

Elders Limited
ACN 004 336 636

Constitution

(as approved by Special Resolution on 17 December 2020)

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Constitution

1. PRELIMINARY

1.1 Definitions and interpretation

1.1.1 In this constitution:

A director or Proposed Director (in this definition "the relevant individual") shall be deemed **Affiliated** with a Holder where:

- (a) the relevant individual is an employee of the Holder;
- (b) the Holder is or is an associate of a relative of the relevant individual (as that term is defined in section 12 of the Corporations Act);
- (c) the Holder is a corporation - the relevant individual is a director or an executive officer of that Holder or any related body corporate of the Holder or the relevant individual or a relative of the relevant individual owns an equity interest (direct or indirect) of not less than 15% in the Holder;
- (d) the Holder is or is an associate of the trustee of a trust estate where the relevant individual or a relative of the relevant individual has either a discretionary or contingent entitlement to assets of the trust estate or a fixed equity interest of not less than 15% in the assets of the trust estate;
- (e) the relevant individual is accustomed or, is under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the Holder in relation to the affairs of the company;
- (f) the relevant individual has or proposes to enter a relevant agreement with the Holder because of which the Holder has or will have power (even if it is in any way qualified) to exercise, to control, directly or indirectly the exercise of, to influence substantially the exercise of, to control or influence the conduct of affairs of the company or under which the relevant individual may be required to exercise any vote or exercise any powers or functions as a director of the company or to resign as a director of the company in accordance with the directions of the Holder whatever other effect the relevant agreement may have; or
- (g) the relevant individual is a person in concert with whom the Holder is acting, or proposes to act in relation to the conduct of the affairs of the company or the control of the composition of the Board;

"**Affiliation Declaration**" means a declaration in a form approved by the Nomination and Prudential Committee which:

- (a) states whether or not the person making the declaration is Affiliated with any Substantial Holder;
- (b) if any such Affiliation is declared - details all material facts, events and circumstances giving rise to the relevant Affiliation between the person and the Substantial Holder or associates of the Substantial Holder;

"**Affiliation Limit**" means:

- (a) In the case of any Substantial Holder with a relevant interest in less than 15% of the issued voting shares in the company:
 - (i) where the number of directors of the company is 6 or less - one director Affiliated with that Substantial Holder;
 - (ii) where the number of directors is 7 or more - two directors Affiliated with that Substantial Holder; or
- (b) In the case of any Substantial Holder with a legal and beneficial entitlement to 15% or more of the issued voting shares in the company - a percentage of the total number of directors of the company which does not exceed the percentage of the issued voting shares in the company to which the Substantial Holder has a legal and beneficial entitlement plus 5%;
- (c) provided that this Affiliation Limit shall be deemed breached if at any time the majority of the Board is not comprised of directors who are not Affiliated with the relevant Substantial Holder;

"Applicable Rules" means any rules of ASX Settlement and Transfer Corporation Pty Ltd, Australian Clearing House Pty Ltd, their successors or replacements or any other relevant body, which apply to the company, each as amended or replaced from time to time;

"ASX" means Australian Stock Exchange Limited;

"Board" means the board of directors of the company;

"business day" has the meaning given to that term in the Listing Rules;

"Commonwealth" means the Commonwealth of Australia and its external territories;

"Corporations Act" means the Corporations Act 2001 (Commonwealth);

"Executive Director" means any director who is not an Independent Individual;

"Holder" means any person who has relevant interests in voting shares of the company (whether directly or through their associates) and includes associates of any such person;

"Independent Individual" means an individual who is not an employee of the company or any subsidiary of the company;

"Ineligible Individual" means:

- (a) an individual in respect of whom no determination has been made by the Nomination and Prudential Committee that the relevant individual complies with the Prudential Criteria;
- (b) an individual in respect of whom the Nomination and Prudential Committee has determined does not comply with the Prudential Criteria (whether made on the basis of a change in the Prudential Criteria or for any other reason) where that determination has not been revoked; or
- (c) an individual who is the subject of a Prudential Notification given to the company;

"listed company" means a company which is admitted to the official list of ASX;

"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" means a marketable parcel as defined by the Listing Rules or such other number of shares as the directors determine and the ASX approves;

"Nomination and Prudential Committee" means the committee established under rule 8.19.1;

"Non-Voting Director" means a director who has ceased to hold voting rights through the operation of rules 8.2 or 8.4 and includes any alternate of such a director;

"Odd Lot Shareholder" means a member who holds an Unmarketable Parcel;

"Proposed Director" means any individual who:

- (a) is a candidate for election as a director;
- (b) has been nominated for election as a director; or
- (c) is proposed to be appointed as a director;

"Prudential Criteria" means criteria approved by the Nomination and Prudential Committee and published by the company in its annual financial report being criteria relevant to the determination of whether or not individuals are "fit and proper" persons to act as directors of the company having regard to guidelines and policies adopted by a Specified Regulator from time to time;

"Prudential Notification" means a written notification or communication made by a Specified Regulator to the effect that:

