

Notes regarding this Constitution

1. This Constitution includes provisions which the *Corporations Law* requires public companies to observe although they are not required to be included in a company's constitution. The provisions are included in this Constitution so that the Constitution provides a reasonably complete code of the matters which it covers.
2. The annotations to the Constitution (referring to various provisions of the *Corporations Law*) do not form part of the Constitution.
3. Annotations which state that a clause reflects a section of the *Corporations Law*, which is not a Replaceable Rule, mean that the clause states (as at the date of adoption of the Constitution) provisions of the *Corporations Law* which cannot be varied by the Constitution.
4. Clauses which have no annotation, or which refer to a section of the *Corporations Law* which is a Replaceable Rule, are provisions which the *Corporations Law* does not require and which may be varied by amendments to the Constitution from time to time.
5. This Constitution does not deal with the duties and liabilities of directors and officers of the company under the general law or the *Corporations Law*.

CONSTITUTION

OF

FIDUCIAN PORTFOLIO SERVICES LIMITED

ACN 073 845 931

HENRY DAVIS YORK

Lawyers

Level 25

135 King Street

Sydney NSW 2000

DX: 173 Sydney

Tel: (02) 9364 6300

Fax: (02) 9235 1244

www.hdy.com.au

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**CONSTITUTION OF
FIDUCIAN PORTFOLIO SERVICES LIMITED ("COMPANY")**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution unless the context otherwise requires:

"**address**" means:

- (a) in the case of a shareholder, the address of the shareholder in the Register;
- (b) in the case of a director, an alternate director or the auditors of the company, such address of that person derived from information that is available to the public from the ASIC;
- (c) in the case of ASX, such address as provided by the Listing Rules; or
- (d) in the case of any recipient, such address (if any), whether within or outside New South Wales, as notified in writing to the company by the Recipient for the purpose of serving notice on that recipient.

"**alternative director**" means a person for the time being holding office as an alternate director of the company under clause 25.1.

"**Appointer**" means in, respect of an alternate director, the director who appointed the alternate director under clause 25.1.

"**ASIC**" means the Australian Securities and Investments Commission or any successor body.

"**ASX**" means Australian Stock Exchange Limited or any successor body.

"**board**" means the board of directors.

"**Business Day**" has the meaning given in the Listing Rules if the company is Listed, and otherwise means a day which is not a Saturday, Sunday or public holiday in New South Wales.

"**Certificate**" means a certificate in respect of shares.

"**CHESS**", "**CHESS Subregister**" and "**CHESS Approved**" have the meanings given in the SCH Business Rules.

"**company**" means the company named above.

"**Constitution**" means this document and includes any variation or replacement of it.

"**director**" means a person appointed as a director of the company or who is appointed to the position of an alternative director and is acting in that capacity.

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

"**dividend**" includes bonus.

"**Eligible Shareholder**" means, in relation to a meeting of shareholders, any person who is or was the registered holder of a share (which carries the right to vote at the meeting) at the time prescribed for the purpose of determining voting entitlements for the meeting.

"**Eligible Voter**" means, in relation to a meeting of shareholders:

- (a) an Eligible Shareholder;
- (b) a proxy of an Eligible Shareholder;
- (c) an attorney of an Eligible Shareholder; or
- (d) the representative of an Eligible Shareholder appointed under this Constitution or the Law.

"**includes**" means includes without limitation.

"**Law**" means the *Corporations Law* as amended or re-enacted from time to time and includes any statutory instruments issued under the *Corporations Law*.

"**Listed**" means having been admitted to the official list of ASX and at the relevant time still being so admitted.

"**Listing Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable while the company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

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

"**Office**" means the registered office of the company.

"**option**" means an option over an unissued share.

"**personal representative**" means, in respect of a shareholder, a person who becomes entitled to a share in the company held by the shareholder by reason of the death, mental ill health or bankruptcy of the shareholder.

"**Register**" means the register of shareholders kept under the Law and, where appropriate, includes:

- (a) a subregister conducted by or for the company pursuant to the Law, Listing Rules or SCH Business Rules; and
- (b) any branch register.

"**Relevant Director**" means, in relation to an annual general meeting, a director, but excludes:

- (a) the managing director; and

(b) a director retiring under clause 21.2.1.

"**Replaceable Rules**" means the replaceable rules under, or as referred to in, the Law as amended or re-enacted from time to time.

"**Restricted Securities**" has the meaning given in the Listing Rules.

"**Restriction Agreement**" means, in relation to a security, the restriction agreement entered into by the company under the Listing Rules in respect of that security.

"**SCH**" has the meaning given in the SCH Business Rules.

"**Seal**" means the common seal of the company.

"**secretary**" means any person appointed to perform the duties of secretary of the company.

"**security**" has the meaning given in the Listing Rules.

"**shareholder**" or "**holder**" means the registered holder of any ordinary shares in the company.

"**writing**" or "**written**" include printing, lithography, photography and other modes or reproducing or representing words in a visible form.

1.2 **Replaceable Rules**

The Replaceable Rules do not apply in respect of the company except when they are expressly stated to apply.

1.3 **Application while Listed**

1.3.1 A reference to the Listing Rules, the SCH Business Rules or ASX in this Constitution has effect if, and only if, at the relevant time the company is Listed.

1.3.2 For the purposes of this Constitution, if the provisions of:

(a) the Law and the Listing Rules; or

(b) the Law and the SCH Business Rules,

conflict on the same matter, the provisions of the Law prevail.

1.4 **Written notice**

Written notice includes notice given by way of:

1.4.1 facsimile; and

1.4.2 electronic transmission.

1.5 **Representatives**

A representative appointed by a shareholder that is a corporation may, unless otherwise specified in the appointment, exercise on that corporation's behalf, all of the powers that the corporation could exercise at a meeting or in voting on a resolution.

(This reflects section 250D(4) of the Law.)

1.6 **General interpretive provisions**

1.6.1 Words importing:

- (a) the singular number include the plural number and vice versa;
- (b) any gender include every other gender;
- (c) or referring to a person include corporations.

1.6.2 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.6.3 In this Constitution, any reference to a clause is a reference to a clause of this Constitution.

1.6.4 Headings to clauses in this Constitution are added for convenience only and do not affect interpretation.

1.6.5 Annotations to this Constitution by reference to sections of the Law or to Replaceable Rules do not form part of the Constitution.

1.6.6 Where an expression used in this Constitution is defined in the Law it has the same meaning in this Constitution unless the context otherwise requires.

2. **PUBLIC COMPANY**

The company is a public company.

3. **POWERS OF THE COMPANY**

3.1 **Legal capacity and powers of the company**

The company has the legal capacity and powers of an individual anywhere in the world. The company also has all the powers of a body corporate, including the power to:

- 3.1.1 issue and cancel shares in the company;
- 3.1.2 issue debentures whether irredeemable or redeemable and;
- 3.1.3 grant options over unissued shares in the company;
- 3.1.4 distribute any of the company's property among the shareholders, in kind or otherwise;
- 3.1.5 give security by charging uncalled capital;

- 3.1.6 grant a floating charge over the company's property;
- 3.1.7 arrange for the company to be registered or recognised as a body corporate in any place outside New South Wales; and
- 3.1.8 do anything that it is authorised to do under law (including a law of a foreign country).

(This reflects section 124 of the Law.)

The powers must be exercised subject to the Law and the Listing Rules.

3.2 Issues of Securities to related parties

Notwithstanding anything contained in this Constitution to the contrary, the company must not issue securities to a related party (as defined in the Listing Rules) of the company to the extent that the company doing so would contravene the Listing Rules or the Law.

3.3 Company may have a common seal

3.3.1 The company may, but need not, have a Seal. If the company does have a Seal it must have set out on it:

- (a) if the company has its ACN in its name - the company's name; or
- (b) otherwise, the company's name, the expression "Australian Company Number" or "ACN" and the company's ACN.

(This reflects sections 123 and 149(1) of the Law.)

3.3.2 If the company has a Seal, the directors must provide for the safe custody of the Seal, which may only be used on the authority of the directors or of a committee of the directors authorised by the directors.

3.4 Agent exercising the company's power to make contracts

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a Seal.

(This reflects section 126 of the Law.)

3.5 Execution of documents by the company

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

- (a) 2 directors; or
- (b) a director and secretary.

3.5.2 If the company has a Seal, the company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:

- (a) 2 directors; or
- (b) a director and a secretary.

(This reflects section 127 of the Law.)

4. ISSUING AND CONVERTING SHARES

4.1 Terms of issue

4.1.1 The power of the company to issue shares is to be exercised by the directors.

4.1.2 The directors may determine:

- (a) the terms on which shares are issued; and
- (b) subject to this Constitution, the rights and restrictions attaching to the shares.

4.1.3 Unless otherwise specified in this Constitution or the terms of issue, all issued shares rank, from the date of issue, equally in respect of capital and income entitlements, irrespective of the issue price of the shares.

4.2 Power to issue bonus, partly-paid, preference and redeemable preference shares

The directors' power under clause 4.1 to issue shares includes the power to issue:

- 4.2.1 bonus shares;
- 4.2.2 preference shares (including, subject to the Law, converting and redeemable preference shares); and
- 4.2.3 partly-paid shares.

(Note requirements for issuing preference shares in section 254A(2) of the Law and the requirements for redeemable preference shares in sections 254J - 254L of the Law.)

4.3 Conversion of shares

4.3.1 Subject to clause 4.3.2 the directors may determine the terms on which the shares of a class convert to shares of another class or classes.

4.3.2 An ordinary share may be converted into a preference share only if the holder's rights with respect to the following matters are approved by special resolution:

- (a) repayment of capital;
- (b) participation in surplus assets and profits of the company;
- (c) cumulative and non-cumulative dividends;

- (d) voting; and
- (e) priority of payment of capital and dividends in relation to other shares or classes or preference shares.

4.3.3 A share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

(This reflects section 254G of the Law.)

4.4 **Resolution to convert shares into larger or smaller number**

4.4.1 The company may convert all or any of its shares into a larger or smaller number of shares by resolution.

4.4.2 The conversion takes effect on:

- (a) the day the resolution is passed; or
- (b) a later date specified in the resolution.

