

# **CONSTITUTION**

**of**

**VERTUA LIMITED**

**ACN 108 076 295**

**A Company Limited by Shares**

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CONSTITUTION

of

VERTUA LIMITED  
ACN 108 076 295

A company limited by shares

1. INTERPRETATION

1.1 Definitions

In this Constitution unless the context otherwise requires:

**Alternate Director** means a person for the time being holding office as an alternate director of the Company under rule 18.1.

**Appointor** means, in respect of an Alternate Director, the Director who appointed the Alternate Director under rule 18.1.

**ASIC** means the Australian Securities and Investment Commission.

**ASX Settlement** means ASX Settlement Corporation Limited ACN 008 617 187.

**ASX Settlement Operating Rules** means the rules so entitled of ASX Settlement.

**Board** means the board of Directors of the Company.

**Business Day** has the meaning given in the *Listing Rules* if the Company is Listed and otherwise means a day on which banks are open for the conduct of normal banking business in the capital city of the State (other than a Saturday, Sunday or public holiday).

**CHESS** means the Clearing House Electronic Sub-register System operated by ASX Settlement.

**Company** means Vertua Limited ACN 108 076 295.

**Constitution** means this constitution of the Company as modified, repealed or replaced from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a director for the time being of the Company.

**Dispose** has the meaning given in the *Listing Rules*.

**Eligible Member** means, in relation to a meeting of the Company (including a meeting of any class of Members), any person who is or was the registered holder of a share at the time prescribed for this purpose under or for the *Corporations Act* in the notice convening the meeting.

**Executive Director** means a Director who is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company. It does not include a person acting solely as a Director.

**Holding Lock** has the meaning given in the *ASX Settlement Operating Rules*.

**Listed** means having been admitted to the official list of a Securities Exchange and at the relevant time still being so admitted even though, for the avoidance of doubt, the quotation of the Company's securities may be suspended.



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

**Managing Director** means a person holding office as a managing director of the Company under rule 19.1 and who may be known as the chief executive officer.

**Marketable Parcel** has the meaning given in the *Listing Rules*.

**Member** means a person entered on the Register as the holder of one or more shares.

**Non-Executive Directors** means all Directors other than Executive Directors.

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

**Officer** means an officer as defined in section 9 of the *Corporations Act*.

**Paid up** includes credited as paid up.

**Prescribed Rate** means the lower of 15% per annum and the rate prescribed under the rules of the Supreme Court of the State for the relevant period.

**Register** means the register of Members kept under the *Corporations Act* and where appropriate includes a sub-register conducted by or for the Company pursuant to the *Corporations Act* and any branch register.

**Representative** means a person appointed pursuant to section 250D of the *Corporations Act* under rule 11.20.

**Resolution** means a resolution passed or deemed to be passed at a relevant (including deemed) meeting by a simple majority of the votes cast or deemed to be cast at that meeting by persons who, being entitled so to do, attend in person (or, where proxies are allowed, by proxy) or by Representative and vote at that meeting or deemed meeting.

**Restricted Securities** has the meaning given in the *Listing Rules* in respect of those securities of the Company.

**Seal** means any common seal of the Company and, as the context allows, includes an official seal and a certificate seal.

**Secretary** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.

**Securities Exchange** means an entity licensed to operate a financial market in Australia.

**share** means an issued share or unissued share in the capital of the Company, as the case may be.

**State** means New South Wales.

## **1.2 Application of the definitions in the *Corporations Act*, the *Listing Rules* and the *ASX Settlement Operating Rules***

Unless the contrary intention appears in this Constitution:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules* the same meaning as in that provision of the *Corporations Act*, the *Listing Rules* or *ASX Settlement Operating Rules* (as the case may be); and
- (b) words that are given a general meaning in the *Corporations Act* have the same meaning in this Constitution.

### 1.3 General interpretation

In this Constitution unless the context otherwise requires:

- (a) the table of contents and headings are used only for convenience and do not affect interpretation;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to any legislation or legislative provision, regulation, constitution or by-law (including the *Listing Rules* and the *ASX Settlement Operating Rules*) includes any modification or re-enactment of, or provision substituted for, and any subordinate legislation or other instrument issued under, that legislation or provision;
- (d) the singular includes the plural and vice versa;
- (e) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (f) a reference to any gender includes all genders;
- (g) a reference to a rule, clause, schedule or paragraph is to a rule, clause, schedule or paragraph of this Constitution;
- (h) the schedules form part of this Constitution;
- (i) a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, repealed, substituted or supplemented at any time and from time to time; and
- (j) including and similar expressions are not and must not be treated as words of limitation.

### 1.4 Replaceable rules

The replaceable rules contained in the *Corporations Act* do not apply to the Company and are displaced in full by this Constitution.

### 1.5 Compliance with the *Corporations Act* and the *Listing Rules*

- (a) Notwithstanding anything express or implied in this Constitution, each and every provision of this Constitution is subject to the *Corporations Act* and, if the Company is Listed, the *Listing Rules* and the *ASX Settlement Operating Rules*. The Company must at all times comply with the *Corporations Act* and, where applicable, the *Listing Rules* and the *ASX Settlement Operating Rules*.
- (b) If there is any inconsistency between any provision of this Constitution and the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules*, the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules* (as the case may be) will prevail to the extent of the inconsistency.
- (c) Without limiting the generality of rules 1.5(a) and 1.5(b), if the Company is Listed, the following provisions apply:
  - (i) notwithstanding anything contained in this Constitution, if the *Listing Rules* prohibit an act being done, that act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the *Listing Rules* require to be done;
  - (iii) if the *Listing Rules* require an act to be done or not to be done, authority is given for

that act to be done or not to be done (as the case may be);

- (iv) if the *Listing Rules* require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
- (v) if the *Listing Rules* require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (vi) if any provision of this Constitution is or becomes inconsistent with the *Listing Rules*, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

## **1.6 Listing Rules**

A reference in this Constitution to the *Listing Rules*, the *ASX Settlement Operating Rules* or the Securities Exchange has effect only for so long as the Company is Listed on the relevant Securities Exchange and must otherwise be disregarded.

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

### **2.1 Directors control unissued shares**

Subject to this Constitution, the *Corporations Act*, the *Listing Rules* and any rights for the time being attached to the shares in any special class of shares, all unissued shares are under the control of the Directors who may issue and allot, grant options over or otherwise deal with or dispose of them at such times with such rights and privileges and on such terms and conditions as the Directors determine.

### **2.2 Directors may not participate in certain securities issues**

Notwithstanding anything contained in this Constitution to the contrary, no Director, and no person associated with a Director in terms of sections 10, 11, 12, 15 and 16 of the *Corporations Act*, may participate directly or indirectly in an issue by the Company of unissued shares, options or other securities to the extent that his or her doing so would contravene the *Listing Rules* or the *Corporations Act*.

### **2.3 Preference shares**

- (a) The Company may issue preference shares including preference shares that are, or at the option of the Company are, liable to be redeemed.
- (b) Holders of a preference share have the right to vote at any general meeting of the Company in each of the following circumstances and in no others:
  - (i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;
  - (ii) on a proposal to reduce the Company's share capital;
  - (iii) on a resolution to approve the terms of a buy back agreement;
  - (iv) on a proposal that affects rights attached to the share;
  - (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;
  - (vii) during the winding up of the Company; and
  - (viii) subject to the *Listing Rules*, in any additional circumstances specified in the terms of issue of such preference shares by the Company relating to the share on its allotment

and issue.

- (c) Holders of a preference share will be entitled to:
  - (i) a dividend in preference to holders of ordinary shares; and
  - (ii) a return of capital in preference to holders of ordinary shares when the Company is wound up.
- (d) Subject to this rule 2.3, holders of preference shares have the same rights as holders of ordinary shares in relation to receiving notices, reports, financial statements, attending general meetings of the Company and all other matters.

#### **2.4 Variation or cancellation of rights**

- (a) Subject to the *Listing Rules*, if at any time the share capital of the Company is divided into different classes of shares, the rights attached to shares in any class of shares (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 or cancelled by special resolution of the Company and:
  - (i) by special resolution passed at a meeting of the class of Members holding shares in that class; or
  - (ii) with the written consent of Members with at least 75% of the votes in the class.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary amendments, to each separate meeting of Members holding a class of shares, except that:
  - (i) a quorum is constituted by at least two persons holding or representing by proxy not less than one-third of the issued shares of that class or, if there is only one holder of shares of that class, that person; and
  - (ii) any holder of shares of that class present in person or by proxy may demand a poll.
- (c) The Company must give written notice of the variation or cancellation to the Members of the class within seven days after the variation or cancellation is made.
- (d) The rights conferred on the holders of shares in any class are not altered or abrogated by the creation or issue of further shares of the same class ranking equally with or in priority to the shares already issued, unless expressly provided in the terms of issue of the shares issued.

