poll.

An instrument, power or authority will be treated as being validly received by the company if it is received at a facsimile number at the company's registered office or at a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

- (b) Article 10.13 shall apply to any objection as to the use or legibility of a facsimile transmission copy.
- (c) The secretary may waive or reduce either of the periods referred to in article 10.15(a) in respect of any meeting or any member.

#### **10.16 Validity of vote in certain circumstances**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### **10.17 Director entitled to attend and speak**

A director shall be entitled to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the company and shall be entitled to speak at those meetings.

### **10.18 Electronic transmission of proxy instruments**

For the purposes of articles 10.14(a) and 10.15(a), a proxy instrument received at an electronic address specified in the notice of meeting for the receipt of proxy instruments will be taken to have been signed if the appointment of the proxy:

- (a) includes or is accompanied by a personal identification code allocated by the company to the member making the appointment; or
- (b) has been authorised by the member in another manner approved by the directors and specified in or with the notice of meeting.

## **11. THE DIRECTORS**

### **11.1 Number and appointment of directors**

- (a) The number of directors shall not be less than nine nor more than 13 (or such lower number as the board may from time to time determine) including:
  - (i) the managing director; and
  - (ii) not more than three executive directors.
- (b) The company may by ordinary resolution alter the maximum or minimum number of directors, and subject to the listing rules may also determine in what rotation the increased or reduced number of directors is to vacate office.
- (c) At each annual general meeting one-third of the directors for the time being (apart from the directors referred to in articles 11.1(a)(i) and 11.4(b)) shall retire from office.
- (d) If the number of the directors referred to in article 11.1(c) is not three or a multiple of three, then the number nearest one-third shall retire.
- (e) Subject to article 11.5(b), the directors to retire under article 11.1(c) at any annual general meeting are those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

### **11.2 Election of directors**

- (a) A retiring director shall be eligible for re-election and shall act as a director throughout the meeting (including any adjournment thereof) at which he or she retires.
- (b) The company may, at the meeting at which a director retires, by ordinary resolution and in accordance with this constitution fill the vacated office by electing a person to that office.
- (c) No person (not being a director retiring by rotation or by virtue of article 11.4(b) or a person nominated in accordance with the provisions of article 9.5) shall be eligible for election to the office of director at any general meeting unless the person is recommended for election by the directors and the person gives to the

company a written notice signed by him or her consenting to nomination and signifying his or her candidature not less than twenty-one days before the relevant general meeting.

- (d) Notice of every candidature for the office of director shall, not less than three business days before the meeting at which an election is to take place, be given to all members.

### **11.3 Qualification of directors**

- (a) A director must be a natural person.
- (b) A director shall not be required to hold any share qualification.
- (c) The auditor may not be appointed as a director and a director may not be appointed as the auditor.

### **11.4 Casual vacancy**

- (a) The directors may at any time appoint any person (other than a person disqualified under the Corporations Law or article 11.3) to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the maximum number specified pursuant to article 11.1.
- (b) Any director so appointed (other than the managing director) holds office only until the next general meeting and is then eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

### **11.5 Removal of a director**

- (a) Subject to the Corporations Law, the company may by ordinary resolution (of which special notice of 28 days shall have been given) remove any director from office and may by ordinary resolution and in accordance with this constitution appoint another person in his or her place.
- (b) Any director appointed pursuant to article 11.5(a) shall be subject to retirement at the same time as if he or she had become a director on the day on which the director in whose place he or she was appointed was last elected a director.
- (c) Nothing in article 11.5(a) deprives a person so removed of compensation or damages payable to such person in respect of the termination of the person's appointment as director or of any appointment terminating with that as director.

### **11.6 Appointment of managing director and executive directors**

- (a) The directors may from time to time appoint one of their number to the office of managing director and no more than three full time employees of the company or a related body corporate as executive directors for such period and on such terms as they think fit.
- (b) The directors may at any time remove or dismiss any managing director or executive director from his or her office. Without prejudice to the foregoing, the managing director and each executive director shall be subject to the same provisions as to resignation and removal as the other directors of the company.
- (c) The appointment of a managing director or an executive director automatically terminates if he or she ceases for any reason to be a director.

- (d) Nothing in this article 11.6 deprives a person removed from office of compensation or damages payable to such person in respect of the termination of the person's appointment as managing director or executive director or of any appointment terminating therewith.