4.4.3 Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

(This reflects section 254H of the Law.)

4.5 **Partly - paid shares**

The holder of a partially paid share is entitled to a proportion of an issue of bonus shares equal to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts included). In this clause 4.5, amounts paid in advance of a call are to be excluded when calculating the proportion.

4.6 **Redeemable converting preference shares**

The directors may issue shares designated as Redeemable Converting Preference Shares ("**Preference Shares**") and, on issue, those shares confer on the holder ("**Preference Shareholder**") the rights and are subject to the conditions contained in this clause 4.6.

In this clause 4.6:

"**Conversion Date**" means the earlier of the date 7 days after the company announces its audited financial year end results for the financial year ending 30 June 2002 or 1 November 2002.

"**Redemption Event**" occurs in respect of a Preference Shareholder if, for the 12 months ending 30 June 2001 or 30 June 2002 the Preference Shareholder's New Calculated Income (as defined in clause 4.6.2) is less than for the preceding 12 months.

4.6.1 Issue of Preference Shares

- (a) The company must issue to each Preference Shareholder by 31 July 2000 the number of Preference Shares calculated, in respect of the relevant Preference Shareholder, as follows:

$$\text{PSI} = \frac{\text{AI} \times 18,215}{1,019,250}$$

where:

PSI = the number of Preference Shares to be issued to the Preference Shareholder provided that PSI cannot exceed 1,730.

AI = the Old Calculated Income of the Preference Shareholder for the period 1 July 1999 to 31 March 2000.

Old
Calculated

Income = for a Preference Shareholder, for a period, is the aggregate of the following items of income received by the company in respect of the Preference Shareholder for the period:

- (i) 20% of upfront fees received by the company for funds introduced during the period by the Preference Shareholder;
 - (ii) 100% of ongoing management fees received by the company for funds introduced during the period by the Preference Shareholder (provided that the management fees are to be adjusted by deducting any fees paid by the company to the relevant fund administrator or by way of commission in respect of the introduced funds during the period);
 - (iii) 10% of the company's share of the fees earned from external fund managers or other financial institutions by proper authority holders referable to the Preference Shareholder.
- (b) The company must issue to each Preference Shareholder by 31 July 2000 the number of Preference Shares calculated, in respect of the relevant Preference Shareholder, as follows:

$$\text{Bonus Shares} = \frac{\text{PSWI} \times 11,463}{\text{AWI}}$$

where:

Bonus Shares = the number of Preference Shares to be issued to the Preference Shareholder.

PSWI = the Weighted Income of the Preference Shareholder.

AWI = the aggregate of the Weighted Incomes of all Preference Shareholders.

Weighted
Income = for a Preference Shareholder, the aggregate of the Old
Calculated Income of the Preference Shareholder for
each of the following periods multiplied by the
relevant loading factor shown:

<i>Period</i>	<i>Loading Factor</i>
<i>to 30.6.97</i>	<i>2.2</i>
<i>1.7.97 to 31.12.97</i>	<i>1.8</i>
<i>1.1.98 to 30.6.98</i>	<i>1.6</i>
<i>1.7.98 to 31.12.98</i>	<i>1.2</i>
<i>1.1.99 to 31.3.00</i>	<i>1.0</i>

- (c) The company must issue to each Preference Shareholder by 31 August 2000 the number of Preference Shares calculated, in respect of the relevant Preference Shareholder, as follows:

$$\text{PSI} = \frac{\text{IF} \times 571}{\$10,000,000}$$

where:

PSI = the number of Preference Shares to be issued to the Preference Shareholder (rounded down to the nearest whole number) provided that the number will be reduced if after the issue of the Preference Shares under this clause 4.6 the Preference Shareholder would hold 4% or more of the total number of issued Preference Shares and ordinary shares.

IF = the funds introduced by the Preference Shareholder into company managed products after 1 April 2000 and still under management as at 31 July 2000.

- (d) Each of paragraphs (a), (b) and (c) have independent operation.

4.6.2 **Redemption**

If for the 12 months ending 30 June 2001 or 30 June 2002 the Preference Shareholder's New Calculated Income is less than for the immediately preceding 12 months the company may redeem in accordance with clause 4.6.6 a number of the Preference Shareholder's Preference Shares calculated as follows:

$$\text{NPSR} = \frac{(\text{IPY} - \text{ICY}) \times \text{PS}}{\text{IPY}}$$

where:

NPSR = the number of a Preference Shareholder's Preference Shares to be redeemed in respect of the Relevant Year.

ICY = the New Calculated Income for the Relevant Year.

IPY = the New Calculated Income for the year immediately preceding the Relevant Year.

Relevant

Year = for the purposes of calculating the number of Preference Shares to be redeemed due to the Preference Shareholder's New Calculated Income for:

- (a) the year ending 30 June 2001 being less than for the immediately preceding year, the year ending 30 June 2001; and
- (b) the year ending 30 June 2002 being less than for the immediately preceding year, the year ending 30 June 2002.

New
Calculated

Income = for a Preference Shareholder for a year, is the aggregate of the following items of income received by the company in respect of the Preference Shareholder:

- (a) 20% of upfront fees received by the company for funds introduced during the year by the Preference Shareholder;
- (b) 100% of $(MF - TC) \times 38$

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where:

MF = the ongoing management fees received by the company during the year (before deduction of commissions or administration fees) in respect of funds introduced (at any time) by the Preference Shareholder.

TC = the fees or commission paid or payable to the Preference Shareholder in respect of MF for the year;

- (c) 10% of the fees earned and retained by the company from external fund managers or other financial institutions during the year by proper authority holders, life brokers, mortgage brokers or other intermediaries referable to the Preference Shareholder provided that if fees are earned by the company in respect of insurance policies issued, or loans made by, a company owned by the company, the rate of 10% referred to above may be increased up to a maximum of 20% as determined by the company. A reference to fees being "retained" by the company means fees less any commission or

administration fees paid by the company in respect of the fees.

PS = the number of Preference Shares held by the Preference Shareholder as at the last day of the Relevant Year.

Year = a period of 12 months.

4.6.3 **Voting rights**

A Preference Share does not carry the right to vote at meetings of the company except where that vote is:

- (a) on a proposal to wind up the company;
- (b) on a proposal that affects the rights attached to the Preference Shares;
- (c) at any general meeting when the dividend payable in respect of the Preference Shares is in arrears for more than 6 months;
- (d) on a proposal to reduce the company's share capital;
- (e) on a resolution to approve the terms of a buy-back agreement;
- (f) during the winding up of the company;
- (g) on a proposal for the disposal of the whole of the company's property, business and undertakings.

Whenever any Preference Shareholder is entitled to vote, the Preference Shareholder has one vote on a show of hands and one vote for every Preference Share held on a poll.

4.6.4 **Dividends**

A Preference Share carries the right to receive dividends including, without limitation, interim dividends, as may be declared on the ordinary shares as if the Preference Shares had converted to ordinary shares.

4.6.5 **Preference on winding up**

A Preference Share carries on the winding up of the company, the following rights in priority to all other shareholders:

- (a) the payment of the original issue price of the Preference Share; and
- (b) the right to receive any arrears on dividends as may be declared on the ordinary shares as if the Preference Shares had converted to ordinary shares.

The Preference Shareholders also have the right to participate in the division of any surplus or profits of the company as if the Preference Shares had converted to ordinary shares.

4.6.6 **Redemption procedures**

The company shall be entitled upon the occurrence of a Redemption Event to redeem (for \$0.20 for every 100 Preference Shares) the number of Preference Shares as calculated under clause 4.6.2 in respect of the Preference Shareholder.

The Board acting on behalf of the company shall exercise the entitlement to redeem, subject to the following provisions:

- (i) **redemption notice:** the company shall effect the redemption by issuing to the Preference Shareholder a redemption notice ("**Redemption Notice**") stating that the company intends redeeming the number of Preference Shares specified in the Redemption Notice;
- (ii) **delivery of scrip:** the notice shall require the Preference Shareholder to deliver to the company's registered office the certificates for the Preference Shares to be redeemed within 10 Business Days of the date of the Redemption Notice ("**Redemption Date**");
- (iii) **payment:** the company shall pay to the Preference Shareholder at its address by ordinary cheque the amount being \$0.20 per 100 Preference Shares being redeemed, together with an amount equal to all dividends accrued whether declared or not but unpaid as at the Redemption Date within 10 Business Days of the date of the Redemption Notice;
- (iv) **dividends:** dividends payable upon the Preference Shares to be redeemed cease to accrue from the Redemption Date;
- (v) **failure to deliver scrip:** if the Preference Shareholder fails to deliver the certificates for the Preference Shares to be redeemed by the Redemption Date the company shall pay the amount payable on redemption to the company's bankers, to be held by the bankers for the purpose of payment to the Preference Shareholder upon the delivery of the certificates. The company shall notify the Preference Shareholder in writing that the amount has been paid to the bankers and upon giving that notice, whether received or not by the Preference Shareholder, the Preference Shares in respect of which that notice is given are taken to be redeemed and the company is discharged from all liability to the Preference Shareholder in respect of any of the Preference Shares.

4.6.7 **Conversion**

On the Conversion Date, the Preference Shares (not redeemed) will automatically convert to ordinary shares on a one for one basis.

4.6.8 Transfer

Preference Shares may not be transferred without the company's written approval (which may be given or withheld in the company's absolute discretion).

4.6.9 Restrictions

Without the sanction of a special resolution of the Preference Shareholders passed at a meeting of the Preference Shareholders the company shall not: create any shares ranking in priority to the Preference Shares for the rights dealt with in this clause 4.6; or directly or indirectly affect in any way the rights and the exercise or enjoyment of the rights of the Preference Shareholders.

4.6.10 No further issues and reports

No Preference Shares may be issued pursuant to this clause 4.6 following the Listing of the company. Holders of Preference Shares have the same rights as a holder of ordinary shares in relation to receiving notices, reports and audited accounts, and attending meetings.