#### **2.5 No recognition of trusts**

Except as required by law or by this Constitution, the Company is not:

- (a) required to recognise a person as holding a share on any trust; or
- (b) bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, future or partial interest in any share or unit of a share or any other right in respect of a share, except an absolute right of ownership in the Member.

#### **2.6 Joint holders**

If two or more persons are registered as joint holders of any share, the joint Member named first in the Register in respect of that share is treated as being the sole owner of the share in relation to the receipt of dividends, service of notices and all other matters connected with the Company except the transfer of shares, the right to vote, delivery of certificates and liability for calls or instalments.

## **2.7 Brokerage and commission on subscriptions for unissued shares**

Subject to the *Corporations Act*:

- (a) the Company may exercise the power to make payments by way of brokerage or commission in connection with subscriptions for unissued shares; and
- (b) payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **3. SHAREHOLDING STATEMENTS AND CERTIFICATES FOR SECURITIES**

### **3.1 Uncertificated holdings**

Notwithstanding any other provision of this Constitution, the Directors may determine not to issue certificates in respect of securities of the Company or may determine to cancel those certificates without issuing any replacement certificates where that practice is not contrary to the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules*.

### **3.2 Holding Statements**

Where the Directors have determined (pursuant to rule 3.1) not to issue certificates in respect of securities, or to cancel existing certificates, a Member will be entitled to receive such statements of its holdings as the Company is required to give pursuant to the *Corporations Act*, the *Listing Rules* and the *ASX Settlement Operating Rules*.

### **3.3 Where Certificates are issued**

Where the Directors determine to issue certificates in respect of securities of the Company, rules 3.4 to 3.8 will apply.

### **3.4 Certificates to be issued under Seal**

Certificates of title to securities may be issued under the Seal or by two Directors or a Director and a Secretary signing the certificates of title and otherwise in accordance with the *Corporations Act* and, where applicable, the *Listing Rules* and the *ASX Settlement Operating Rules*.

### **3.5 Entitlement to certificates**

Subject to rule 3.1, every Member is entitled without payment to one certificate of title for the securities registered in that Member's name or to several certificates (in reasonable denominations) for each part of those securities.

### **3.6 Joint holders**

Where any securities are held jointly by several persons, the Company is only required to issue such certificates as would be required if those securities were held by one person, and delivery of a certificate or certificates to one of them is sufficient delivery to all.

### **3.7 Loss or destruction of certificates**

Where the Company receives evidence satisfactory to the Directors that a certificate of title to securities has been destroyed, the Company must (on application by the owner of the securities and payment of such fee as the Directors require) issue a duplicate certificate in accordance with the *Corporations Act* and the *Listing Rules*. Duplicate certificates issued in accordance with this rule must be clearly marked "Duplicate certificate issued in replacement of certificate numbered: (number)."

### **3.8 Worn out or defaced certificates**

Where a certificate of title to securities is worn out or defaced then on production and delivery of it to the Company, the Company may cancel that certificate and issue a new certificate in its place.

#### **4. LIEN**

##### **4.1 Lien for moneys called**

The Company has a first and paramount lien on every share where:

- (a) an unpaid call or instalment is due but unpaid on that share;
- (b) the share was acquired under an employee incentive scheme and an amount is owed to the Company for acquiring that share; or
- (c) the Company is required by law to pay (and has paid) an amount in respect of that share (whether held by a Member or a deceased former Member).

##### **4.2 Exemption at Directors' discretion**

Subject to the provisions of the *Corporations Act* and the *Listing Rules*, the Directors may at any time and to any extent exempt a share wholly or in part from the provisions of rule 4.1.

##### **4.3 Lien extends to dividends**

The Company's lien (if any) on a share extends to:

- (a) reasonable interest and expenses incurred because the amount is not paid;
- (b) all dividends payable in respect of the share; and
- (c) the proceeds of sale of the share.

##### **4.4 Sale where lien over shares**

- (a) The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien where:
  - (i) a sum in respect of which the lien exists is presently payable; and
  - (ii) the Company has, not less than ten Business Days before the date of the sale, given to the Member or the person entitled to the share by reason of the death or bankruptcy of the Member a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
- (b) In the case of shares in a CHESS holding, any notice under rule 4.4(a)(ii) will comply with the *Listing Rules* and the *ASX Settlement Operating Rules*.

##### **4.5 Application of proceeds of sale**

The proceeds of a sale mentioned in rule 4.4 must be applied by the Company in payment of:

- (a) first, the expenses of the sale or other disposal;
- (b) secondly, any expenses necessarily incurred in respect of the forfeiture of the relevant share, or the enforcement of the lien on the sale or other disposal; and
- (c) thirdly, the calls, interest, expenses, money paid or liabilities due and unpaid,

and the residue (if any) will be held on trust by the Company until paid to the Member or the Member's executors and administrators or assigns (as the case requires) or as such person (or if more than one such person, as such persons) directs in writing.

#### **4.6 Lien on payments made by the Company**

If any law imposes or purports to impose any immediate, future or possible liability on the Company to make any payment or empowers any person to require the Company to make any payment in respect of any shares registered in the name of any Member (whether solely or jointly with others) or in respect of any dividends or other moneys to which that Member is or may become entitled to receive from the Company, the Company:

- (a) is fully indemnified by that Member against all liability;
- (b) has a lien on those shares and all dividends and other moneys payable in respect of those shares for all moneys so paid by the Company, together with interest on that amount at the Prescribed Rate (or at such lower rate as the Directors may determine) from the date of payment to the date of repayment, and may deduct or set off against any such dividend or other moneys payable any moneys so paid or payable by the Company together with interest;
- (c) may recover as a debt due from that Member any moneys so paid by the Company together with interest calculated on the basis set out in paragraph (b); and
- (d) except in the case of a proper ASTC transfer and subject to the *Listing Rules*, may refuse to register a transfer of any shares by that Member until the money and interest has been paid to the Company.

Nothing in this rule prejudices or affects any right or remedy which the Company may have and any such right or remedy (including those noted above) is enforceable by the Company against every such Member or, if the Member is deceased or bankrupt, the Member's legal personal representative or the trustee of the Member's estate (as the case may be).

#### **4.7 Protection of lien under *ASX Settlement Operating Rules***

The Company may do all such things as may be necessary or appropriate for it to do under the *ASX Settlement Operating Rules* to protect any lien, charge or other right to which it may be entitled under any law or this Constitution.

#### **4.8 Remedies limited to damages**

The remedy of any person aggrieved by a sale, re-allotment or cancellation under this rule 4, rule 5 or rule 8 is limited to damages only and is against the Company exclusively.

### **5. CALLS ON SHARES**

#### **5.1 Directors may make calls**

Subject to compliance with the *Corporations Act* and the *Listing Rules*, the Directors may (in accordance with the terms of issue of a share) make calls on Members in respect of any moneys unpaid on the shares held by them unless and to the extent that the terms of those shares require those moneys to be paid at fixed times.

#### **5.2 Notice of call**

- (a) Notice of any call made by the Company must be given to the Member in writing.
- (b) Notices of any calls given by the Company must specify the amount of the call, the time and place of payment, to whom that call must be paid, and give such other information as may be required by the *Listing Rules*.
- (c) The Company must give Members notice of any call as is required by the *Listing Rules*.
- (d) The non-receipt of a notice of any call or the accidental omission to give notice of any call to any Member will not invalidate the call.

### **5.3 Payments of calls**

Each Member must pay to the Company at the times and places specified by the Directors the amount called on that Member's shares.

### **5.4 Terms of call**

- (a) Subject to the *Listing Rules*, the Directors may revoke or postpone a call.
- (b) Subject to the *Listing Rules* and the terms of issue of the shares, a call may be payable by instalments.

### **5.5 Time of call**

A call is treated as having been made at the time when the resolution of the Directors authorising the call was passed.

### **5.6 Liability of joint holders**

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

### **5.7 Interest on unpaid calls**

- (a) If a sum called in respect of a share is not paid on or before the day appointed for its payment, the person from whom the sum is due must pay interest on the sum from the day appointed for its payment to the time of actual payment at the Prescribed Rate or such other rate as the Directors determine.
- (b) The Directors may waive payment of all or part of the interest payable under rule 5.7(a).