### **11.7 Remuneration of directors**

- (a) The directors shall, subject to the listing rules, be paid by way of fees for services such aggregate sum as may be determined from time to time by the company in general meeting, to be divided among them in such proportion and manner as the directors agree and, in default of agreement, equally.
- (b) All directors' fees shall be deemed to accrue from day to day.
- (c) Where a director (other than the managing director or an executive director) is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for any business or purposes of the company, the directors may arrange with that director for a special remuneration by payment of a stated sum of money determined by the directors and that remuneration may be either in addition to or in substitution for his or her share in the remuneration provided for in article 11.7(a).
- (d) The directors may also be paid an allowance for travelling 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 exercise of their powers and the discharge of their duties or the business of the company.
- (e) In addition to any other remuneration otherwise provided by this constitution, on or after a director (other than the managing director or an executive director) ceasing to hold office by reason of death or otherwise howsoever the directors shall have power to pay to him or her, or in case of his or her death to his or her widow or widower, dependants or legal personal representatives, such sum as the directors shall think fit but in any event not exceeding the sum permitted by section 237 of the Corporations Law, and any such payments may be in the form of a lump sum or be paid by instalments or through an annuity policy.
- (f) The company may pay the premium in respect of any contract of insurance which insures a person who is or has been a director (including the managing director or an executive director) against a liability incurred by the person as a director, except in circumstances prohibited by the Corporations Law.

### **11.8 Remuneration of managing director and executive directors**

The remuneration of the managing director and any executive director shall from time to time be fixed by the directors and may be by way of salary, commission, participation in profits or other benefits or by all or any of these modes but shall not be by way of a commission on, or a percentage of, revenue, turnover, asset levels or asset growth.

### **11.9 Director's interest**

- (a) Subject to the Corporations Law, no director shall be disqualified by his or her office from holding any office or place of profit (other than that of auditor) under the company and any director may be or become a director of or otherwise hold office or a place of profit in any other body corporate in which the company may be interested as shareholder or otherwise.
- (b) Subject to the Corporations Law, any director may contract or make any arrangement with the company whether as vendor, purchaser, broker, solicitor or

accountant or other professional person or otherwise. Any contract or arrangement entered or to be entered into by or on behalf of the company in which any director shall be in any way interested shall not be avoided for that reason.

- (c) Any director:
- (i) holding any office or place of profit under the company;
  - (ii) being a director of or otherwise holding office or a place of profit in any other body corporate in which the company may be interested as shareholder or otherwise; or
  - (iii) contracting or arranging with the company as set out in article 11.9(b),
- shall not by reason only of any of those facts or any interest resulting from them or the fiduciary relationship thereby established be liable to account to the company for any remuneration or other benefits so accruing.
- (d) Each director must disclose to the board any material contract in which he or she is interested (including a contract of the type referred to in article 11.9(b)), and must provide the board with the names of the parties to the contract, particulars of the contract, and the director's interest in the contract. The secretary shall record any such disclosure in the minutes of the relevant meeting. A director's failure to make disclosure under this article does not render void or voidable a contract in which he or she has an interest.
- (e) Unless permitted by the Corporations Law, a director who has a material personal interest (other than an interest which he or she has as a member in common with the other members) in a matter that is to be considered at a meeting of directors:
- (i) must not vote on the matter or be present while the matter is being considered at the meeting; and
  - (ii) shall not be counted in a quorum in relation to that matter.
- (f) Subject to the listing rules, article 11.9(e) does not apply if the directors have at any time passed a resolution that:
- (i) specifies the director, the interest and the matter; and
  - (ii) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (g) Notwithstanding article 13.2(a), the quorum for consideration at a meeting of directors of a matter in which one or more directors have a material personal interest is two directors who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (h) Subject to the Corporations Law, a director, or a director's firm, may act in a professional capacity (other than as auditor) for the company and he or she or the firm shall be entitled to remuneration for professional services as if he or she were not a director.
- (i) A director may, notwithstanding his or her interest, and whether or not he or she is entitled to vote or does vote, participate in the execution of any instrument by or on behalf of the company and whether by signing or sealing the same or otherwise.