5. SHARE HOLDING STATEMENTS AND CERTIFICATES

5.1 Uncertificated holdings and holding statements

5.1.1 Notwithstanding any other provision of this Constitution, the directors may determine:

- (a) not to issue Certificates; or
- (b) to cancel existing Certificates without issuing any replacement Certificates,

where such practice is not contrary to the Law, the Listing Rules and the SCH Business Rules.

5.1.2 Where the directors have made a determination, a shareholder will be entitled to receive statements of the holdings of shares of the shareholder as the company is required to give pursuant to the Law, the Listing Rules and the SCH Business Rules.

5.2 Shareholders entitlement to Certificates

Subject to clause 5.1:

5.2.1 every shareholder will be entitled to one Certificate, or to several Certificates in reasonable denominations, in respect of each class of shares registered in the shareholder's name; and

5.2.2 the company will dispatch Certificates to shareholders in accordance with the requirements of the Law, the Listing Rules and the SCH Business Rules.

5.3 Issuing of Certificates

5.3.1 Any Certificates will:

- (a) be uniquely numbered;
- (b) contain such information as required by the Law and the Listing Rules; and
- (c) be executed in a manner permitted under the Law and the Listing Rules as the directors may determine.

5.3.2 Subject to clause 5.4.3, the company will not charge a fee for issuing Certificates.

5.4 Duplicate Certificates

5.4.1 If any Certificate is worn out or defaced, then on production of it to the directors, the directors may order it to be cancelled and the company may issue a duplicate of it.

5.4.2 If any Certificate is lost or destroyed, then on application by the shareholder in accordance with the Law, the company will issue a duplicate of it if required by the Law.

5.4.3 The company will issue any duplicate Certificate under this clause 5.4:

- (a) on the conditions set out in the Law and the Listing Rules; and
- (b) subject to the Listing Rules, on payment of a fee (not exceeding that prescribed in the Law) as the directors determine.

5.5 Certificates of joint holders

5.5.1 The number of Certificates issued in respect of shares held jointly by two or more persons will be the same number which would be issued for those shares if those shares were held by one person.

5.5.2 Delivery of a Certificate for a share to any one of several joint holders named in the Register in relation to that share is deemed to be delivery to all the joint holders.

5.6 Options

This clause 5 applies, with necessary alterations, to options and other securities to the extent required by the Law, Listing Rules or SCH Business Rules.

6. REGISTER

6.1 Registered holder absolute owner

Except as required by law, the SCH Business Rules or as otherwise required by this Constitution, the company:

6.1.1 is entitled to treat the registered holder of any share as the absolute owner of that share; and

6.1.2 is not bound to recognise any equitable or other claim to, or interest in, that share on the part of any other person, whether or not the company has notice of that claim interest.

6.2 Transferor is holder until transfer registered

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

6.2.1 a proper SCH transfer for those shares has taken effect in accordance with the SCH Business Rules; or

6.2.2 the transfer for those shares is registered and the name of the transferee is entered in the Register in respect of them.

6.3 Non-closure and audit of Register

6.3.1 The company must not close the Register in contravention of the Listing Rules or the SCH Business Rules.

6.3.2 While the company is Listed, the Register will be audited at such intervals, by such person and in such manner as required by the Listing Rules and the SCH Business Rules.

6.4 Branch registers

6.4.1 Subject to the Law and this Constitution, the directors may, on behalf of the company, keep a branch register of shareholders at a place outside Australia and may comply with the requirements of any law applying in the place where the branch register is kept.

6.4.2 Subject to the Law, the Listing Rules and the SCH Business Rules, the directors may make provision for the transfer of shares between the Register and any branch register of shareholders.

6.5 Subregisters

6.5.1 The company will:

(a) authorise SCH as its agent to establish and administer a CHESSE Subregister; and

(b) establish and administer an issuer sponsored subregister (as defined in the Listing Rules),

for securities of the company to the extent required by the Law, the Listing Rules and the SCH Business Rules.

6.5.2 The company will not provide for a certified subregister (as defined in the Listing Rules) in contravention of the Listing Rules.

6.5.3 The company will comply with all obligations imposed on the company under the Listing Rules and the SCH Business Rules in respect of conversions of securities of the company from one subregister of the Register to another subregister of the Register.

7. PARTLY-PAID SHARES

7.1 Differentiation between holders as to the amount to be paid on calls

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

7.2 Liability on partly-paid shares

If shares in the company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

(This reflects section 254M(1) of the Law.)

7.3 Directors may make calls on shares

7.3.1 The directors may, subject to the Listing Rules make calls on shareholders in respect of any money unpaid on their shares which is not, by the conditions of issue, payable at fixed times.

7.3.2 Each shareholder must (subject to receiving at least 10 Business Days notice or such longer period required by the Listing Rules specifying the time or times and place of payment) pay to the company, at the time or times and place so specified, the amount called on the shareholder's shares.

7.3.3 A call may, subject to the Listing Rules, be revoked or postponed as the directors may determine.

7.3.4 The non-receipt of any call or the accidental omission to give notice of any call to any of the shareholders will not invalidate the call.

7.4 Joint and several liability for payment of calls

The joint holders of a share are jointly and severally liable for the payment of all instalments and calls due in respect of the share.

7.5 When a call is made

7.5.1 A call is made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

7.5.2 Any sum which by the terms of issue of a share becomes payable on a specified date is, for the purposes of this Constitution, a call duly made, notified and payable on that date.

7.6 Interest to be paid on early payment of calls

The directors may accept from any shareholder in advance all or any part of the money uncalled and unpaid on any shares held by the shareholder, and on all or any part of the money so advanced may (until the unpaid amount would, but for the advance, become payable) pay interest at such rate, not exceeding (unless the company in general meeting otherwise directs) 10% per annum, as may be agreed between the directors and the shareholder paying the sum in advance.

7.7 Proof of liability for calls

On the trial or hearing of any action for the recovery of any money due for any call:

7.7.1 proof that:

- (a) the name of the shareholder sued is entered in the Register as the holder or one of the holders of the shares in respect of the call; and
- (b) the resolution making the call is duly recorded in the minute book and notice of the call was duly given to the shareholder sued,

will be conclusive evidence of the debt due in respect of a call; and

7.7.2 it will not be necessary to prove the appointment of the directors who made the call or any other matter.

8. FORFEITURE

8.1 Directors may forfeit shares

8.1.1 If a shareholder fails to pay any call or instalment of a call or other money payable under the terms of issue of a share on the due date, the directors may give 10 Business Days notice to the shareholder that the share will be forfeited if payment is not made.

8.1.2 If a shareholder fails to comply with a notice provided under clause 8.1.1, the directors may, by resolution, forfeit the share together with any dividends declared on the share but not paid.

8.1.3 A share forfeited under this clause becomes the property of the company and may be sold, re-issued or otherwise disposed of in such manner as the directors think fit. Any time before a sale or disposition of a share under this clause, the forfeiture may be cancelled on such terms as the directors think fit. In the event of sale, the company must account to the shareholder for the residue (if any) after satisfaction of the money due to the company.

8.2 Consequences of forfeiture

A person whose shares have been forfeited ceases to be a shareholder in respect of the forfeited shares. However, the shareholder remains liable to pay to the company all

money which, at the date of forfeiture, was payable by the person to the company in respect of the shares (together with interest at the rate of 10% per annum from the date of forfeiture, on the money for the time being unpaid if the directors think fit to enforce payment of such interest). That person's liability to pay ceases if and when the company receives payment in full of all such money in respect of the shares.

8.3 Proof of forfeiture

A statutory declaration in writing that the declarant is a director or the secretary of the company and a share in the company has been duly forfeited on a date stated in the declaration, is conclusive evidence of the facts stated in the declaration, as against all persons claiming to be entitled to the share.

8.4 Sale of forfeited share

8.4.1 Subject to the Listing Rules, the directors may on behalf of the company sell, otherwise dispose of or reissue a share which has been forfeited on such terms and in such manner as the directors think fit and, in the case of reissue, with or without any money paid on the share by any former holder being credited as paid up.

8.4.2 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 transferee. The transferee must be registered as the holder of the share. The transferee is not bound to see to the application of the purchase money, if any, and the transferee's title to the share is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of the share.

8.5 Notice of forfeiture

8.5.1 When any share has been forfeited, the company must:

- (a) give notice of the forfeiture to the shareholder in whose name it stood immediately before the forfeiture; and
- (b) make an entry of the forfeiture with the date of the forfeiture in the Register.

8.5.2 Failure by the company to give notice or to make an entry as specified in clause 8.5.1 will not invalidate the forfeiture in any way.

9. LIEN

9.1 Lien over partly paid shares

The company has a first and paramount lien on shares registered in the name of each shareholder (whether solely or jointly with others) in respect of all money (whether presently payable or not) due to the company by the shareholder or the shareholder's estate either alone or jointly with any other person. The company's lien, if any, on a share extends to all dividends payable on the share. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

9.2 **Lien in respect of money owing under statute or legislative enactment**

The company has a first and paramount lien and charge on all the shares registered in the name of each shareholder (whether solely or jointly with others) in respect of all money (with interest) which the company under any present or future statute or legislative enactment of the Commonwealth of Australia or any of the Australian States or any other country or place may become liable to pay:

9.2.1 in respect of the shares registered in the name of the shareholder; or

9.2.2 otherwise in the connection with the holding of the shareholder.

Any such money paid by the company may also be recovered by action from the shareholder or the shareholder's personal representative as a debt due by the shareholder or the shareholder's estate to the company. The company may charge and recover interest at such rate not exceeding 10% as the directors may determine on any money so paid by the company from the date when such money was so paid until repayment.

9.3 **Sale of shares subject to a lien**

9.3.1 Subject to the Listing Rules, for the purpose of enforcing any lien the directors may sell the shares subject to the lien in such manner as they think fit provided that:

- (a) a sum in respect of which the lien exists is presently payable;
- (b) notice in writing of the intention to sell has been served on the holder of the shares or the holder's personal representative; and
- (c) the holder or the holder's personal representative has not paid all money for which the lien exists within 10 Business Days after such notice.