### **5.8 Certain sums treated as calls**

If by the terms of issue of a share any sum is payable on allotment or at a fixed date:

- (a) that sum is to be treated as a call duly made and payable on the date on which the sum becomes payable under the terms of issue of that share; and
- (b) if that sum is not paid, all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **5.9 Terms of issue of shares may differ**

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

### **5.10 Prepayment of calls**

- (a) The Directors may:
  - (i) accept from a Member the whole or part of the amount unpaid on a share although no part of that amount has been called up; and
  - (ii) authorise payment by the Company of interest on the whole or part of an amount so accepted, until that amount becomes payable, at such rate agreed between the Directors and the Member being a rate not exceeding the Prescribed Rate.
- (b) The amount paid in advance will not confer a right to participate in dividends paid or otherwise participate in profits of the Company in respect of a period before the date on which the amount advanced would but for such payment have become payable.
- (c) The Directors may repay the amount advanced on giving to the Member at least 14 days notice in writing.



### 5.11 Proof of liability for call

- (a) On the trial or hearing of any action for the recovery of any money due for any call, it will be sufficient to prove that the name of the Member sued is entered in the Register as the holder or one of the holders of the shares in respect of the call and that, subject to rule 5.8, the resolution making the call is duly recorded in the minutes and notice of the call was duly given to the Member sued under this Constitution.
- (b) Proof of the matters referred to in rule 5.11(a) will be conclusive evidence of the debt due in respect of a call.
- (c) It will not be necessary to prove the appointment of the Directors who made the call or any other matter.

## 6. TRANSFER OF SHARES

### 6.1 Transfer

Subject to this Constitution, a Member may transfer all or any of his or her shares by:

- (a) a proper ASTC transfer or any other method of transferring or dealing in shares introduced by a Securities Exchange or operated in accordance with the *ASX Settlement Operating Rules* or the *Listing Rules*, and recognised by the *Corporations Act*; or
- (b) an instrument in writing in any usual or common form or in any other form that the Directors or a Securities Exchange allow.

### 6.2 Participation in CHES

- (a) The Directors may do anything permitted by the *Corporations Act*, the *Listing Rules* and the *ASX Settlement Operating Rules* which they consider necessary or appropriate in connection with the participation by the Company in any computerised or electronic system established or recognised by the *Corporations Act* and the *Listing Rules* or the *ASX Settlement Operating Rules* for the purpose of facilitating dealings in marketable securities.
- (b) If the Company participates in an electronic transfer system as provided in rule 6.2(a), then notwithstanding any other provision of this Constitution:
  - (i) shares may be transferred and transfers may be registered in any manner required or permitted by the *Listing Rules* or the *ASX Settlement Operating Rules* applying in relation to that system;
  - (ii) the Company must comply with any obligations which are imposed on it by the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules* in connection with a proper ASTC transfer or any other transfer of shares; and
  - (iii) the Company must not prevent, delay or interfere with the registration of a proper ASTC transfer except as permitted by the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules*.

### 6.3 Registration

Where a Member seeks to transfer all or any of the Member's shares in accordance with rule 6.1(b), the Company may only register a transfer of shares where an instrument satisfying that rule is delivered to the Company at the Office or the premises of or other place designated by or for the Company and the instrument:

- (a) is, where necessary, duly stamped;
- (b) is executed by or on behalf of both the transferor and the transferee, except where execution by either the transferor or transferee is not required by, or is treated as having been executed by the

*Corporations Act*, the *Listing Rules*, the *ASX Settlement Operating Rules* or the business rules of the Securities Exchange;

- (c) except where otherwise permitted by the *Corporations Act*, the *Listing Rules*, the *ASX Settlement Operating Rules* or the business rules of a Securities Exchange, is accompanied by the certificate of title to the shares the subject of the transfer together with such other evidence as the Directors may require to prove the title of the transferor or the transferor's right to transfer the shares; and
- (d) relates only to shares of one class.

#### **6.4 Transferor remains holder**

A transferor of shares remains the registered holder of the shares transferred until:

- (a) a proper ASTC transfer has taken effect in accordance with the *ASX Settlement Operating Rules*; or
- (b) the transfer is registered and the name of the transferee is entered in the Register in respect of them,

whichever occurs first.

#### **6.5 Restricted Securities**

- (a) Restricted Securities cannot be disposed of by the holder of those Restricted Securities during the escrow period except as permitted by the *Listing Rules* or a Securities Exchange.
- (b) The Company will refuse to acknowledge a disposal of Restricted Securities during the escrow period except as permitted by the *Listing Rules* or a Securities Exchange.

#### **6.6 Small holdings**

- (a) The Company may only sell the securities of a holder who has less than a Marketable Parcel of those securities once in any 12 month period if:
  - (i) the Company has notified the security holder in writing of its intention to sell those securities;
  - (ii) the security holder has been given at least 6 weeks from the date the notice referred to in rule 6.6(a)(i) is sent in which to advise the Company that the holder wishes to retain the holding;
  - (iii) the security holder has not notified the Company (pursuant to rule 6.6(a)(ii)) that the holder wishes to retain the holding; and
  - (iv) neither a takeover offer nor a takeover announcement has been made in respect of the Company or, if one has been made in respect of the Company, the offers made under that takeover offer or takeover announcement have closed.
- (b) The costs of sale of the securities of a holder who has less than a Marketable Parcel of those securities under rule 6.6(a) must be paid by the Company or the purchaser of the securities.
- (c) Unless otherwise determined by the Company, the proceeds of the sale of certificated securities of a holder who has less than a Marketable Parcel of those securities will not be sent to the holder until the Company has received a certificate relating to any certificated securities (or is satisfied that the certificate has been lost or destroyed).

## **6.7 Directors declining registration**

The Directors:

- (a) may in their absolute discretion decline to register a transfer of shares (other than a proper ASTC transfer) where to do so would not contravene the *Corporations Act*, *Listing Rules* and the *ASX Settlement Operating Rules*; and
- (b) must decline to register a transfer of shares:
  - (i) (other than a proper ASTC transfer) where required by the *Corporations Act*, the *Listing Rules* or the *ASX Settlement Operating Rules*; or
  - (ii) of Restricted Securities during the escrow period except as permitted by the *Listing Rules* or a Securities Exchange.

## **6.8 Notice of refusal to register**

- (a) If the Directors decline to register a paper based transfer under rule 6.7, the Company must notify the transferee (and the broker if any) of the refusal to register and the reason for the refusal within five Business Days after the day on which the transfer was lodged with the Company.
- (b) The failure to provide a notice pursuant to rule 6.8(a) will not invalidate the decision of the Directors.

## **6.9 Holding Locks**

- (a) The Company may apply a Holding Lock to securities where permitted to do so under the *Listing Rules* and the *ASX Settlement Operating Rules*.
- (b) If the Company asks for a Holding Lock to be applied in accordance with the *Listing Rules* and the *ASX Settlement Operating Rules*, the Company must notify the holder of those securities of the Holding Lock and the reason for its application within five Business Days after the day on which the Company asked for the Holding Lock.

## **6.10 Retention of instruments of transfer**

On delivery of an instrument of transfer to the Company, property to and title in that instrument of transfer, but not the underlying shares, passes to the Company which will be entitled to absolute possession of that instrument.

## **6.11 Powers of attorney**

Any power of attorney granted by a Member empowering the attorney to transfer shares which may be lodged, produced or exhibited to the Company or any Officer of the Company will be treated as continuing and remaining in full force and effect, as between the Company and the grantor of that power, and the power of attorney may be acted on, until express notice in writing that it has been revoked or notice of the death of the grantor has been given and lodged at the Office, at the place where the Register is kept or any other place designated by or for the Company.

# **7. TRANSMISSION OF SHARES**

## **7.1 Title on death of Member**

If a Member dies, then the only person or persons who may be recognised by the Company as having any title to or interest in the shares held by the deceased are:

- (a) where the deceased was a sole holder - the legal personal representative of the deceased; and
- (b) where the deceased was a joint holder - the surviving joint holder.

This rule does not in any way release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

## **7.2 Registration as holder**

- (a) Subject to the *ASX Settlement Operating Rules* and the *Bankruptcy Act 1966* (Cth), any person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, on producing such evidence as the Directors require, elect either:
  - (i) to be registered as the holder of the share, in which case the person must provide the Company with written notice signed by the person stating that election; or
  - (ii) to nominate another person to be registered as the holder of the share, in which case the person must execute a transfer of the share to that other person.
- (b) Subject to the *ASX Settlement Operating Rules*, all the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfer of, shares apply to any notice (under rule 7.2(a)(i)) or transfer (under rule 7.2(a)(ii)) as if the death or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by that Member.
- (c) If the Company has acted in good faith in registering a person pursuant to rule 7.2(a), the person who makes the election must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of the registration.