- (a) any specified individual is required by the Specified Regulator to resign as a director of the company;
- (b) any specified individual is not considered by the Specified Regulator to be a fit and/or a proper person:
 - (i) to be elected to;
 - (ii) to be appointed to; or
 - (iii) to continue to hold;the office of director of the company; or
- (c) the continuation of any specified individual to hold office as a director of the company would or might jeopardise the continuation of the grant of a Specified Licence to:
 - (i) the company;
 - (ii) or any subsidiary of the company;
 - (iii) or company in which the company or any subsidiary of the company owns shares prescribed as the maximum

permissible under the relevant law pursuant to which the written notification or communication is made;

- (iv) Elders Rural Bank Ltd (ACN 083938416);

"representative", in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law;

"seal" means any common seal or duplicate seal of the company;

"Specified Business" means any business or business activities under which any banking, financial, insurance, superannuation or trustee services are supplied including the offer of any financial products, the giving of any financial advice and the management of any financial risk now or in the future engaged in by the company or any subsidiary of the company;

"Specified Licence" means:

- (a) a licence or any other regulatory approval or undertaking which is required under the law of any relevant jurisdiction to carry on any Specified Business including required by:
- (i) Chapter 7 Financial Services and Markets of the Corporations Act;
 - (ii) the Banking Act 1959 (Commonwealth);
 - (iii) the Insurance Act 1973 (Commonwealth);
 - (iv) the Superannuation Industry (Supervision) Act 1993; or
 - (v) the Trustee Companies Act of any relevant jurisdiction;

"Specified Regulator" means any regulator or Minister of the Crown or public official responsible for the issue, grant, continuance, regulation, monitoring or supervision of any Specified Licence or holder of any Specified Licence and includes the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission or any successor bodies or organisations performing comparable public or statutory functions;

"Substantial Holder" means a person or persons together holding a substantial holding in shares of the company and includes associates of such persons;

"transmission event" means:

- (a) in respect of a member who is an individual:
- (i) the death of the member;
 - (ii) the bankruptcy of the member; or
 - (iii) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) in respect of a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member;

"Unmarketable Parcel" means a number of shares which is less than that required to constitute a Marketable Parcel.

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- 1.1.2 A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.
- 1.1.3 A reference in a rule relating to partly paid shares to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- 1.1.4 A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or representative or, except in any rule that specifies a quorum or except in any rule prescribed by the Board, a member who has duly lodged a valid direct vote in relation to the general meeting under rule 7.8A.
- 1.1.5 A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director.
- 1.1.6 Where a rule establishes an office of chairperson, the chairperson may be referred to as chair or as chairman or chairwoman, as the case requires.
- 1.1.7 Where a rule establishes an office of deputy chairperson, the deputy chairperson may be referred to as deputy chair or as deputy chairman or deputy chairwoman, as the case requires.
- 1.1.8 A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- 1.1.9 Unless the contrary intention appears in this constitution:
- (a) words importing the singular include the plural and words importing the plural include the singular;
 - (b) words importing a gender include every other gender;
 - (c) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (d) a reference to a person includes that person's successors and legal personal representatives;
 - (e) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (f) a reference to the Listing Rules or the Applicable Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the company from compliance with those rules; and
 - (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (h) a reference to "includes" or "including" means without limitation of the generality.
- 1.1.10 In this constitution headings and boldings are for convenience only and do not affect its interpretation.

1.2 **Application of the Corporations Act, Listing Rules and Applicable Rules**

1.2.1 This constitution is to be interpreted subject to:

- (a) the Corporations Act;
- (b) the Listing Rules, while the company is a listed company; and
- (c) the Applicable Rules, while the company is an issuer of CHESSE Approved Securities.

1.2.2 The rules that apply as replaceable rules to companies under the Corporations Act do not apply to the company.

1.2.3 While the company is a listed company, the following provisions apply:

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

1.2.4 While the company is a listed company, the company and the directors must comply with the obligations respectively imposed on them under the Listing Rules and the Applicable Rules. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.

1.2.5 Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the Applicable Rules has the same meaning as in that provision.

1.2.6 Subject to rule 1.2.5, unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

1.3 **Exercise of powers**

1.3.1 The company may, in any manner permitted by the Corporations Act:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which under the Corporations Act a company limited by shares may exercise, take or engage in if authorised by its constitution.

- 1.3.2 While the company is a listed company, the company and the directors must exercise their powers to ensure that the Listing Rules and the Applicable Rules are complied with, unless to do so would be unlawful or a breach of duty. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.
- 1.3.3 Where this constitution provides that a person or body may do a particular act or thing and the word “may” is used, the act or thing may be done at the discretion of the person or body.
- 1.3.4 Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- 1.3.5 Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- 1.3.6 Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (a) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (b) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (c) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- 1.3.7 Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- 1.3.8 Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- 1.3.9 Where this constitution confers power on a person or body to delegate a function or power:
- (a) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (b) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (c) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;

- (d) the delegation may include the power to delegate;
- (e) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (f) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.4 **Currency**

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

2. **SHARE CAPITAL**

2.1 **Shares**

2.1.1 Without prejudice to any special rights conferred on the holders of any shares or class of shares but subject to this constitution and, while the company is a listed company, the Listing Rules, the directors may issue or grant options in respect of, or otherwise dispose of, shares to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions, whether with regard to dividend, voting, return of capital, participation in the property of the company on a winding up or otherwise, as the directors think fit.