9.3.2 To give effect to any such sale the directors may authorise any person to transfer the shares sold to the transferee and to sign a transfer on behalf of the transferor. The transferee must be registered as the holder of the shares comprised in the transfer and the transferee is not bound to see to the application of the purchase money. The transferee's title to the shares is not affected by any irregularity or invalidity in the proceedings in relation to the sale.

9.3.3 The proceeds of the sale received by the company must be applied in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must (subject to a like lien for sums not presently payable as existed on the shares before the sale) be paid to the person entitled to the shares immediately before the sale.

10. **TRANSFER OF SHARES**

10.1 **Forms of transfer**

Subject to this Constitution, a shareholder may transfer any shares the shareholder holds by:

- 10.1.1 a proper SCH transfer or any other method of transferring or dealing in shares introduced by the ASX or operated in accordance with the SCH Business Rules or Listing Rules and, in any such case, recognised under the Law; or
- 10.1.2 a written instrument of transfer in any usual form or in any other form approved either the directors or the ASX, that is otherwise permitted by law.

10.2 **CHESS transfer**

- 10.2.1 The directors may do anything they consider necessary or desirable and which is permitted under the Law, the Listing Rules and the SCH Business Rules to facilitate involvement by the company in any system established or recognised by the Law and the Listing Rules or the SCH Business Rules in respect of the transfers of, or dealings, in marketable securities.
- 10.2.2 The company will comply with all obligations imposed on the company under the Law the Listing Rules and the SCH Business Rules in respect of a proper SCH transfer or any other transfer of shares.
- 10.2.3 Notwithstanding any other provision in this Constitution, the company will not prevent, delay or interfere with the generation of, or registration of, a proper SCH transfer except as expressly permitted by the Law, the Listing Rules or the SCH Business Rules.

10.3 **Registration process**

The following provisions apply to instruments of transfer referred to in clause 10.1.1.

- 10.3.1 unless the instrument of transfer is otherwise a sufficient transfer under the Law , the instrument will be signed by , or executed by or on behalf of:
 - (a) the transferor; and
 - (b) if required by the company, the transferee
- 10.3.2 the instrument of transfer will be left at the place where the Register is kept, accompanied by the Certificate (if any) in respect of the shares to be transferred and such other evidence as the directors require to prove the transferor's title to, or right to transfer, the shares; and
- 10.3.3 on registration of a transfer of shares, the company will cancel the old Certificate (if any)

10.4 **Directors to register transfer**

Subject to clauses 10.3, 10.5, and 10.10 the directors will not refuse to register or fail to register or give effect to a transfer of a share except if a call remains outstanding in respect of the share.

10.5 **Refusal to register transfers other than proper SCH transfer**

- 10.5.1 The directors may refuse to register any transfer of shares (other than a proper SCH transfer) where the Listing Rules permit the company to do so.

10.5.2 The directors will refuse to register any transfer of shares (other than a proper SCH transfer) where:

- (a) the Law or the Listing Rules require the company to do so, or the transfer is in breach of the Listing Rules; or
- (b) those shares are Restricted Securities and the transfer is in breach of any Restriction Agreement in respect of those shares.

10.6 Notice of refusal to register

10.6.1 Where the directors refuse to register a transfer of shares under clause 10.5, the company will give written notice of the refusal and the reasons for the refusal to the transferee and the person who lodged the transfer, if not the transferee, within 5 Business Days after the date on which the transfer was lodged with the company.

10.6.2 Failure by the company to give notice under clause 10.6.1 will not invalidate the refusal to register the transfer any way.

10.7 Retention of transfer by company

10.7.1 All instruments of transfer of shares which are registered will be retained by the company.

10.7.2 Except in the case of fraud, any instrument of transfer of shares which the directors decline or refuse to register will, on demand, be returned to the transferee.

10.8 Powers of attorney

Any power of attorney granted by a member empowering the donee to transfer shares which may be lodged, produced or exhibited to the company or any officer of the company:

10.8.1 will be taken and deemed to continue to remain in full force and effect as between the company and the grantor of that power; and

10.8.2 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 with the company or at the place where the Register is kept.

10.9 No fees for registering transfers

10.9.1 Subject to clause 10.9.2, the company will not charge a fee for:

- (a) registering proper SCH transfers;
- (b) registering paper-based transfers in registrable form;
- (c) splitting certificates, renunciations and transfer forms;
- (d) issuing certificates and transmission receipts;

- (e) effecting conversions between subregisters of the Register;
- (f) noting transfer forms;
- (g) issuing a statement showing the opening balance of a holding on any issuer sponsored subregister maintained pursuant to this Constitution;
- (h) issuing a routine transaction statement, as defined in the Listing Rules, to a shareholder on any issuer-sponsored subregister maintained pursuant to this Constitution; or
- (i) sending to a shareholder details of a change to the shareholder's holding of shares which arises from an issue of shares or an acquisition of rights.

10.9.2 The company may charge a reasonable fee:

- (a) pursuant to clause 5.4.1;
- (b) for marking a transfer form, or marking a renunciation and transfer form, within 2 Business Days after the form is lodged with the company; and
- (c) for issuing a special transaction statement, as defined in the Listing Rules.

10.10 **Restricted Securities**

Except as permitted by the Listing Rules or ASX:

10.10.1 the registered holder of a security which is a Restricted Security will not Dispose of that security during the escrow period specified in the Restriction Agreement in respect of that security; and

10.10.2 the company will refuse to acknowledge a Disposal (including registering a transfer) of a security which is a Restricted Security during the escrow period specified in the Restriction Agreement in respect of that security.

10.11 **Holding locks**

The company may or may request SCH to, apply to remove a holding lock (as defined in the Listing Rules) to securities where permitted to do so under the Listing Rules and SCH Business Rules.

10.12 **Options**

This clause 10 applies, with necessary alterations, to Options and other Securities to the extent required by the Law, Listing Rules or SCH Business Rules.

11. TRANSMISSION OF SHARES

11.1 Title to shares of deceased shareholders

- 11.1.1 If a shareholder (not being one of several joint holders) dies, the company will recognise only the personal representative of that shareholder as having any title to or interest in the Shares registered in the name of that shareholder or any benefits accruing in respect of those shares.
- 11.1.2 If a shareholder (being any one or more of the joint registered holders of any shares) dies, the company will recognise only the surviving joint registered holders of those shares as having any title to or interest in, or any benefits accruing in respect of, those shares.
- 11.1.3 Nothing in this Constitution will be taken to release the estate of a deceased shareholder from any liability.
- 11.1.4 Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder of that share, for the purpose of this Constitution they will be deemed to be joint holders of that share.

11.2 Title to Shares on transmission event

- 11.2.1 Subject to the Bankruptcy Act 1966, the Law and the SCH Business Rules, a transmittee who gives the directors the information they reasonably require to establish the transmittee's entitlement to be registered as the holder of any shares may:
- (a) elect to be registered as a shareholder in respect of those shares by giving a signed notice in writing to the company; or
 - (b) transfer those shares to another person.
- 11.2.2 Subject to the SCH Business Rules, a notice or transfer under clause 11.2.1 is subject to all provisions of this Constitution relating to transfers of shares as if the event giving rise to the transmittee's entitlement to the shares had not occurred and the notice or transfer was a transfer signed by that shareholder.
- 11.2.3 If the company has acted in good faith in registering a transmittee or the transferee of a transmittee under this clause 11.2, that person will indemnify the company to the extent of any loss or damage suffered by the company as a result of such registration.

11.3 Rights of Transmittee

- 11.3.1 Subject to clause 11.3.2 a transmittee who has given to the directors the information referred to in clause 11.2.1 is entitled to the same rights to which the transmittee would be entitled if registered as the holder of the share.
- 11.3.2 Subject to the Law, a transmittee will not be entitled in respect of a share to exercise any right conferred by membership in relation to general meetings or meetings of shareholders in respect of that share until the transmittee is registered as a holder of the share.

12. REDUCTION OF CAPITAL

The company may from time to time by resolution reduce its share capital in any way subject to compliance with the Law.

(See the provisions of sections 256A, B, C, D and E of the Law.)

13. MODIFICATION OF RIGHTS

13.1 The procedure to vary or cancel class rights

13.1.1 If at any time the share capital is divided into different classes of shares, the rights attached to any class unless otherwise provided by the terms of issue of the shares of that class, may be varied or modified with the consent in writing of the holders of 75% of the issued shares of that class or with the sanction of a special resolution passed at a meeting of the holders of shares of that class.

13.1.2 Clauses relating to general meetings apply to such meetings except that the quorum for the meeting is one or more shareholders holding one-third of the issued shares of the class and that any shareholder holding shares of the class may demand a poll.

(This sets out the procedure for modification of class rights for the purposes of section 246B(1) of the Law.)

(Note the provisions of section 246C of the Law which provide that certain actions are taken to vary rights.)

13.1.3 The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.

(This reflects section 246B(3) of the Law.)

13.2 When modification takes effect

13.2.1 If all shareholders in a class do not agree (whether by resolution or written consent) to the variation or cancellation of their rights or to a modification of this Constitution to allow their rights to be varied or cancelled, the variation, cancellation or modification takes effect:

- (a) if no application is made to the court to have it set aside, one month after the variation, cancellation or modification is made; or
- (b) if an application is made to the court to have it set aside, when the application is withdrawn or finally determined.

(This reflects sections 246(D(1), (2) and (3) of the Law.)

13.2.2 If the shareholders in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:

- (a) if no later date is stated in the resolution or consent, on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or consent.

(This reflects sections 246D(3) and 246E of the Law.)

14. CIRCULATING RESOLUTIONS OF SHAREHOLDERS

14.1 Circulating resolutions when more than 1 shareholder

14.1.1 Except in the case of a resolution under section 329 of the Law to remove an auditor, or any other resolution which the Law or this Constitution requires to be passed at a general meeting, the company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint shareholders must sign the document.

14.1.2 Separate copies of a document may be used for signing by shareholders if the wording of the resolution and statement is identical in each copy.