## **7.3 Entitlement to deceased's rights**

Where the registered holder of a share dies or becomes bankrupt, the deceased's personal representative, trustee in bankruptcy or the trustee of the deceased's estate (as the case may be) is entitled to the same dividends and other advantages and rights as the Member would have been entitled to if the Member had not died or become bankrupt but, before being registered as a holder of the share, the person will not be entitled in respect of the share to exercise any right conferred by membership in relation to general meetings in respect of the share.

## **7.4 Joint entitlement**

Where two or more persons are jointly entitled to any share in consequence of the death or bankruptcy of the registered holder, they are treated as being joint holders of the share for the purposes of this Constitution.

## **7.5 Mental Incapacity**

- (a) If a person entitled to a share because of the mental incapacity of a Member gives the Directors information they reasonably require to establish the person's entitlement to be registered as the holder of the share:
  - (i) the person may:
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
    - (B) by giving a completed transfer form to the Company, transfer the share to another person; and
    - (C) the person is entitled, whether or not registered as the holder of the share, to the same rights as the Member.
- (b) On receiving an election under rule 7.5(a)(i)(A), the Company must register the person as the holder of the share.
- (c) A transfer under rule 7.5(a)(i)(B) is subject to the same rules as apply to transfers generally.

## **8. FORFEITURE OF SHARES**

### **8.1 Notice of forfeiture**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time while any part of the call or instalment remains unpaid, serve a notice on that Member:

- (a) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued;
- (b) specifying a date (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (c) stating that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

### **8.2 Forfeiture of shares**

- (a) If the requirements of a notice served under rule 8.1 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- (b) A forfeiture under rule 8.2(a) includes all dividends or other amounts payable in respect of the forfeited shares which have not actually been paid before the forfeiture.
- (c) Forfeiture of shares in a CHESS holding must comply with the *ASX Settlement Operating Rules*.

### **8.3 Directors power on forfeiture**

Subject to the *Listing Rules*, a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.

### **8.4 Cancellation of forfeited shares**

The Company may cancel a forfeited share in accordance with the *Listing Rules*.

### **8.5 Implications of forfeiture for Member**

A person whose shares have been forfeited ceases to be a Member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by that Member to the Company in respect of the shares (including interest at the Prescribed Rate from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of the interest), but the liability of that Member ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.

### **8.6 Statement as evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or Secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is sufficient but not conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

### **8.7 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of and, on execution of the transfer, the transferee may be registered as the holder of the share. The transferee is not bound to see to the application of any money paid as consideration.

## **8.8 Transferee's title to share**

The title of a transferee to a share under rule 8.7 is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

## **8.9 Non-payment treated as call**

The provisions of this rule 8 apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

## **8.10 Additional Powers**

Where a transfer following the sale of any shares after forfeiture or for enforcing a lien, charge or right to which the Company is entitled under any law or under this Constitution is effected by a proper ASTC transfer, the Company may do all things necessary or desirable for it to do under the *ASX Settlement Operating Rules* in relation to that transfer.

# **9. ALTERATION OF CAPITAL**

## **9.1 Alteration of capital**

The Company may increase, divide, consolidate or reduce its share capital if it complies with the *Corporations Act* and the *Listing Rules*.

## **9.2 Additional Rights**

- (a) Where shares are consolidated or subdivided under rule 9.1, the Company in general meeting may determine by special resolution that as between the shares resulting from that consolidation or subdivision, one or more of the shares has some preference or special advantage in relation to dividends, capital, voting or anything else over or compared with one or more of the other shares.
- (b) Nothing in rule 9.2(a) in any way limits the operation of rule 2.4.

# **10. GENERAL MEETINGS**

## **10.1 Annual general meeting**

Annual general meetings must be held in compliance with the *Corporations Act* and the *Listing Rules*.

## **10.2 Convening general meetings**

- (a) A Director may call a general meeting at any time.
- (b) The Directors must convene a general meeting on the requisition of Members in accordance with the *Corporations Act*.

## **10.3 Notice of general meeting**

- (a) A notice of a general meeting must:
  - (i) set out the place, the date and the time of meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - (ii) state the general nature of the business to be transacted at the meeting; and
  - (iii) if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution; and
  - (iv) contain a form of proxy substantially in the form required by the *Corporations Act*; and

- (v) contain a statement setting out the following information:
  - (A) that the Member has a right to appoint a proxy;
  - (B) whether or not the proxy needs to be a Member of the Company;
  - (C) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (D) while the Company is Listed, a place and a fax number (and, at the option of the Company, an electronic address) for the purposes of receipt of proxy appointments.
- (b) Notice of every general meeting of the Company must be given in a manner authorised by rule 27.1 and in accordance with the *Corporations Act* and the *Listing Rules* to:
  - (i) every Member;
  - (ii) every Director and Alternate Director;
  - (iii) the auditors of the Company; and
  - (iv) a Securities Exchange,and no other person is entitled to receive notices of general meeting of the Company unless the *Corporations Act* or the *Listing Rules* otherwise require.

#### **10.4 Meetings may be cancelled or postponed**

The Directors may at any time after notice of a general meeting has been given, postpone or cancel the general meeting by giving notice to all persons entitled to receive notice of that general meeting.

#### **10.5 Failure to give notice**

Subject to the *Corporations Act*, the accidental omission to give notice of a general meeting to or the non-receipt of notice of a general meeting by any Member does not invalidate any of the proceedings of that meeting.

#### **10.6 Technology**

The Company may hold a general meeting simultaneously at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

### **11. PROCEEDINGS AT GENERAL MEETINGS**

#### **11.1 Quorum required**

No business may be transacted at any general meeting unless a quorum of Eligible Members is present at the time when the meeting proceeds to business.

#### **11.2 Quorum**

A quorum is three Eligible Members present. For the purpose of determining whether a quorum is present, a person attending as a proxy or as a Representative appointed in accordance with the *Corporations Act* of a corporation that is an Eligible Member, is treated as being an Eligible Member. If a Member has appointed more than one proxy, attorney or Representative, only one of them may be counted.

### **11.3 Absence of quorum**

If a quorum is not present within 30 minutes from the time appointed for the general meeting:

- (a) where the meeting was convened on the requisition of Members - the meeting is dissolved; or
- (b) in any other case:
  - (i) the meeting stands adjourned to the date, time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and same place; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting is dissolved.

### **11.4 Chair**

The chair of Directors (if any) or, in the chair's absence, the deputy chair will preside as chair at every general meeting.

### **11.5 Decisions of the chair are final**

Any questions arising at a general meeting relating to the order, business, procedure or conduct of the meeting shall be referred to the chair whose decision is final.

### **11.6 Absence of chair**

Where a general meeting is held and:

- (a) a chair has not been elected by the Directors; or
- (b) the chair elected by the Directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
- (c) is unwilling to act,

the Directors present must elect one of the Directors to be chair of the meeting or, if no Directors are present or if all Directors decline to take the chair, the Members present must elect one of their number to be chair of the meeting.

### **11.7 Adjournment of meetings**

The chair may with the consent of any general meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **11.8 Notice of adjourned meeting**

Notice of an adjournment or of the business to be transacted at an adjourned meeting need only be given when a general meeting is adjourned for 21 days or more, in which case at least three days' notice of the adjourned meeting must be given as in the case of the original meeting.

### **11.9 Voting at general meetings**

A resolution put to the vote of any general meeting must 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:

- (a) by the chair; or
- (b) by at least five Eligible Members present in person or by proxy, or Representative and entitled to vote on the resolution; or



- (c) by an Eligible Member or Eligible Members present in person or by proxy or Representative with at least 5% of the total voting rights of all the Eligible Members having the right to vote at the meeting; or
- (d) by an Eligible Member or Eligible Members present in person or by proxy or Representative holding voting shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all voting shares issued by the Company,

but no poll may be demanded on the election of a chair or on a question of the adjournment of a meeting.

#### **11.10 Result of voting by show of hands**

Unless a poll is demanded in accordance with rule 11.9, a declaration by the chair 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.

#### **11.11 Withdrawal of demand for poll**

The demand for a poll may be withdrawn.

#### **11.12 Taking of poll**

If a poll is duly demanded, it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.