### **11.10 Vacation of office of director**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Corporations Law or 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) resigns his or her office by notice in writing to the company;
- (c) is absent without the consent of the directors from meetings of the directors held during a period of 6 months and the directors resolve that his or her office shall be vacated;
- (d) becomes an insolvent under administration;
- (e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his or her interest, and the directors resolve that his or her office shall be vacated;
- (f) becomes prohibited from being a director pursuant to the Corporations Law or an order made pursuant to the Corporations Law; or
- (g) being the managing director or an executive director, is dismissed or removed from that office under this constitution.

## **12. POWERS AND DUTIES OF DIRECTORS**

### **12.1 Directors to manage company**

- (a) The business of the company shall be managed by or under the direction of the directors, who may exercise all such powers of the company as are not, by the Corporations Law or this constitution, required to be exercised by the company in general meeting.
- (b) Without limiting the generality of article 12.1(a), the directors may exercise all the powers of the company to borrow or raise money, to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The company in general meeting may not invalidate any prior act of the directors which would otherwise have been valid.

### **12.2 Powers of managing director and executive directors**

- (a) The directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon the managing director any of the powers exercisable by them.
- (b) Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.
- (c) The directors may at any time withdraw or vary any of the powers so conferred on the managing director.
- (d) The managing director may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to an executive director

or other officer of the company any of the powers and functions exercisable by the managing director, other than this power of delegation.

- (e) A power or function so delegated, when exercised by the delegate, shall be deemed to have been exercised or performed by the managing director.
- (f) A delegation does not prevent exercise of a power or function by the managing director.

### **12.3 Appointment of attorney**

- (a) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

## **13. PROCEEDINGS OF DIRECTORS**

### **13.1 Directors' meetings**

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may at any time, and the secretary shall on the requisition of a director, convene a meeting of the directors. Notice of every directors' meeting and of every adjourned meeting shall be given to every director and to the secretary.
- (c) Without limiting the discretion of the directors to regulate their meetings under article 13.1(a), the directors may, if they think fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication and a resolution passed by such a conference shall (provided that the directors in attendance can hear and be heard by each other and, notwithstanding that the directors are not present together in one place at the time of the conference) be deemed to have been passed at a meeting of the directors held on the day on which and at the time at which the conference was held (being the time in the Australian Capital Territory if the directors in attendance are in different time zones). The provisions of this constitution relating to proceedings of directors apply so far as they are capable of application and mutatis mutandis to such conferences.

### **13.2 Quorum for directors' meeting**

- (a) At a meeting of directors, no business shall be transacted unless a quorum is present. The number of directors whose presence is necessary to constitute a quorum is one half of the total number of directors for the time being in office (rounded upwards if not a whole number) or three, whichever is greater.
- (b) In the event of a vacancy or vacancies in the office of a director or directors, the remaining directors may act; but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

### 13.3 Chairman and deputy chairman of directors

- (a) The majority of all the directors in office shall elect one of their number as chairman of directors and determine the period for which he or she is to hold office. The managing director and executive directors for the time being shall not be eligible to be elected as chairman. A chairman of directors may be removed by a majority of all the directors for the time being in office. The chairman of directors shall act as chairman at meetings of directors.
- (b) The directors may elect one of their number as deputy chairman to act as chairman if the chairman of directors is absent or unwilling or unable to act as chairman or if there is a vacancy in the office of chairman of directors. The provisions of article 13.3(a) as to eligibility for appointment, duration of appointment and removal apply also to the position of deputy chairman.
- (c) Where at a meeting of directors, the chairman or deputy chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

### 13.4 Questions decided by majority

- (a) Subject to this constitution, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.
- (b) In the event of there being an equality of votes, the chairman of the meeting, in addition to his or her deliberative vote, shall have a casting vote.

### 13.5 Directors' committees

- (a) The directors may delegate any of their powers to a committee or committees consisting of at least two of their number and such other persons as they think fit.
- (b) A committee to which the powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.
- (c) The members of such a committee may elect one of their number as chairman of their meetings.
- (d) Where such a meeting is held and:
  - (i) a chairman has not been elected as provided by article 13.5(c); or
  - (ii) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,
 the members of the committee present may elect one of their number to be chairman of the meeting.
- (e) A committee may meet and adjourn as it thinks proper.
- (f) The chairman of any meeting of a committee shall arrange for minutes of the meeting to be taken and kept.
- (g) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members of the committee present and voting.