14.1.3 The resolution is passed when the last shareholder signs the document.

14.1.4 This clause does not affect any rule of law relating to the assent of shareholders not given at a general meeting.

14.2 Resolutions of company when 1 shareholder

If the company has only 1 shareholder, that shareholder may pass a resolution by the shareholder recording it and signing the record.

(This reflects section 249B of the Law.)

15. CALLING MEETINGS OF SHAREHOLDERS

15.1 Calling of meetings of shareholders by a director

A director may call a meeting of the company's shareholders.

(This reflects section 249C of the Law which is a Replaceable Rule.)

15.2 Calling of general meeting by directors when requested by shareholders

15.2.1 The directors of the company must call and arrange to hold a general meeting on the request of:

- (a) shareholders with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 shareholders (or such different number as may be prescribed by the regulations) who are entitled to vote at the general meeting.

15.2.2 The request must:

- (a) be in writing;
- (b) state any resolution to be proposed at the meeting;
- (c) be signed by the shareholders making the request; and

(d) be given to the company.

15.2.3 Separate copies of a document setting out the request may be used for signing by shareholders if the wording of the request is identical in each copy.

15.2.4 The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

(This reflects section 249D of the Law.)

15.3 Failure of directors to call a general meeting

15.3.1 Shareholders with more than 50% of the votes of all of the shareholders who make a request under clause 15.2 may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.

15.3.2 The meeting must be called in the same way, so far as is possible, in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.

15.3.3 To call the meeting the shareholders requesting the meeting may ask the company for a copy of the Register. The company must give the shareholders the copy of the Register within 7 days after request without charge.

15.3.4 The company must pay the reasonable expenses the shareholders incurred because the directors failed to call and arrange the meeting.

15.3.5 The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with clause 15.2. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

(This reflects section 249E of the Law.)

15.4 Calling of general meeting by shareholders

15.4.1 Shareholders with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The shareholders calling the meeting must pay the expenses of calling and holding the meeting.

15.4.2 The meeting must be called in the same way, so far as is possible, in which general meetings of the company may be called.

(This reflects section 249F of the Law.)

15.5 Amount of notice of meetings

15.5.1 The company must give to shareholders not less than 21 days notice of a meeting of shareholders or such longer period as is required under the Law or the Listing Rules (if any).

15.5.2 The company may call on shorter notice than required by clause 15.5.1:

- (a) an annual general meeting, if all the shareholders entitled to attend and vote at the annual general meeting agree beforehand; and
- (b) any other general meeting, if shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.

15.5.3 A company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 15.5.4.

15.5.4 At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to:

- (a) remove an auditor under section 329 of the Law; or
- (b) remove a director under clause 21.2.2 or appoint a director in place of a director removed under that clause.

(This reflects section 249H of the Law.)

15.6 Notice of meetings of shareholders to shareholders and directors

15.6.1 Written notice of a meeting of the company's shareholders must be given:

- (a) individually to each shareholder entitled to vote at the meeting
- (b) each director, provided that if a share is held jointly, notice need only be given to one of the shareholders;
- (c) the auditors of the company; and
- (d) the ASX

(This reflects section 249J(1) of the Law.)

15.6.2 Notice to joint shareholders must be given to the joint shareholder named first in the register of shareholders.

(This substitutes for section 249J(2) of the Law which is a Replaceable Rule.)

15.6.3 The company may give the notice of a meeting to a shareholder:

- (a) personally;
- (b) by sending it by post to the address for the shareholder in the Register or the alternative address (if any) nominated by the shareholder; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the shareholder.

(This reflects section 249J(3) of the Law.)

15.6.4 A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

(This substitutes for section 249J(4) of the Law which is a Replaceable Rule.)

15.7 Auditor entitled to notice and other communications

The directors must give the company's auditor, if any:

- 15.7.1 notice of a general meeting in the same way that a shareholder of the company is entitled to receive notice; and
- 15.7.2 any other communications relating to the general meeting that a shareholder of the company is entitled to receive.

(This reflects section 249K of the Law.)

15.8 Contents of notice of meetings of shareholders

A notice of a meeting of the company's shareholders must:

- 15.8.1 set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 15.8.2 state the general nature of the meeting's business;
- 15.8.3 in the case of an election of directors, set out the names of the candidates for election;
- 15.8.4 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
- 15.8.5 if a shareholder is entitled to appoint a proxy, contain a statement setting out the following information:
 - (a) that the shareholder has a right to appoint a proxy;
 - (b) whether or not the proxy needs to be a shareholder of the company; and

- (c) that a shareholder who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and

15.8.6 set out or include any additional information or document specified by the Law or the Listing Rules.

(This reflects section 249L of the Law.)

15.9 Persons entitled to attend meetings of shareholders

15.9.1 All Eligible Shareholders are entitled to attend meetings of shareholders as well as any other persons entitled to attend under the Law or the Listing Rules.

15.9.2 Subject to this Constitution, each director is entitled to attend and speak at all meetings of shareholders.

15.9.3 The chairperson of a meeting of shareholders may require any person to leave and remain out of any meeting of shareholders if that person, in the opinion of the chairperson, is not complying with his or her reasonable directions

15.10 Meeting of shareholders at more than one place

15.10.1 A meeting of shareholders called in accordance with this Constitution may be held in 2 or more separate meeting places linked together by an instantaneous audio-visual communication device or any other technology which, by itself or in conjunction with other arrangements:

- (a) gives the shareholders as a whole in the separate meeting places a reasonable opportunity to participate in proceedings;
- (b) enables the chairperson to be aware of proceedings in each such place; and
- (c) enables the shareholders in each such place to vote on a show of hands and on a poll.

15.10.2 A shareholder present at one of the separate meeting places is taken to be present at the meeting of shareholders and entitled to exercise all rights which the shareholder is granted under this Constitution.

15.10.3 Where a meeting of shareholders is held in 2 or more separate places pursuant to this clause, that meeting will be deemed to have been held at one of those places as is determined by the chairperson of the meeting.

15.11 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

(This reflects section 249M of the Law which is a Replaceable Rule.)

15.12 Accidental omission or non-receipt of notice

The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the ASIC, declares proceedings at the meeting to be void.

(This reflects section 1322(3) of the Law.)

16. SHAREHOLDERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

16.1 Shareholders' resolutions

16.1.1 The following shareholders may give the company notice of a resolution that they propose to move at a general meeting:

- (a) shareholders with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 shareholders (or such different number as may be prescribed by the regulations) who are entitled to vote at a general meeting.

16.1.2 The notice must:

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the shareholders proposing to move the resolution.

16.1.3 Separate copies of a document setting out the notice may be used for signing by shareholders if the wording of the notice is identical in each copy.

(This reflects section 249N of the Law.)

16.2 Company giving notice of shareholders' resolutions

16.2.1 If a company has been given notice of a resolution under clause 16.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.

16.2.2 The company must give all of its shareholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

16.2.3 The company is responsible for the cost of giving shareholders notice of the resolution if the company receives the notice in time to send it out to shareholders with the notice of meeting.

16.2.4 The shareholders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving shareholders notice of the resolution if the directors do not receive the shareholders notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

16.2.5 The company need not give notice of the resolution if:

- (a) it is more than 1,000 words long or defamatory; or
- (b) the shareholders making the request are to bear the expenses of sending the notice out, unless the shareholders give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

(This reflects section 249O of the Law.)

17. SHAREHOLDERS' STATEMENTS TO BE DISTRIBUTED

17.1 Grounds for statement

Shareholders may request the company to give to all of its shareholders a statement provided by the shareholders making the request about:

- 17.1.1 a resolution that is proposed to be moved at a general meeting; or
- 17.1.2 any other matter that may be properly considered at a general meeting.

17.2 Who may request

The request must be made by:

- 17.2.1 shareholders with at least 5% of the vote that may be cast on the resolution; or
- 17.2.2 at least 100 shareholders (or such different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

17.3 How request to be made

The request must be:

- 17.3.1 in writing;
- 17.3.2 signed by the shareholders making the request; and
- 17.3.3 given to the company.

17.4 Copies for signing

Separate copies of a document setting out the request may be used for signing by shareholders if the wording of the request is identical in each copy.

17.5 Distribution of statement

After receiving the request, the company must distribute to all of the company's shareholders a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

17.6 When company bears costs

The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to shareholders with the notice of meeting.

17.7 When shareholders bear cost

The shareholders making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

17.8 When company need not comply with request

The company need not comply with the request if:

17.8.1 the statement is more than 1,000 words long or defamatory; or

17.8.2 the shareholders making the request are responsible for the expenses of the distribution, unless the shareholders give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

(This reflects section 249P of the Law.)

18. HOLDING MEETINGS OF SHAREHOLDERS

18.1 Purpose

A meeting of shareholders must be held for a proper purpose.

(This reflects section 249Q of the Law.)

18.2 Time and place for meetings of shareholders

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

(This reflects section 249R of the Law.)

18.3 Quorum

18.3.1 No business may be transacted at any general meeting unless a quorum of shareholders entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:

- (a) if there is only 1 shareholder, that shareholder;
- (b) if there are 2 or more shareholders, then subject to clause 18.3.4, 2 shareholders.

For the purposes of this clause and clause 18.3.2, "shareholder" includes a person attending as a proxy or a body corporate representative. If a person has appointed more than 1 proxy or representative, only 1 of those proxies or representatives is to be counted in determining whether a quorum is constituted.

- 18.3.2 If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the directors may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the shareholder or shareholders present constitute a quorum.

(This substitutes for section 249T of the Law which is a Replaceable Rule.)

18.4 Chairing meetings of shareholders

- 18.4.1 The chair, if any, of the board is to be the chair at every general meeting of the company. If the chair of the board cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting the directors present may elect one of their number to be the chair of the meeting but if they do not do so the shareholders present must elect the chair of the meeting.

- 18.4.2 The chair must adjourn a meeting of the company's shareholders if the shareholders present with a majority of votes at the meeting agree or direct that the chair must do so.

(This substitutes for section 249U of the Law which is a Replaceable Rule.)