#### **11.13 Chair has a casting vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded does have a casting vote.

#### **11.14 Right to receive notice and attend**

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of shares, each Member, each Director (including each Alternate Director), the Securities Exchange and the auditor of the Company is entitled to receive notice of, and to be present and to speak at, each general meeting.

#### **11.15 Voting entitlement**

Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of Members or classes of Members:

- (a) each Eligible Member entitled to vote may vote in person or by proxy, or Representative;
- (b) on a show of hands every Eligible Member, or person entitled to the rights of an Eligible Member in accordance with this Constitution, present has one vote; and
- (c) on a poll every Member, or person entitled to the rights of a Member in accordance with this Constitution, present in person or by proxy or Representative has:
  - (i) one vote for each fully paid share that Member holds; and
  - (ii) a fraction of a vote for each partly paid share that Member holds where the fraction is equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on that share,

except that a Member is not entitled to vote at a general meeting:

- (d) unless all calls and other sums presently payable by that Member in respect of shares have been

paid; and

- (e) during a breach of the *Listing Rules* relating to Restricted Securities, or a breach of a restriction agreement by that Member.

#### **11.16 Vote of joint holders**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the register of Members counts.

#### **11.17 Vote of mentally affected Member**

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 laws relating to mental health, that Member's committee or trustee or such other person as properly has the management of that 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.

#### **11.18 Objection to voting rights**

An objection may be raised with the chair of the general meeting as to the qualification of a vote but only at the meeting or adjourned meeting at which the vote objected to is given or tendered, and the decision of the chair is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

#### **11.19 Appointment of proxies**

An instrument appointing a proxy:

- (a) may specify the manner in which the proxy is to vote in respect of a particular resolution and, if it does:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (iii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
  - (iv) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way; and
- (b) must be in the form required by the *Corporations Act* or in a form that is as similar to that required as the circumstances allow.

#### **11.20 Appointment of Representatives**

- (a) A body corporate which is a Member may appoint a specified person to act as its Representative to exercise all or any of the powers the body corporate may exercise:
  - (i) at meetings of the Members;
  - (ii) at meetings of creditors or debenture holders; or
  - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment under rule 11.20(a) may be a standing one.

#### **11.21 Powers of Proxies and Representatives**

Unless otherwise specified in the instrument of appointment, the proxy or Representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

## **11.22 Validity of instrument of appointment**

- (a) An instrument appointing a proxy or a Representative must not be treated as valid unless this rule 11.22 has been complied with.
- (b) An instrument appointing a proxy must comply with section 250A(1) of the *Corporations Act*, and must be completed and received by the Company (together with any authority under which the appointment was signed or a certified copy of the authority, where the appointment is signed by the appointor's attorney):
  - (i) at least 48 hours before the time for holding the meeting;
  - (ii) if the meeting has been adjourned, at least 48 hours before the resumption of the adjourned meeting; or
  - (iii) in the case of a poll conducted at a date later than the date of the meeting at which it was demanded, at least 24 hours before the time appointed for taking of the poll.
- (c) An instrument appointing a Representative must be received by the Company:
  - (i) at least 48 hours before the time for holding the meeting;
  - (ii) if the meeting has been adjourned, at least 48 hours before the resumption of the adjourned meeting; or
  - (iii) in the case of a poll conducted at a date later than the date of the meeting at which it was demanded, at least 24 hours before the time appointed for taking of the poll,and the original or a copy must accompany the Representative and be produced to the Secretary or another authorised person of the Company when the Representative attends the relevant meeting.

## **11.23 Validity of vote of proxy notwithstanding death etc of Member**

Notwithstanding any other rule, a vote given in accordance with the terms of an instrument of proxy or an instrument appointing a Representative is valid notwithstanding:

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power; or
- (c) the transfer of the share in respect of which the instrument or power is given,

if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the Office or any other place designated by the Company before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **12. APPOINTMENT AND REMOVAL OF DIRECTORS**

### **12.1 Continuing Directors**

The Directors who hold office at the date of adoption of this Constitution continue in office subject to this Constitution.

### **12.2 Number of Directors**

- (a) Subject to rule 12.3, the number of Directors must not be less than three nor more than 7.
- (b) At least two Directors must ordinarily reside in Australia.

### **12.3 Variation to number of Directors**

The Company may from time to time by resolution in general meeting do any or all of the following:

- (a) increase or reduce the maximum number of Directors permitted under rule 12.2 (a);
- (b) if the Company is Listed and there is a reduction or increase in the number of Directors, determine the rotation by which the reduced or increased number are to retire; and
- (c) appoint new Directors.

### **12.4 Duration of appointment**

Directors may hold office until removed under rule 12.6 or until their office is vacated pursuant to this Constitution, the *Corporations Act* or the *Listing Rules*.

### **12.5 Fulfilment of casual vacancy**

- (a) The Directors may at any time appoint any person 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 number fixed in accordance with this Constitution.
- (b) A Director appointed under rule 12.5(a) must retire at the next following annual general meeting of the Company and will then be eligible for re-election.
- (c) Rule 12.5(b) does not apply to the Managing Director (or the first appointed Managing Director if there is more than one).

### **12.6 Removal of Directors**

The Company may, in addition to any power conferred by the *Corporations Act*, by resolution remove any Director and may, if so desired, by resolution appoint a replacement Director.

### **12.7 Directors need not be Members**

A Director need not be a Member.

### **12.8 Vacation of Director's office**

In addition to the circumstances prescribed by the *Corporations Act*, 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 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 six months;
- (d) is removed as a Director under this Constitution or the *Corporations Act*;
- (e) becomes bankrupt or suspends payment or compounds with that Director's creditors; or
- (f) is prohibited by the *Corporations Act* or any other legislation from being a Director.

### **12.9 Compulsory retirement**

- (a) Subject to the *Listing Rules* and rule 12.9(b), at each annual general meeting the following Directors automatically retire and are eligible for re-appointment (and if not re-appointed, that retirement takes effect at the conclusion of that annual general meeting):
  - (i) one-third of the Directors or, if their number is not a multiple of three, then the

number nearest to but not exceeding one-third of the Directors (excluding Directors who retire by virtue of rule 12.5(b)); and

- (ii) any Director who, if that Director did not retire at that annual general meeting, would at the next annual general meeting, have held that office for more than three years.
- (b) Rule 12.9(a) does not apply to the Managing Director (or the first appointed Managing Director if there is more than one) or an Alternate Director.

#### **12.10 Identification of rotating Directors**

- (a) The Directors who are to retire by reason of rule 12.9(a)(i) are those of the Directors the subject of that rule who have been in office the longest and, as between Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot.
- (b) Where a Director has previously vacated office, the length of time that Director has been in office will be computed from the Director's last election or appointment by a general meeting.

#### **12.11 Appointment at Annual General Meeting**

At any annual general meeting at which a Director retires under rule 12.9, the Company may by resolution fill the office vacated by appointing a person as Director.

#### **12.12 Notice of nomination of Directors**

- (a) Except in the case of a Director retiring under rule 12.9 or a person recommended for appointment by the Directors, a person is only eligible to be appointed as a Director by resolution at a general meeting where the Company receives both:
  - (i) a nomination of the person by a Member; and
  - (ii) a consent to nomination signed by that person,at its Office at least 30 Business Days before the relevant general meeting.
- (b) A person recommended by the Directors to act as a Director must be nominated by a Director at least 25 Business Days before the relevant general meeting at which the appointment of that Director will be considered.
- (c) Members duly entitled to attend and vote at the general meeting referred to in rules 12.12(a) and (b) may also propose themselves for election in accordance with this Constitution.
- (d) Notice of each and every candidature will be given to all Members at least 28 days before the meeting at which the election is to be held.

#### **12.13 Less than minimum number of Directors**

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by rule 12.2, in which case the continuing Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a general meeting of the Company; or
- (c) in an emergency.

### **13. REMUNERATION OF NON-EXECUTIVE DIRECTORS**

#### **13.1 Non-Executive Directors' remuneration**

The Non-Executive Directors may be paid such aggregate remuneration as is from time to time determined by the Company in general meeting, and that remuneration accrues from day to day. The remuneration may be divided among the Non-Executive Directors in such proportions as they from time to time agree and, in default of agreement, equally.

#### **13.2 Expenses incurred by Directors**

The Non-Executive Directors may be paid all 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 business of the Company.

#### **13.3 Payment for special exertions**

The Company may remunerate any Non-Executive Director who is required to perform extra services or make any special exertions (whether travelling or living abroad or otherwise) on behalf of the Company by way of a fixed sum determined by the Directors. Any remuneration paid to a Director under this rule may be either in addition to or in substitution for that Director's part of the remuneration referred to in rule 13.1.