- (h) In the event of there being an equality of votes, the chairman, in addition to his or her deliberative vote, shall have a casting vote.
- (i) Article 13.1(c) shall apply to meetings of directors' committees as if all members of the committee were directors.
- (j) The presence of one half of the members of the committee (rounded upwards if not a whole number), of whom one must be a director, is necessary to constitute a quorum. No business may be transacted unless a quorum is present.
- (k) The provisions of article 13.6 relating to a written resolution by directors apply so far as they are capable of application and with such changes as are necessary to directors' committees as if all the members of a committee were directors.

### **13.6 Written resolution by directors**

- (a) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day and at the time at which the document was last signed by a director and, where a document is so signed, the document shall be deemed to constitute a minute of that meeting and shall be recorded by the secretary in the minute book.
- (b) For the purposes of article 13.6(a), two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- (c) A reference in article 13.6(a) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.
- (d) For the purposes of article 13.6(a) and (b), a statement sent electronically by a director to an agreed electronic address that he or she is in favour of a specified resolution shall be taken to be a document containing that statement and duly signed by the director. Such document shall be taken to have been signed by the director at the time of its receipt at the agreed electronic address.

### **13.7 Validity of acts of directors**

All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as a director, or that a person so appointed was disqualified, or that proper notice had not been given, as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee or proper notice had been given, as the case may be.

## **14. SECRETARY**

### **14.1 Appointment and removal of secretary**

There shall be at least one secretary of the company who shall be appointed by the directors for such term, at such remuneration and upon such conditions as they think fit. The directors shall have power to suspend or remove a secretary.

## **14.2 Powers and duties of secretary**

- (a) The secretary shall keep minutes of the proceedings at all general meetings and all directors' meetings of the company.
- (b) The directors may vest in a secretary such other powers, duties and authorities as they may from time to time determine and the secretary shall exercise all such powers, duties and authorities subject at all times to the control of the directors.

## **15. COMMON SEAL AND CERTIFICATE SEAL**

### **15.1 Custody of seals**

The directors shall provide for the safe custody of the seals.

### **15.2 Use of common seal**

The common seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors in that behalf and every instrument to which the common seal is affixed shall be signed by two people being:

- (a) two directors;
- (b) a director and a secretary;
- (c) a director and a person authorised by the board for the purpose (an "authorised person");
- (d) a secretary and an authorised person; or
- (e) two authorised persons.

### **15.3 Use of certificate seal**

- (a) The company may have a duplicate seal known as the certificate seal which shall be a facsimile of the common seal of the company and a document issued under such certificate seal shall be deemed to be sealed with the common seal.
- (b) The certificate seal may be affixed to any document by mechanical means unless the directors determine otherwise. Any document to which the certificate seal is affixed may show facsimile signatures of persons entitled to witness the affixing of the common seal.
- (c) The only documents on which the certificate seal may be used shall be share or stock unit certificates, debentures or certificates of debenture stock, secured or unsecured notes, option certificates and any other documents evidencing any options or rights to take up any shares in or debenture stock or debentures or notes of the company.

## **16. DIVIDENDS AND RESERVES**

### **16.1 Dividends**

- (a) The directors may declare dividends and may fix the time for payment of any dividend.
- (b) The directors may pay such interim dividends as in their judgement and subject to law the position of the company justifies.

## **16.2 Reserves and profits carried forward**

- (a) The directors may, before declaring any dividend or resolving to pay any interim dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.
- (c) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

## **16.3 Calculation and apportionment of dividends**

- (a) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend all shares shall carry equal dividend entitlements except to the extent that those entitlements may be defined or restricted by the terms on which the shares are issued by the directors.
- (b) If any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

## **16.4 Payment of dividends**

- (a) The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him or her to the company in relation to shares.
- (b) Any dividend, interest or other money payable in cash in respect of shares may be paid by crediting it to an account with the company nominated by the holder or by cheque sent through the post directed:
  - (i) to the registered address of the holder or, in the case of joint holders, to the registered address of the joint holder first named in the register; or
  - (ii) to such other address as the holder or joint holders in writing directs or direct.
- (c) Any one of two or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.
- (d) Interest is not payable by the company in respect of any dividend.
- (e) All dividends declared but unclaimed 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 moneys.