18.5 Auditor's right to be heard at general meetings

- 18.5.1 The company's auditor (if any) is entitled to attend any general meeting of the company.

- 18.5.2 The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

- 18.5.3 The auditor is entitled to be heard even if:

- (a) the auditor retires at the meeting; or
- (b) the meeting passes a resolution to remove the auditor from office.

- 18.5.4 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

(This reflects section 249V of the Law.)

18.6 Adjourned meetings

- 18.6.1 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(This reflects section 249W(1) of the Law.)

- 18.6.2 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

(This substitutes for section 249W(2) of the Law which is a Replaceable Rule.)

18.7 Annual general meetings

18.7.1 Holding of annual general meetings

The company must, if required by the Law, hold an annual general meeting.

(See the requirements of section 250N of the Law.)

18.7.2 Business of annual general meeting

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of directors;
- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

(This reflects section 250R of the Law.)

18.7.3 Questions at annual general meetings

- (a) The chair of an annual general meeting must allow a reasonable opportunity for shareholders as a whole at the meeting to ask questions about or make comments on the management of the company.
- (b) If the company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the shareholders as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct the audit and the preparation and content of the auditor's report.

(This reflects sections 250S and 250T of the Law.)

19. VOTING AT A SHAREHOLDERS' MEETINGS

19.1 How many votes a shareholder has

Subject to any rights or restrictions attached to any class of shares, at a shareholders' meeting:

19.1.1 on a show of hands each shareholder has 1 vote;

19.1.2 on a poll, each shareholder has (subject to clause 19.8.4) 1 vote for each share they hold;

19.1.3 the chair does not have a casting vote in addition to any vote they have as a shareholder.

(This substitutes for section 250E of the Law which is a Replaceable Rule.)

19.2 **Jointly held shares**

If a share is held jointly and more than 1 shareholder votes in respect of that share, only the vote of the shareholder whose name appears first in the register of shareholders counts.

(This substitutes for section 250F of the Law which is a Replaceable Rule.)

19.3 **Objections to right to vote at a meeting of the company's shareholders**

A challenge to a right to vote at a shareholders' meeting:

19.3.1 may only be made at the meeting; and

19.3.2 must be determined by the chair, whose decision is final.

(This substitutes for section 250G of the Law which is a Replaceable Rule.)

19.4 **Votes need not all be cast in the same way**

On a poll, a person voting who is entitled to 2 or more votes:

19.4.1 need not cast all their votes; and

19.4.2 may cast their votes in different ways.

(This reflects section 250H of the Law.)

19.5 **How voting is carried out**

19.5.1 A resolution put to the vote at a shareholders' meeting must be decided on a show of hands unless a poll is demanded.

19.5.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

19.5.3 Subject to this Constitution and the Law, resolutions of shareholders are to be decided by simple majority of votes cast in respect of the relevant resolution.

(This substitutes for section 250J of the Law which is a Replaceable Rule.)

19.6 **Matters on which a poll may be demanded**

19.6.1 A poll may be demanded on any resolution proposed at a shareholders' meeting.

19.6.2 Without limiting clause 19.6.1, a poll can be demanded on any resolution concerning:

(a) the election of the chair of a meeting; or

(b) the adjournment of a meeting.

19.6.3 A demand for a poll may be withdrawn.

(This reflects section 250K of the Law.)

19.7 When a poll is effectively demanded

19.7.1 At a shareholders' meeting a poll may be demanded by:

- (a) at least 2 shareholders entitled to vote on the resolution;
- (b) shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

19.7.2 The poll may be demanded:

- (a) before a vote is taken on the proposed resolution;
- (b) before the voting results on a show of hands on the proposed resolution are declared; or
- (c) immediately after the voting results on a show of hands on the proposed resolution are declared.

(This reflects section 250L of the Law.)

19.8 When and how polls must be taken

19.8.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

19.8.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

(This substitutes for section 250M of the Law which is a Replaceable Rule.)

19.8.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

19.8.4 Notwithstanding anything else contained in this Constitution, on a resolution to be decided on a poll, each shareholder holding an ordinary share or preference share who has a right to vote, must be entitled to one vote for each fully paid share and a fraction of a vote for each partly paid share. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) (amounts paid in advance of a call are excluded with calculating the proportion).

(This reflects listing rule 6.9.)

19.9 Shareholders with unpaid calls

No shareholder is entitled to vote at any general meeting unless all calls or other sums presently payable by the shareholder in respect of shares in the company have been paid.

19.10 Personal representative's right to vote

A personal representative of a shareholder may vote at any general meeting in respect of the share in the same manner as if the personal representative was the holder of the share, if at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the personal representative proposes to vote, the personal representative has satisfied the directors of the personal representative's entitlement or the directors have previously admitted the personal representative's right to vote at such meeting in respect of the share.

19.11 Votes of incapacitated shareholder

If a shareholder is mentally incapacitated, the person entitled to manage that shareholder's estate may, subject to clause 11.3.2, exercise any rights of the shareholder in relation to a meeting of shareholders as if that person were the shareholder.

19.12 No vote if call unpaid or breach of Restriction Agreement

An Eligible Voter will not be entitled to vote on any resolution, whether on a show of hands or on a poll, in respect of any shares:

19.12.1 on which any calls due and payable in respect of those shares have not been paid; or

19.12.2 which are Restricted Securities where there is a subsisting breach of any Restriction Agreement in respect of those shares.

19.13 No vote if contrary to Law or Listing Rules

Notwithstanding anything contained in this Constitution to the contrary:

19.13.1 an Eligible Voter will not be entitled to vote; and

19.13.2 the company will disregard any vote purported to be cast by an Eligible Voter,

on a particular resolution where such a vote is prohibited by the Law, Listing Rules or ASX.

20. PROXIES

20.1 Who can appoint a proxy

20.1.1 A shareholder of the company who is entitled to attend and vote at a meeting of the company's shareholders may appoint a person as the shareholder's proxy to attend and vote for the shareholder at the meeting.

20.1.2 The appointment may specify the proportion or number of votes that the proxy may exercise.

20.1.3 Each shareholder may appoint a proxy. If the shareholder is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the shareholder's votes each proxy may exercise, each proxy may exercise half of the votes.

20.1.4 Any fractions of votes resulting from the application of clauses 20.1.2 and 20.1.3 must be disregarded.

(This reflects section 249X of the Law.)

20.2 **Rights of proxies**

A proxy appointed to attend and vote for a shareholder has the same rights as the shareholder:

20.2.1 to speak at the meeting, except while the shareholder is present;

20.2.2 to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and

20.2.3 to join in a demand for a poll.

(This reflects section 249Y(1) of the Law.)

20.3 **Company sending appointment forms or lists of proxies must send to all shareholders**

If the company sends a shareholder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

20.3.1 if the shareholder requested the form or list, the company must send the form or list to all shareholders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or

20.3.2 otherwise, the company must send the form or list to all its shareholders entitled to appoint a proxy to attend and vote at the meeting.

(This reflects section 249Z of the Law.)

20.4 **Appointing a proxy**

20.4.1 An appointment of a proxy is valid if it is signed by the shareholder making the appointment and contains the following information:

(a) the shareholder's name and address;

(b) the company's name;

(c) the proxy's name or the name of the office held by the proxy; and

- (d) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

- 20.4.2 The chair of the board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 20.4.1.
- 20.4.3 An undated appointment is taken to have been dated on the day it is given to the company.
- 20.4.4 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (c) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (d) 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.
- 20.4.5 If a proxy is also a shareholder, this clause does not affect the way that the person can cast any votes they hold as a shareholder.
- 20.4.6 An appointment does not have to be witnessed.
- 20.4.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

(This reflects section 250A of the Law.)

20.5 **Proxy documents**

- 20.5.1 For an appointment of a proxy for a meeting of shareholders to be effective, the following documents must be received by the company at least 24 hours before the meeting:
 - (a) the proxy's appointment; and
 - (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- 20.5.2 If a meeting of shareholders has been adjourned, an appointment and any authority received by the company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

20.5.3 The company receives an appointment or an authority when it is received at any of the following:

- (a) the company's registered office;
- (b) a fax number at the company's registered office; or
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

(This reflects section 250B of the Law.)

20.6 **Validity of proxy vote**

20.6.1 A proxy who is not entitled to vote on a resolution as a shareholder may vote as a proxy for another shareholder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(This reflects section 250C(1) of the Law.)

20.6.2 Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing shareholder dies;
- (b) the shareholder is mentally incapacitated;
- (c) the shareholder revokes the proxy's appointment;
- (d) the shareholder revokes the authority under which the proxy was appointed by a third party; or
- (e) the shareholder transfers the share in respect of which the proxy was given.

(This substitutes for section 250C(2) of the Law which is a Replaceable Rule.)

21. **DIRECTORS**

21.1 **Number of directors**

The company must have at least 3 directors (not counting alternate directors) of which at least 2 must be ordinarily resident in Australia. The company in general meeting may by resolution determine the maximum number of directors of the company.

(This reflects section 201A) of the Law.)

21.2 **Appointment and removal of directors**

21.2.1 **Directors may appoint other directors**

The directors may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors meeting even if the total number of directors of the company is not enough to make up a quorum.

Any person appointed by the directors under this clause must be confirmed in office at the company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the annual general meeting.

(This substitutes for section 201H of the Law which is a Replaceable Rule.)

21.2.2 Company may remove and appoint directors

The company in general meeting may by resolution:

- (a) remove a director from office despite anything in this Constitution, any agreement between the company and the director or any agreement between any or all shareholders and the director;

(This reflects section 203D(1).)

- (b) appoint a director.

(This substitutes for section 201G of the Law which is a Replaceable Rule.)

21.2.3 Resolution for appointment

A motion for the appointment of 2 or more persons as directors by a single resolution must not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it. However, this does not prevent the election of 2 or more directors by ballot or poll.

(This reflects sections 225(1) and 225(6) of the Law.)

21.3 Directors over 72

A person who has turned 72 years must not be appointed as a director of the company or of a subsidiary of the company except in accordance with the requirements of section 201C of the Law.