### **14. RETIREMENT BENEFITS**

#### **14.1 Payment of retirement benefits**

A Director may be paid a retirement benefit as determined by the Directors in accordance with the provisions of the *Corporations Act* and the *Listing Rules* and, where required by the *Corporations Act* or the *Listing Rules*, as approved by the Company in general meeting.

#### **14.2 Retirement benefits generally**

A retirement benefit includes any benefit paid in consequence of the loss by a Director of, or the retirement of the Director from, the office of Director, or in consequence of the death of the Director.

#### **14.3 Death of Director**

Where a retirement benefit is payable in consequence of the death of a Director, that benefit may be paid to the Director's spouse, children or such other persons as the Directors may determine were financially dependent on the Director at the time of the Director's death, in such shares as may be determined by the Directors.

#### **14.4 Company may contract to pay retirement benefits**

The company may enter into a contract or arrangement with a Director for the purpose of providing or making arrangements for the payment of a retirement benefit in accordance with this rule 14.

### **15. POWERS OF DIRECTORS**

#### **15.1 Power to manage Company generally**

Subject to the *Corporations Act*, the *Listing Rules* and to any other provision of this Constitution, the business of the Company is to be managed by the Directors who may exercise all powers of the Company to the exclusion of the Company in general meeting.

#### **15.2 Appointment of attorneys**

The Directors may by power of attorney appoint any person to be an attorney 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.

### **15.3 Provisions of power of attorney**

Any power of attorney under rule 15.2 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 the attorney.

### **15.4 Powers to provide for local management**

The Directors may from time to time provide for the management and transaction of the affairs of the Company in any specified locality, whether at home or abroad, in any manner they think fit and the provisions contained in the rules 15.5, 15.6 and 15.7 will be without prejudice to the general powers conferred by this rule.

### **15.5 Delegation to local boards and agencies**

- (a) The Directors may establish any local boards and agencies for managing any of the affairs of the Company in any such locality and may appoint any persons to be members of such local board or any managers or agents and may fix their remuneration.
- (b) The Directors may delegate to any persons so appointed any of the powers, authorities and discretions for the time being vested in the Directors, other than the power of making calls pursuant to rule 5.1, and may authorise any members of any such local board to fill up any vacancies in it and to act notwithstanding vacancies.
- (c) Any such appointment or delegation may be made on such terms and conditions as the Directors think fit.
- (d) The Directors may at any time remove any person so appointed and may annul or vary any such delegation, but no person dealing in good faith and without notice of such annulment or variation shall be affected by it.

### **15.6 Local management through attorneys**

An appointment of an attorney under rule 15.2 may be made in favour of:

- (a) any member of a local board established under rule 15.5;
- (b) any corporation;
- (c) the members, directors, nominees or managers of any corporation or firm; or
- (d) any fluctuating body of persons nominated directly or indirectly by the Directors,

and any such powers of attorney may contain provisions for the protection or convenience of persons dealing with the attorney or attorneys.

### **15.7 Sub-delegation of powers**

Any delegate or attorney appointed by the Directors under this rule 15 may be authorised by the Directors to sub-delegate any of the authorities and discretions vested in them.

## **16. DUTIES AND INTERESTS OF DIRECTORS**

### **16.1 Permitted interests of Directors**

Subject always to the *Corporations Act* and to compliance with rule 16.2, a Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit under the Company other than that of

auditor for the Company; and

- (c) act in a professional capacity other than as auditor for the Company,

and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.

#### **16.2 Disclosure of interests**

- (a) A Director must declare the existence, nature, character and extent of any interest if and as required by the *Corporations Act* and the *Listing Rules*.
- (b) The Secretary must record all declarations in the minutes of the relevant Directors' meeting.
- (c) A Director's failure to make disclosure under rule 16.2(a) does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

#### **16.3 Prohibition on voting**

- (a) A Director who has a direct or indirect material personal interest in a matter that is being considered at a Directors meeting must not:
  - (i) vote in respect of the matter; or
  - (ii) be present at the meeting while the matter is being considered,except as permitted by or under the *Corporations Act*.
- (b) If the Director purports to vote on any matter contemplated by rule 16.3(a), the Director's vote will not be counted.
- (c) The requirement in rule 16.3(a) is in addition to any requirements of the *Corporations Act* and the *Listing Rules* in relation to voting by an interested director of a public company.
- (d) A Director's failure to comply with rule 16.3(a) does not render void or voidable any resolution or any contract or arrangement in which the Director has a direct or indirect material interest.

#### **16.4 Execution of instruments**

A Director may execute any instrument notwithstanding any interest which that Director has in the subject matter of that instrument or any other office or place of profit held by the Director.

#### **16.5 Director's to keep matters confidential**

Each Director and other Officer of the Company must:

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

#### **16.6 Application to Alternate Director**

The provisions of this rule 16 extend and apply to Alternate Directors.



## **17. PROCEEDINGS OF DIRECTORS**

### **17.1 Directors may regulate meetings**

The Directors may meet in person at a single location or at more than one location using any technology consented to by all of them for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **17.2 Convening Directors meetings**

A Director may at any time, and a Secretary must on the request of a Director, convene a meeting of the Directors on giving reasonable notice individually to every other Director and Alternate Director.

### **17.3 Notice of meetings of Directors**

Unless agreed otherwise by all Directors, at least seven days' notice of every meeting of Directors must be given to each Director and to each Alternate Director (whether in Australia or not).

### **17.4 Decisions resolved by majority**

At a meeting of Directors:

- (a) each Director present has one vote; and
- (b) questions arising are to be decided by a majority of votes of Directors present and entitled to vote.

### **17.5 Chair does have a casting vote**

Subject to the *Listing Rules*, in case of an equality of votes, the chair of the meeting will have a second or casting vote.

### **17.6 Quorum**

At a meeting of Directors, the number of Directors whose presence (whether in person or as contemplated by rule 17.15) is necessary to constitute a quorum is two unless otherwise determined by the Directors.

### **17.7 Number of Directors less than quorum**

In the event of a vacancy or vacancies in the office of a Director or offices of 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:

- (a) increasing the number of Directors to a number sufficient to constitute a quorum; or
- (b) convening a general meeting of the Company.

### **17.8 Election of chair and deputy chair**

- (a) The Directors may elect one of their number to chair their meetings and may determine the period for which that Director is to hold that position.
- (b) The Directors may also elect one of their number as a deputy chair who, in the absence of the chair at a meeting of the Directors, may exercise all the powers and authorities of the chair.

### **17.9 Absence of chair**

Where a Directors' meeting is held and:

- (a) a chair and deputy chair have not been elected as provided by rule 17.8; or
  - (b) neither the previously elected chair nor the previously elected deputy chair is present within 15 minutes after the time appointed for the holding of the meeting; or
  - (c) both the previously elected chair and the previously elected deputy chair are unwilling to act,
- the Directors present may elect one of their number to act as chair of the meeting.

### **17.10 Delegation of powers to committee**

The Directors may delegate any of their powers to a committee or committees consisting of such of their number and other persons as they think fit. A delegation of a power, or a specified class of powers, may be made either generally or as otherwise provided by the terms of delegation.

### **17.11 Powers of committee**

If any power is delegated to a committee under rule 17.10:

- (a) the committee must exercise the powers delegated in accordance with any directions of the Directors;
- (b) exercise by the committee of the power is taken to be exercised by the Directors;
- (c) the delegation does not prevent the exercise of the power by the Directors; and
- (d) where the exercise depends on the opinion, belief or state of mind of the Directors, the power may be exercised by the committee on the opinion, belief or state of mind of the committee.

### **17.12 Meetings of committee**

The provisions of this Constitution relating to meetings of Directors apply so far as they are capable of application and are altered as necessary to every meeting held by a committee appointed except that:

- (a) the members of the committee may elect one of their number as chair of their meetings;
- (b) where the committee holds a meeting and:
  - (i) a chair has not been elected as provided by rule 17.12(a); or
  - (ii) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act,the members of the committee present may elect one of the number to be chair of the meeting; and
- (c) the committee may meet in person or by any other means contemplated by rule 17.15 and adjourn as it thinks proper.

### **17.13 Circular resolutions of Directors**

- (a) Subject to rule 17.13(c), if all of the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of the resolution in terms set out in the document, a resolution in those terms is to be treated as having been passed at a meeting of the Directors held on the day and at the time on which the document was last signed by a Director.