## **16.5 Distribution of specific assets**

- (a) The company in general meeting may direct payment of a dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.
- (b) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the

specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

## 16.6 Share investment plan

- (a) The directors may resolve (at the same time as or before or after the directors declare any dividend or resolve to pay an interim dividend) that each holder of ordinary shares to the extent that the member's shares are fully paid shall have the option to elect to forgo the right to share in such dividend and to receive instead an issue of ordinary shares credited as fully paid within the limits and on the terms and conditions set out in this article 16.6 and as otherwise determined by the directors from time to time.
- (b) A member entitled to elect as aforesaid shall not be permitted to forgo such amount of dividend per share as the directors may resolve shall not be forgone.
- (c) A member entitled to elect as aforesaid may elect, by notice in writing to the company (a "notice of election") given in such form and within such period as the directors may from time to time prescribe, to forgo the dividend which otherwise would have been paid on such of the fully paid shares conferring a right to share in such dividend as the member shall specify in the notice of election and to receive in lieu thereof shares, to be allotted and issued to the member credited as fully paid, so that the number of such shares allotted and issued shall be the whole number (rounded up or down as determined by the directors in their discretion) calculated by the formula

$$\frac{S \times D}{C}$$

where:

- S equals the number of shares in respect of which such election has been made;
- D equals the amount of the dividend payable on one such share as if no such election had been made (expressed in terms of cents and fractions of a cent) less the amount of such dividend (if any) per share which the directors have resolved that the holder of such ordinary share shall not be permitted to forgo; and
- C equals an amount which the directors resolve (at the same time as they make the resolution pursuant to article 16.6(a)) will apply for the purpose of the formula not being less than 90 percent (90%) of the price of one share in the company of the class to be issued being the weighted average market price (expressed in terms of cents and fractions of a cent to two decimal places) of all fully paid shares of the company of that class sold on the Exchange during the five trading days immediately following the books closing date (as defined in the listing rules) in respect of the relevant dividend determined by reference to such information as the directors approve for the purpose from time to time.
- (d) Following the period prescribed by the directors pursuant to article 16.6(c), the directors shall appropriate from either the capital profits reserve, asset revaluation reserve or such other capital reserve as the directors may determine of the company an amount equal to the aggregate nominal amount of the shares to be allotted credited as fully paid to those members who have given notices of election and shall apply the same in paying up in full the number of shares required to be so allotted. The shares so allotted and issued will rank *pari passu* with the existing

fully paid shares and will rank for all dividends on shares declared after the date of such allotment.

- (e) The directors shall not exercise the powers conferred on them by article 16.6(a) unless the company shall then have sufficient unissued shares capable of issue and reserves to give effect to any elections which could be made under this article 16.6.
- (f) Unless the directors in their discretion determine that it is not necessary to so exclude such members, no member whose registered address is in the United States of America or a territory thereof shall be entitled to elect to forgo the member's right to share in dividends and to receive in lieu fully paid shares in accordance with the preceding provisions of this article 16.6 unless otherwise determined by the directors.
- (g) The directors may modify suspend or terminate the share investment plan established by this article 16.6 from time to time on not less than one month's written notice to all members of the company.

#### **16.7 Dividend and interest reinvestment plans**

- (a) The directors may implement and maintain dividend or interest, or dividend and interest, reinvestment plans for cash dividends paid by the company and interest paid by the company on debentures or unsecured notes issued by the company (as the case may be) to be reinvested by way of subscription for shares to be allotted by the company such shares to rank from the date of allotment equally in all respects (including in respect of dividends for the period in which they are allotted) with other fully paid shares of the company. Participation in any such plan is to be available to such members, debenture holders and unsecured noteholders of the company as are eligible to do so under the terms and conditions of the plan.
- (b) The directors may extend any such plan to allow any designated cash dividends paid by any related body corporate and any designated interest paid by any such body corporate to be reinvested by way of subscription for shares to be allotted by the company on the same terms as in the plan.
- (c) Unless the directors in their discretion determine that it is not necessary to so exclude such members, no member whose registered address is in the United States of America or a territory thereof shall be eligible to participate in any such plan.
- (d) The directors may alter, suspend or terminate any such plan and any of the terms and conditions governing any such plan from time to time on not less than one month's written notice to all members, debenture holders and unsecured noteholders of the company that would be affected by the alteration, suspension or termination.
- (e) Notwithstanding article 16.7(d), the directors may make minor amendments of an administrative or procedural nature to the plan from time to time but must give not less than one month's prior written notice to any members, debenture holders and unsecured noteholders of the company that would be adversely affected by the amendment.
- (f) The issue price of shares allotted pursuant to any such plan shall not be less than the amount defined as "C" in article 16.6(c).