21.4 Interested directors

21.4.1 Director may hold certain offices

A director may hold any office or position of profit (other than that of auditor) under the company or under any company promoted by the company or in which the company is a shareholder or otherwise interested.

21.4.2 Director may enter into certain contracts

Notwithstanding any rule of law or equity to the contrary, a director may contract with the company and no such contract, transaction or arrangement entered into by or on behalf of the company or any other contract, transaction or arrangement in which a director is in any way interested is avoided or rendered voidable because of that person being a director.

21.4.3 **Disclosure of material interest.**

A director who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless section 191(2) of the Law says otherwise. *(This reflects section 191(1) of the Law.)*

21.4.4 **Voting by interested directors**

A director who has a material personal interest in a matter that is being considered at a directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter

unless:

- (c) clause 21.4.6(a) or 21.4.6(b) allow the director to be present or;
- (d) the interest does not need to be disclosed under section 292 of the Law.

21.4.5 The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
- (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

21.4.6 (a) The director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Law;

- (b) If there are not enough directors for form a quorum for a directors' meeting because of clause 21.4.4(a) or 21.4.4(b), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

(See the provisions of sections 195 and 196 of the Law.)

21.5 **Remuneration of directors**

21.5.1 The directors are entitled to be paid:

- (a) in the case of directors who are not employees of the company or its related bodies corporate, for their services an annual sum to be determined by the company in general meeting, divided between them in such proportions as they may determine;
- (b) in respect of the managing director or any other director employed by the company, such amount as is fixed by the other directors and set out in an agreement between the company and the relevant director;

- (c) all expenses properly incurred in attending or in connection with their attendance at any meeting of the company or of the board or any committee of directors.

21.5.2 In addition to the remuneration referred to in clause 21.5.1 a director may receive a special remuneration and expense reimbursement for performing extra services in and about the company's business.

(This substitutes for section 202A of the Law which is a Replaceable Rule.)

21.6 Vacation of office

The office of a director becomes vacant if the director:

21.6.1 resigns by giving written notice to the company at its registered office;

21.6.2 is removed pursuant to the provisions of section 203D of the Law;

21.6.3 is removed from office in accordance with this Constitution or the Law; or

21.6.4 is disqualified from managing corporations under Part 2D.6 of the Law.

(This reflects section 203B of the Law.)

21.7 Financial benefits

The company must not provide financial benefits to a director except as permitted by, and in accordance with, the provisions of the Law.

(See in particular, but not exclusively, Chapter 2E of the Law.)

21.8 Defect in appointment

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 a committee, or to act as a director, or that a person so appointed was disqualified, all acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

21.9 Wholly owned subsidiary

Each director is expressly authorised to act in the best interests of any holding company of the company.

(See section 187 of the Law for restrictions on this authority.)

22. RETIREMENT OF DIRECTORS

22.1 Retirement of directors at annual general meetings

At every annual general meeting, if and for so long as there are:

22.1.1 3 or more Relevant Directors, one-third of the Relevant Directors or, if their number is not a multiple of 3 then the next lowest whole number of Relevant Directors divisible by 3; or

22.1.2 fewer than 3 Relevant Directors, one Relevant Director,

will retire from office and be eligible for re-election.

22.2 Each director will retire at every third annual general meeting

22.2.1 Notwithstanding clause 22.1, each Relevant Director will retire from office no later than at the third annual general meeting following his or her last election or appointment by a general meeting, but may submit himself or herself for and will be eligible for re-election.

22.2.2 Any Relevant Director who at any annual general meeting retires under this clause 22.2 will be eligible to count towards the number to retire under clause 22.1 at the same meeting.

22.3 Order of retirement of directors at annual general meetings

22.3.1 The Relevant Directors to retire under clause 22.1 will be those who have been longest in office.

22.3.2 As between 2 or more Relevant Directors who have been in office an equal length of time, the directors to retire will be determined by lot, failing agreement between them.

22.3.3 Where a director has previously vacated office, the length of time which that director has been in office will be computed from the director's last election or appointment by a general meeting.

22.4 Nomination of directors for office

22.4.1 No person other than a director retiring in accordance with this Constitution is eligible for election to the office of director at any meeting of shareholders unless:

- (a) in the case of a person whose nomination is recommended by the directors, at least 28 days before the meeting; and
- (b) in any other case, at least 30 Business Days (or such longer period required by the Listing Rules) before the meeting,

there has been left at the company's registered office:

- (c) a notice in writing signed by a shareholder duly entitled to attend and vote at the meeting for which notice is given of that shareholder's intention to propose the person for election; and
- (d) notice in writing signed by the person of his or her willingness to be elected.

22.4.2 Shareholders duly entitled to attend and vote at the meeting may also propose themselves for election as a director in accordance with this Constitution.

22.4.3 The company must give to shareholders not less than 28 days notice (or such lesser period permitted under the Listing Rules) of each and every candidate for election as a director at a meeting of shareholders.

22.5 **Managing director**

The managing director appointed under clause 26:

22.5.1 will not be subject to retirement under clause 24.1; and

22.5.2 will not be taken into account in determining the order of retirement of directors or the number of directors to retire under clause 22.1.

23. **POWERS AND DISCRETIONS OF DIRECTORS**

23.1 **Business of the company**

The business of the company must be managed by or under the direction of the directors who may exercise all the powers of the company except any powers that the Law or this Constitution, require to be exercised by the company in general meeting. No resolution made by the company in general meeting invalidates any prior act of the directors which would have been valid if the resolution had not been made.

(This substitutes for section 198A of the Law which is a Replaceable Rule.)

23.2 **Appointment of attorneys**

The directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the directors, to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors), for the period and subject to such conditions as the directors think fit.

23.3 **Appointment of auditor**

The directors must appoint an auditor of the company if an auditor has not been appointed by the company in general meeting within 1 month after the day on which the company was incorporated.

(This reflects section 327(1) of the Law.)

(For other requirements see sections 327, 328 and 329 of the Law.)

23.4 **Directors may execute security over the assets of the company**

If the directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the company, the directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the company by way of indemnity to secure the directors or persons so becoming liable from any loss in respect of such liability.

23.5 **Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the company in such manner as the directors may from time to time determine.

(This substitutes for section 198B of the Law which is a Replaceable Rule.)

23.6 **Directors discretion**

Unless otherwise provided, if the directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

23.7 **Delegation**

23.7.1 **Power to delegate**

The directors may delegate any of their powers to:

- (a) a committee of directors; or
- (b) a director; or
- (c) an employee of the company; or
- (d) any other person.

23.7.2 **Delegate to act in accordance with directions**

The delegate must exercise the powers delegated in accordance with any directions of the directors.

23.7.3 **Effectiveness of exercise of delegates power**

The exercise of the power by the delegate is as effective as if the directors had exercised it.

23.7.4 **Meetings of committees**

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of directors, subject to any necessary changes and any directions made by the directors.

(This reflects section 198D of the Law.)

23.7.5 **Directors liable for delegate**

If the directors delegate a power under clause 23.7.1, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves unless exonerated under section 190(2) of the Law.

(This reflects section 190(1) of the Law.)

24. DIRECTORS RESOLUTIONS AND MEETINGS

24.1 Circulating resolutions

24.1.1 The directors may pass a resolution without a directors' meeting being held if all the directors present in Australia entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

24.1.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

24.1.3 The resolution is passed when the last director signs.

(This substitutes for section 248A of the Law which is a Replaceable Rule.)

24.2 Calling directors' meetings

A director may at any time, and the secretary on the request of a director must, convene a board meeting.

(This substitutes for section 248C of the Law which is a Replaceable Rule.)

24.3 Use of technology

A directors' meeting may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

(This reflects section 248D of the Law.)

24.4 Chairing directors' meetings

The directors may elect a director to chair their meetings and determine the period for which the chair is to hold office, but if no such chair is elected, or if at any meeting the chair is not present within 15 minutes after the time appointed for holding the meeting, the directors may elect 1 of their number present to chair the meeting.

(This substitutes for section 248E of the Law which is a Replaceable Rule.)

24.5 Quorum at directors' meetings

24.5.1 Subject to clause 21.4.4 a quorum for a meeting of the board is constituted by 2 directors or such other number determined by the board.

24.5.2 The quorum must be present at all times during the meeting.

(This substitutes for section 248F of the Law which is a Replaceable Rule.)

24.6 Passing of directors' resolutions

Questions arising at any board meeting must be decided by a majority of votes. Each director present at a board meeting has 1 vote. In the case of an equality of votes, the chair does not have a second or casting vote.

(This substitutes for section 248G of the Law which is a Replaceable Rule.)

25. ALTERNATE DIRECTORS

25.1 Appointment

A director may appoint an alternate to exercise some or all of the director's powers for a specified period.

25.2 Notice of directors' meeting

If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

25.3 Exercise of powers by alternate

When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

25.4 Termination of appointment

The appointing director may terminate the alternate's appointment at any time.

25.5 Procedure for termination

An appointment or its termination must be in writing. A copy must be given to the company.

25.6 Automatic vacation of office

An alternate director automatically vacates office if the appointor vacates office as a director or terminates the alternate's appointment.

25.7 Entitlements

An alternate director is entitled to be paid the expenses provided in this Constitution but is not entitled to receive directors' fees.

(This substitutes for section 201K of the Law which is a Replaceable Rule.)

26. MANAGING DIRECTOR

26.1 Appointment

The directors may appoint one of themselves to the office of managing director of the company for the period and on the terms (including as to remuneration) as the directors see fit.

(This substitutes for section 201J of the Law which is a Replaceable Rule.)

26.2 Effect of cessation of directorship

A person ceases to be managing director if they cease to be a director.

26.3 Powers

The directors may confer on a managing director any of the powers that the directors can exercise.

26.4 Revocation or variation of appointment or powers

The directors may revoke or vary:

26.4.1 an appointment; or

26.4.2 any of the powers conferred on the managing director.

(This substitutes for section 203F of the Law which is a Replaceable Rule.)