- (b) For the purposes of rule 17.13(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) If a document referred to in rule 17.13(a) is signed by a majority of, but not all, the Directors, the resolution contained in that document is not treated as having been passed pursuant to rule 17.13(a) unless the Secretary or the Managing Director certifies that a copy of the proposed resolution was sent by facsimile transmission, electronic mail or in other written form to each Director at the address notified for that purpose to the Secretary by the Director.

#### **17.14 Validity of Directors' actions**

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are 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 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.

#### **17.15 Directors need not be present in person**

- (a) Directors' meetings may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not all be physically present in the same place. A Director who participates in a meeting held in accordance with this rule is treated as being present and entitled to vote at the meeting.
- (b) A Director will be taken to leave a Directors' meeting where the Directors communicating with each other by any technological means if the Director's technological communication device is disconnected in such a manner that all Directors participating are, or should be, aware that the Director has ceased to participate in the meeting. Unless the Directors participating in the meeting become aware that communications have been disrupted, it will be conclusively presumed that all Directors known to have been participating in the meeting at its commencement have been present and to have formed part of the quorum at all relevant times during the meeting.
- (c) The disruption of communications during a meeting by technological communication will not invalidate proceedings at that meeting.

### **18. ALTERNATE DIRECTORS**

#### **18.1 Appointment of Alternate Directors**

A Director may, with the approval of a majority of the other Directors, appoint any person (other than the auditor of the Company or a partner or employee of the auditor of the Company) to be an Alternate Director in the Appointor's place during such period as the Appointor thinks fit.

#### **18.2 Entitlement to notice and to vote**

An Alternate Director is entitled to notice of meetings of the Directors and, if the Appointor is not present at such meeting, is entitled to attend and vote in place of the Appointor. Any vote of the Alternate Director is in addition to any vote the Alternate Director may have in that person's capacity as a Director.

#### **18.3 Powers of Alternate Director**

An Alternate Director may exercise any powers that the Appointor may exercise and is subject to the duties of the Appointor. An Alternate Director is liable for his or her own acts or defaults in performing the duties and responsibilities of an alternate director and is not for any purpose to be taken to be the agent of, or required to act in accordance with the instructions of, his or her appointor.

#### **18.4 Alternate Directors need not be Members**

An Alternate Director need not be a Member.

#### **18.5 Termination of appointment**

The appointment of an Alternate Director may be terminated at any time by the Appointor notwithstanding that the period of the appointment of the Alternate Director has not expired, and terminates in any event if the Appointor vacates office as a Director.

#### **18.6 Mode of appointment and termination**

An appointment or the termination of any appointment, of an Alternate Director must be effected by notice in writing signed by the Appointor of that Alternate Director and served on the Company.

### **19. MANAGING DIRECTOR AND EXECUTIVE DIRECTORS**

#### **19.1 Appointment of Managing Director**

The Directors may from time to time appoint one or more of their number to the office of Managing Director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into, in a particular case, may revoke any such appointment.

#### **19.2 Automatic termination of Managing Director's appointment**

The Managing Director's appointment pursuant to rule 19.1 is automatically terminated if the Managing Director ceases from any cause to be a Director.

#### **19.3 Vacation of Managing Director's Office**

The office of Managing Director becomes vacant if any of the circumstances set out in rule 12.8 apply to the Managing Director.

#### **19.4 Remuneration of Executive Directors**

An Executive Director is (subject to the terms of any agreement entered into in a particular case) entitled to receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine but, if the Company is Listed, that remuneration must not include a commission on or percentage of operating revenue.

#### **19.5 Executive Directors' powers**

The Directors may at any time, on such terms and conditions and with such restrictions, as they think fit:

- (a) confer on an Executive Director any of the powers exercisable by them, and any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors; and
- (b) withdraw or vary any of those powers.

### **20. SECRETARY**

#### **20.1 Appointment of Secretary**

- (1) The Directors may appoint any person to be a Secretary of the Company and that person holds office as a Secretary on such terms and conditions, as to remuneration and otherwise, as the Directors determine.
- (2) At least one Secretary must be ordinarily resident in Australia.
- (3) The Directors must not appoint a person as a Secretary unless, prior to the appointment, that person has given the Company a signed consent to act as Secretary.

## **20.2 Acting Secretary**

The Directors may appoint a person as acting Secretary or as a temporary substitute for a Secretary who for the purpose of this Constitution will be treated as being a Secretary.

## **21. EXECUTION AND SEAL**

### **21.1 Execution of documents**

The Company may execute a document without using the Seal if the document is signed by:

- (a) two Directors; or
- (b) a Director and a Secretary.

### **21.2 Safe custody of Seal**

If the Directors elect to use or retain a common seal, they must provide for the safe custody of the Seal.

### **21.3 Authority to use Seal**

The Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal, and every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

### **21.4 Official seal**

The Company may have one or more official seals, each of which must be a facsimile of the Seal with the addition on its face of the name of every place where it is to be used.

### **21.5 Use of official seal**

A document sealed with an official seal of the Company is to be treated as having been sealed with the Seal.

### **21.6 Duplicate common seal**

The Company may have a duplicate common seal that must be a facsimile of the Seal with the addition on its face of the words "Share Seal" or "Certificate Seal". A certificate referring to or relating to securities of the Company sealed with such a duplicate common seal is to be treated as being sealed with the Seal.

### **21.7 Non-autographic signatures**

The Directors may determine by resolution (either generally or in respect of a particular case) where the Seal or duplicate common seal of the Company is to be affixed to any instrument, or where an instrument is to be executed without using the Seal, that the signature of any Director or the Secretary or any other person may be affixed by some mechanical or other non-autographic means.

### **21.8 Effect of sealing**

Any instrument bearing the Seal, the share seal or an official seal if issued for valuable consideration will be binding on the Company notwithstanding any irregularity affecting the authority of the Directors to issue the same, or the circumstances of its issue.

## **22. COMPANY ADMINISTRATION**

### **22.1 Minutes of meeting**

The Directors must cause minutes containing the following information to be entered into the Company's minute books within one month after the event whose proceedings are recorded in the minutes:

- (a) the names of the Directors present at each meeting of Directors;
- (b) the names of the committee members present at each meeting of a committee formed under rule 17.10;
- (c) all resolutions and proceedings of each general meeting;
- (d) all resolutions and proceedings of each meeting of Directors;
- (e) all resolutions and proceedings of each meeting of a committee formed under rule 17.10; and
- (f) all resolutions passed by directors without a meeting.

### **22.2 Evidence of meetings**

Any minutes made under rule 22.1 that purport to be signed by the chair of the meeting to which they relate or by the chair of the next succeeding meeting are presumed to be an accurate record of the relevant proceedings unless the contrary is proved.

### **22.3 Inspection of records**

The Directors may determine whether and to what extent, and at what time and place 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, 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.

### **22.4 Execution of cheques and negotiable instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors or in such other manner as the Directors determine.

## **23. ACCOUNTS AND AUDITS**

### **23.1 Duty to keep accounts**

The Directors must cause to be kept such accounting records as correctly record and explain the transactions (including any transactions as trustee) and financial position of the Company and otherwise prepare the Company's financial statements in accordance with the *Corporations Act* and the *Listing Rules*.

### **23.2 Accounts to be laid before annual general meeting**

The Directors must cause the financial statements for the last financial year of the Company together with such other accounts, reports and statements as required by the *Corporations Act* to be laid before the annual general meeting in each year.

### **23.3 Copy of accounts to be sent**

A copy of every document which is required to be laid before each annual general meeting by rule 23.2, must be sent to all persons entitled to receive notices of general meeting, together with the notice of meeting, as required by the *Corporations Act* and the *Listing Rules* except, subject to the *Listing*

*Rules*, those Members who have provided written notice to the Company stating that they do wish to receive a short form copy of the financial statements of the Company.

#### **23.4 Accounts conclusive**

Every account and financial statement of the Company when audited and approved or received by a general meeting at which it is presented will be conclusive except as regards any material error discovered in it within three months after its approval or adoption. Whenever any material error is discovered within that period the account will immediately be corrected and then it will be conclusive.

#### **23.5 Audit**

- (a) The Directors must cause the accounts and financial statements of the Company and the Register to be audited as required by the *Corporations Act* and the *Listing Rules*.
- (b) The Directors must send a copy of the auditor's report to the Members and lay that report before general meetings of the Company as required by the *Corporations Act* and the *Listing Rules*.
- (c) The auditors of the Company will be appointed and may be removed as provided in the *Corporations Act*.
- (d) The auditors of the Company will perform the duties and have the rights and powers provided in the *Corporations Act*.