#### **16.8 Capitalisation of reserves and profits**

- (a) If the resolution has been recommended by the directors, the company in general meeting may resolve to capitalise any sum, being the whole or a part of the

amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and resolve that that sum be applied for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

- (b) A sum may only be applied for the benefit of members under article 16.8(a):
  - (i) in paying up any amounts unpaid on shares held by members;
  - (ii) in paying up in full unissued shares or debentures to be issued to members as fully paid; or
  - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii).
- (c) The directors shall do all things necessary to give effect to a resolution referred to in article 16.8(a) and in particular, to the extent necessary to adjust the rights of the members among themselves, may:
  - (i) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
  - (ii) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in article 16.8(c)(ii) is effective and binding on all the members concerned.

## 17. NOTICES

- (a) A notice may be given to any member or to any other person entitled to notice:
  - (i) personally; or
  - (ii) by sending it by post to the member's registered address or the alternative address (if any) nominated by the member;
  - (iii) by sending it to the electronic address (if any) nominated by the member; or
  - (iv) in such other manner permitted by the Corporations Law as the directors may determine in their discretion.

In the case of overseas members or other persons, documents, if sent by post, shall be forwarded by air.

- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the business day after it is sent.

- (c) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.
- (d) A notice may be given by the company to a person entitled to a share in consequence of the death, bankruptcy or unsoundness of mind of a member by serving it on him or her personally or by sending it to him or her by post addressed to him or her by name, or by the title of representative of the deceased or assignee of the bankrupt or committee or trustee of the member of unsound mind, or by any like description, at the address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death, bankruptcy or unsoundness of mind had not occurred.
- (e) Every person who by operation of law, transfer or other means becomes entitled to any share shall be bound by every notice given in accordance with this article to the person from whom he or she derives his or her title prior to registration of his or her title in the register.

## **18. INSPECTION OF RECORDS**

### **18.1 Inspection by members**

Except as otherwise required by the Corporations Law, the directors shall 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 to the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorised by the directors or by the company in general meeting.

### **18.2 Members not entitled to discovery**

No member shall be entitled to require discovery of or any information respecting any detail of the company's trading, or any matter which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the company if, in the opinion of the directors, it would be contrary to the interests of the members to communicate such information.

## **19 INDEMNITY**

- 19.1 To the extent permitted by law, the company indemnifies every director, officer and employee of the company against any liability incurred by that person:
  - (a) in his or her capacity as a director, officer or employee of the company; and
  - (b) to a person other than the company or a related body corporate of the company.
- 19.2 The company indemnifies every director, officer and employee of the company against any liability for costs and expenses incurred by the person in his or her capacity as a director, officer or employee of the company:
  - (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Law,

provided that the director, officer or employee has obtained the company's prior written approval (which shall not be unreasonably withheld) to incur the costs and expenses in relation to the proceedings.

## **20. WINDING UP**

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution, 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 he or she considers fair upon 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.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

## **21. RESTRICTED SECURITIES**

Notwithstanding any other provision of this constitution but subject to the business rules, at all times while the company is admitted to the official list:

- (a) the company shall refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of restricted securities which is or might be in breach of the listing rules or any escrow agreement entered into by the company under the listing rules in relation to the restricted securities;
- (b) in the event of a breach of any escrow agreement entered into by the company under the listing rules in relation to shares which are classified under the listing rules or by the home exchange as restricted securities, the member holding the shares in question shall cease to be entitled to any dividends and to any voting rights in respect of those shares for so long as the breach subsists; and
- (c) on a winding up of the company, the holders of shares which are classified under the listing rules or by the home exchange as restricted securities and which are subject to escrow restrictions at the commencement of the winding up shall rank on a return of capital behind all other shares in the company.

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