27. SECRETARY

27.1 Requirement for secretary

The company must have at least 1 secretary.

(This reflects section 204A(2) of the Law.)

27.2 Appointment of secretary

A secretary must be appointed by the directors.

(This reflects section 204D of the Law.)

27.3 Natural person not a minor as secretary

A secretary must be a natural person who has attained the age of 18 years.

(This reflects section 204B(1) of the Law.)

27.4 Australian resident as secretary

The secretary, or 1 of the secretaries, must be a person who ordinarily resides in Australia.

(This reflects section 204A(2) of the Law.)

27.5 Acting secretary

If there is no secretary, or no secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary, or no assistant or deputy secretary is capable of acting, by or in relation to an officer authorised by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

27.6 Terms and conditions of office of secretary

27.6.1 A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

(This substitutes for section 204F of the Law which is a Replaceable Rule.)

27.6.2 The board may terminate or suspend any appointment of a person as a secretary.

28. MINUTES

28.1 Company must keep minute books

The company must keep minute books in which it records within 1 month:

28.1.1 proceedings and resolutions of meetings of the shareholders;

28.1.2 proceedings and resolutions of directors' meetings (including meetings of a committee of directors);

28.1.3 resolutions passed by shareholders without a meeting; and

28.1.4 resolutions passed by directors without a meeting.

28.2 Minutes to be signed

The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

28.2.1 the chair of the meeting; or

28.2.2 the chair of the next meeting.

28.3 Resolution without meeting

The company must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.

28.4 Location of minute books

The company must keep the minute books of the company at:

28.4.1 the company's registered office;

28.4.2 the company's principal place of business in Australia; or

28.4.3 another place approved by the ASIC.

(This reflects section 251A of the Law.)

28.5 Inspection by shareholders

The company must ensure that the minute books for the meetings of its shareholders and for resolutions of shareholders passed without meetings are open for inspection by shareholders free of charge.

(This reflects section 251B(1) of the Law.)

28.6 Requests by shareholders

28.6.1 A shareholder may ask the company in writing for a copy of:

- (a) any minutes of a meeting of the company's shareholders or an extract of the minutes; or
- (b) any minutes of a resolution passed by shareholders without a meeting.

28.6.2 If the company does not require the shareholder to pay for the copy, the company must send it:

- (a) within 14 days after the shareholder asks for it; or
- (b) any longer period that the ASIC approves.

28.6.3 If the company requires payment for the copy, the company must send it:

- (a) within 14 days after the company receives the payment; or
- (b) within any longer period that the ASIC approves.

(This reflects section 251B of the Law.)

29. DIVIDENDS

29.1 Dividends to be paid out of profits

A dividend may only be paid out of profits of the company.

(This reflects section 254T of the Law.)

29.2 Other provisions about paying dividends

29.2.1 The directors may determine that a dividend is payable and fix:

- (a) the amount;
- (b) the time for payment; and
- (c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

29.2.2 The holder of a partly paid share is (for each partly paid share held) entitled to a proportion of a dividend paid on a fully paid share equal to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). In this clause 29.2.2, amounts paid in advance of a call are to be excluded when calculating the proportions.

29.3 No interest on a dividend

Interest is not payable on a dividend.

(This substitutes 254U of the Law which is a Replaceable Rule.)

29.4 Dividend rights

Subject to different dividend rights provided for by special resolution, all shares in the same class of shares have the same dividend rights.

(This reflects substitutes for section 254W(1) of the Law.)

29.5 When does the company incur a debt?

The company does not incur a debt merely by fixing the amount or time for payment of a dividend. The debt arises only when the time fixed for payment arrives and the decision to pay the dividend may be revoked at any time before the time fixed for payment.

(This reflects section 254V of the Law.)

29.6 Retention of dividends payable to a personal representative

Where the personal representative of a shareholder is entitled:

29.6.1 to become a shareholder by transmission of a share; or

29.6.2 to transfer a share,

the directors may retain the dividends payable on that share until the personal representative becomes the holder of that share or transfers that share.

29.7 Joint shareholders

Any one of several persons who are registered as the joint holders of any share may give effectual receipts for all dividends and payments on account of dividends in respect of such shares.

30. CAPITALISATION OF PROFITS

The company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

(This reflects section 254S of the Law.)

31. INSPECTION OF BOOKS

The directors may but are not required to authorise a shareholder to inspect books of the company.

(This substitutes for section 247D of the Law which is a Replaceable Rule.)

32. INSPECTION OF ACCOUNTS

The directors may determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the company or any of them are to be opened to the inspection of shareholders not being directors, and no

shareholder (not being a director) has any right of inspecting any account or book or paper of the company except as conferred by statute or authorised by the directors.

33. NOTICES

33.1 Notice to personal representative

Any notice or document given in accordance with this Constitution, notwithstanding that the share in respect of which it is given is then subject to any clause relating to personal representatives, is to be treated as validly given to each personal representative entitled to be registered in respect of the share and all persons who claim through such person.

33.2 Notices to persons on the Register

Any person entitled to a share (whether by transfer, operation of law or otherwise) is to be treated as having duly received every notice in respect of that share which was duly given to the person from whom that person derives that entitlement before the person entitled is entered in the Register as the holder of the shares.

33.3 When notice is given

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

33.4 Notice by shareholders of address for service

Each shareholder must notify the company in writing of an address in Australia for service of notice. Subject to this Constitution and the Law, if the shareholder fails to do so, the shareholder is not entitled to any notice.

33.5 How notices are given

Subject to the Law and this Constitution, the company may give notice and a person may give notice to the company:

33.5.1 personally;

33.5.2 by post, to the address of the recipient;

33.5.3 by facsimile number or electronic address (if any) nominated by the recipient;

33.5.4 by any other means consented to by the sender and the recipient.

33.6 When notices are taken to be given

A notice sent by post is taken to be given 2 days after it is posted. A notice by facsimile or other electronic means is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

33.7 Jointly held shares

If a share is held jointly, notice need only be given to the shareholder whose name appears first in the Register.

34. WINDING UP

If the company is wound up, the liquidator may, with the approval of a special resolution of the company divide amongst the shareholders in kind, the whole or any part of the assets of the company (whether they consist of property of the same kind or not and including shares) and may for that purpose set such value as the liquidator deems fair on any property to be divided and may determine how the division is to be carried out as between the shareholders or different classes of shareholders and vest the whole or any part of any such assets in trustees on such trusts for the benefit of the shareholders as the liquidator thinks fit, provided that no shareholder is compelled to accept any share or other securities on which there is any liability.

The holder of partly paid share is (for each partly paid share held) entitled to a proportion of the surplus distributed in respect of a fully paid share equal to the proportion which the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited). In this clause 34, amounts paid in advance of a call are to be excluded when calculating the proportions.

35. INDEMNITY

35.1 Indemnity against proceedings

Subject to clause 35.5, every person who is or has been a director, secretary or executive officer of the company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the company against any liabilities for costs and expenses incurred by that person:

35.1.1 in defending any proceedings relating to that person's position with the company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or

35.1.2 in connection with any application in relation to any proceedings relating to that person's position with the company, whether civil or criminal, in which relief is granted to that person under the Law by the court.

(See section 199A(3) of the Law.)

35.2 Indemnity against liabilities

Subject to clause 35.5, every person who is or has been a director, secretary or executive officer of the company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the company against any liability incurred by the person as such a director, secretary or executive officer to another person (other than the company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

(See sections 199A(1) and(2) of the Law.)

35.3 Insuring officers of the company

The company may pay a premium for a contract insuring a person who is or has been a director, secretary or executive officer of the company or its related bodies corporate against:

35.3.1 any liability incurred by that person as such a director, secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the company or a contravention of sections 182 or 183 of the Law; and

35.3.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the company, whether civil or criminal and whatever the outcome.

(See section 199B of the Law.)

35.4 Company may make separate contracts and bring separate actions

35.4.1 The company may confirm the indemnities in clauses 35.1 and 35.2 by separate contract with, or on behalf of, one or more of the persons indemnified.

35.4.2 The indemnities given by the company in clauses 35.1 and 35.2 do not affect the right of the company to bring any demand or action against any director, secretary or executive officer of the company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

35.5 Directors may resolve to not indemnify

The directors may resolve that the indemnities in clauses 35.1 and 35.2 are not to apply to a specified person or class of persons and the indemnities will not apply unless the company has confirmed the indemnity under clause 35.4.1 by a contract which is in force.

35.6 Interpretation

Nothing in clauses 35.1 to 35.4 is to be taken to limit the power of the company, as permitted by the Law, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the company or its related bodies corporate.

35.7 Payments not remuneration

Any payment made by the company under clauses 35.1 to 35.3 does not constitute remuneration for the purposes of this Constitution.

36. BRANCH REGISTERS

36.1 Company may keep branch registers

The company may establish and cause to be kept outside the state (including outside of Australia) where its principal register is kept a branch register of shareholders in accordance with the provisions of the Law.

36.2 Directors to determine manner in which branch registers are kept

Subject to the provisions of the Law and of the provisions of this Constitution, any branch register must be established and kept in the manner the directors determine.

36.3 Delegation

The directors may empower any officer of the company or any other person to establish and keep any branch register in a manner that the directors determine and may delegate the following duties:

36.3.1 examining, passing or refusing transfers;

36.3.2 approving or refusing to approve transferees of shares; and

36.3.3 giving certificates of shares.

37. AMENDING THIS CONSTITUTION

Subject to the Law:

37.1 By special resolution

The company may modify or repeal this Constitution or a provision of this Constitution, by special resolution.

(This reflects section 136(2) of the Law.)

37.2 Date effective

A special resolution modifying or repealing this Constitution takes effect:

37.2.1 if no later date is specified in the resolution, the date on which the resolution is passed; or

37.2.2 on a later date specified in or determined in accordance with the resolution.

(This reflects section 137 of the Law.)

38. LISTING RULES

If the company is Listed, the following clauses apply:

38.1 Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.

38.2 Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.

38.3 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).

38.4 If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.

- 38.5 If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- 38.6 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.