### **24. DIVIDENDS AND RESERVES**

#### **24.1 Reserve Fund**

The Directors may, before recommending any dividend:

- (a) 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, use any such sum so set aside in the business of the Company or invest any such sum in such investments (which may be dealt with and varied) as they think fit; or
- (c) 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.

#### **24.2 Determination of dividend**

- (a) The Directors may determine a dividend to be paid to the Members according to their rights and interests in the profits, assets and undertaking of the Company and may fix the amount and the time for and the method of payment.
- (b) The Directors may fix the time and record date for determining entitlements to, and for the payment of, the dividend. The persons entitled to be paid a dividend will be:
  - (i) in the case of uncertificated holdings of shares, those persons so entitled in accordance with the *ASX Settlement Operating Rules*; and
  - (ii) in the case of certificated holdings of shares, persons who are the registered holders of the shares at the time and date fixed for determining entitlements to dividends in accordance with rule 24.2(b).

#### **24.3 Interim dividend**

The Directors may authorise the payment by the Company to the Members of such interim dividends as appear to the Directors to be justified.

#### **24.4 Interest not payable**

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

#### **24.5 Dividend amount**

Subject to the *Listing Rules* and the rights of any persons entitled to shares with special rights as to dividends, any profits of or other amounts that are to be the source of dividends to be paid by the Company are to be divided among Members in proportion to the aggregate amounts paid up on the shares held by them respectively. An amount paid on a share in advance of a call that attracts interest is not to be taken for the purposes of this rule to be paid up on the share.

#### **24.6 Amounts deducted from dividends**

The Directors may deduct from any dividend payable to a Member any sums of money presently payable by that Member to the Company on account of calls or any other account under the Constitution.

#### **24.7 Distribution of assets**

The Directors may pay any part of a dividend by the distribution of specific assets including paid up shares in, or securities of, any other corporation. Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they think fit and may:

- (a) fix the value of any specific asset so distributed;
- (b) determine that cash payments will be made to any Members on the basis of any value so fixed in order to adjust the rights of all parties; and
- (c) vest any such specific assets in trustees.

#### **24.8 Manner of payment**

A dividend may be paid in cash, by the issue of shares or other marketable securities, by the grant of options or by the transfer of assets. Any dividend, interest or other money payable in cash in respect of shares may be paid by either of the following:

- (a) by cheque couriered, delivered or sent through the post directed to:
  - (i) the address of the holder as shown in the Register or, in the case of joint holders, to the address shown in the Register as the address of the joint holder first named in that Register; or
- (b) such other address as the holder or joint holders in writing directs by direct credit into any bank or other account which the registered holder may nominate.

#### **24.9 Receipt from joint holders**

Any one of two or more joint holders may give effective receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

#### **24.10 Unclaimed dividends**

All unclaimed dividends may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed or until dealt with under any law relating to unclaimed moneys.



#### **24.11 Effect on dividends of transfer of shares**

Subject to the *ASX Settlement Operating Rules*, a transfer of shares registered after the relevant record date for a dividend but before the dividend is paid will not pass the right to any dividend announced on those shares prior to that record date.

#### **24.12 Restricted Securities**

During a breach of the *Listing Rules* relating to Restricted Securities, or a breach of a restriction agreement entered into under the *Listing Rules*, the Member holding the Restricted Securities is not entitled to any dividends, distribution or other payment in respect of those Restricted Securities.

### **25. PLANS**

#### **25.1 Directors may implement plans**

The Directors may adopt and implement any number of plans on terms they determine by which a Member may elect to receive shares as, or instead of, dividends.

#### **25.2 Types of Plans**

The plans that the Directors may adopt and implement under rule 25.1 include:

- (a) a dividend reinvestment plan (which, unless otherwise permitted by *Corporations Act* or the *Listing Rules*, must be authorised by the Company in general meeting) whereby any Member or any number or class of Members eligible in accordance with the plan may elect that dividends payable by the Company will be applied on behalf of that Member in subscribing for fully paid ordinary shares in the capital of the Company in accordance with the plan; and
- (b) a bonus share plan whereby any Member or any number or class of Members eligible in accordance with the plan may elect to forego any dividends that may be payable on all or some of the ordinary shares held by that Member and to receive instead some other entitlement in accordance with the plan including the allotment to the Member of fully paid ordinary shares in the capital of the Company.

#### **25.3 Plans may be amended, suspended etc.**

The Directors have all powers necessary or desirable to implement and carry out fully any plan adopted by them under this rule 25 and may (without limitation):

- (a) amend the terms of any plan as they consider desirable; and
- (b) suspend for any period or terminate the operation of any plan as they consider desirable.

### **26 CAPITALISATION OF PROFITS**

#### **26.1 Application of capitalised amount**

Subject to the *Corporations Act* and the *Listing Rules*, the Directors may 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 apply that sum in the ways set out below 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:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members fully paid;
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b); or
- (d) for any other purpose approved by the Company in general meeting,

and any such application under this rule 26.1 and must be accepted by the Members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.

## **26.2 Adjustment of rights**

The Directors may do all things necessary to give effect to the application referred to in rule 26.1 and, to the extent necessary to adjust the rights of the Members among themselves, may authorise any person to make, on behalf of all the Members entitled to any further shares or debentures on 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 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 this authority is effective and binding on all the Members concerned.

## **27. NOTICES**

### **27.1 Giving of notices by the Company**

The Company may give a notice to any Member:

- (a) personally;
- (b) by sending it by post (air mail for Members residing outside Australia) to the address for the Member in the Register or the alternative address (if any) nominated in writing by the Member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the Member in writing.

### **27.2 Effecting of notices**

A notice is treated as being effectively given by the Company:

- (a) where sent by post, on the day after its date of posting; and
- (b) where sent by air mail, on the seventh day after its date of posting; and
- (c) where sent by facsimile and a complete and correct transmission report is received, on the day of transmission; and
- (d) where sent by electronic means and no delivery failure report is received, on the day it is sent; and
- (e) where delivered personally or left at the member's registered address, when delivered or left.

### **27.3 Notice to joint holders**

The Company may give a notice 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.

### **27.4 Person entitled on death or bankruptcy**

The Company may give a notice to a person entitled to a share in consequence of the death or bankruptcy of a Member by serving it on that person:

- (a) by any of the methods listed in rule 27.1 if that person has supplied an address (including electronic address) or facsimile number within the State for the service of such notices; or
- (b) if such an address has not been supplied, in any manner which notice might have been given if the death or bankruptcy had not occurred.

27.5 Subject to the *Corporations Act*, the signature to a notice given by the Company and any document issued by the Company need not be handwritten.

## 28. WINDING UP

### 28.1 Liquidator's powers on winding up

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

- (a) divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members; and
- (b) vest the whole or any part of any such property in trustees on 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.

### 28.2 Distribution in proportion to issued capital paid up

If, on a winding up of the Company, there remains a surplus that surplus, will be divided among the Members in proportion to the issued share capital paid up on their shares, whether or not the liquidator exercises its powers under rule 28.1.

### 28.3 Special rights prevail

Rules 28.1 and 28.2 are without prejudice to the rights of holders of shares issued on special terms and conditions.

### 28.4 Member need not accept encumbered property

No Member will be compelled by the provisions of this rule 28 to accept any property, including shares or other securities, in respect of which there is any liability.

## 29. OFFICERS: INDEMNITIES AND INSURANCE

### 29.1 Indemnities

To the maximum extent permitted by law, the Company indemnifies every person other than an auditor who is or has been a director or secretary of the Company or of a related body corporate of the Company against:

- (a) any liability incurred by the person, as a director or secretary of the Company or of a related body corporate of the Company, to another person (other than the Company or a related body corporate of the Company) unless such an indemnity for that liability is prohibited by section 199A(2) of the *Corporations Act*; and
- (b) any liability for costs and expenses incurred by that person in defending an action for a liability incurred as a director or secretary of the Company unless such an indemnity is prohibited by section 199A(3) of the *Corporations Act*.

### 29.2 Insurance

To the maximum extent permitted by law, the Company may pay directly or through an interposed entity, or agree to pay, a premium for a contract insuring a person who is or has been a director or secretary of the Company or of a related body corporate of the Company against a liability other than one for the legal costs arising out of:

- (a) conduct involving a willful breach of duty in relation to the Company; or

(b) a contravention of section 182 or 183 of the *Corporations Act*.

**30. GENERAL AUTHORISATION**

This rule authorises the Company to do any act or thing which the *Corporations Act* or the *Listing Rules* permit if the Company is authorised by its Constitution to do that act or thing.