2.1.2 In particular, the directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.

2.2 **Preference shares**

2.2.1 The directors may issue preference shares including preference shares which are, or at the option of the company are, liable to be redeemed.

2.2.2 The terms of issue for each preference share must specify or provide for the determination of:

- (a) whether the share carries a right to a dividend;
- (b) the rate of dividend applicable to the share and the times at which dividends are to be paid;
- (c) the amount paid or payable on the issue of the share and, if that amount is not payable on issue, the amount unpaid on the share;
- (d) the number of votes that may be exercised by the holder in respect of the share on a poll;
- (e) in the case of a redeemable preference share, the time and place for redemption of the share;
- (f) any restrictions on the right to transfer the share; and
- (g) whether the right to payment of a dividend is cumulative or non-cumulative.

- 2.2.3 The dividend payable in respect of a preference share:
- (a) may be at a fixed or variable rate;
 - (b) unless otherwise stated in the terms of issue for the share, will be taken to accrue from day to day; and
 - (c) unless otherwise stated in the terms of issue for the share, is payable in respect of the amount for the time being paid on the preference share.
- 2.2.4 Each preference share confers on its holder the right in a winding up or reduction of capital and, in the case of a redeemable preference share, on redemption to payment in cash in priority to any other class of shares of:
- (a) the amount of any dividend accrued but unpaid on the share at the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption; and
 - (b) any amount paid on the share.
- 2.2.5 A preference share does not confer on its holder any right to participate in the profits or property of the company, whether on a winding up, reduction of capital or otherwise, except as set out in rule 2.2.4.
- 2.2.6 The holder of a preference share has the same right as the holder of an ordinary share to receive notice of and to attend a general meeting and to receive a copy of any documents to be laid before that meeting.
- 2.2.7 A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:
- (a) on a proposal:
 - (i) to reduce the share capital of the company;
 - (ii) that affects rights attached to the share;
 - (iii) to wind up the company; or
 - (iv) for the disposal of the whole of the property, business and undertaking of the company;
 - (b) on a resolution to approve the terms of a buy back agreement;
 - (c) during a period in which a dividend or part of a dividend on the share is in arrears; or
 - (d) during the winding up of the company.
- 2.2.8 The holder of a preference share who is entitled to vote in respect of that share under rule 2.2.7 is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the terms of issue for the share.
- 2.2.9 In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, pay to or at the direction of the holder, the amount payable on redemption of the share.
- 2.2.10 A holder of a preference share must not transfer or purport to transfer, and the directors must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

2.3 Variation of Rights

- 2.3.1 The rights attached to any class of shares may not be varied or abrogated except with the sanction of a special resolution passed at a meeting of the members holding shares in that class.
- 2.3.2 A winding up of the company while solvent is to be taken for the purposes of this rule to be a variation of the rights attaching to shares.

2.4 Power to pay brokerage, commission and interest on share capital

- 2.4.1 The company may make payments by way of brokerage or commission in the manner provided by the Corporations Act.
- 2.4.2 Payments by way of brokerage or commission may be satisfied by the payment of cash, by the issue of fully paid shares, by the issue of partly paid shares or by any combination of the above.
- 2.4.3 The company may pay interest on its share capital in the manner provided by the Corporations Act.

2.5 Joint holders of shares

Where 2 or more persons are registered as the holders of a share they hold it as joint tenants with rights of survivorship subject to the following provisions:

- 2.5.1 they and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which ought to be made in respect of the share;
- 2.5.2 subject to rule 2.5.1, on the death of any 1 of them the survivor or survivors are the only person or persons the company will recognise as having any title to the share;
- 2.5.3 any 1 of them may give effectual receipts for any dividend, interest or other distribution or payment in respect of the share;
- 2.5.4 except where otherwise required under the Applicable Rules, the company is not bound to register more than 3 persons as joint holders of the share;
- 2.5.5 the company is not bound to issue more than 1 certificate in respect of the share; and
- 2.5.6 delivery of a certificate for the share to any 1 of them is sufficient delivery to all of them.

2.6 Equitable and other claims

- 2.6.1 Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
- (a) compelled in any way to recognise a person as holding a share upon any trust, even if the company has notice of that trust; or
 - (b) compelled in any way to recognise, or bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.

2.6.2 With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.

2.6.3 Nothing in rule 2.6.2 limits the operation of rule 2.6.1.

2.7 **Restricted securities**

If any restricted securities are issued on or after 1 December 2019, then despite any other provision of this constitution:

2.7.1 a holder of restricted securities must not dispose of, or agree or offer to dispose of, the securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX;

2.7.2 if the restricted securities are in the same class as quoted securities, the holder will be taken to have agreed in writing that the restricted securities are to be kept on the company's issuer sponsored subregister and are to have a holding lock applied for the duration of the escrow period applicable to those securities;

2.7.3 the company will refuse to acknowledge any disposal (including, without limitation, to register any transfer) of restricted securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX;

2.7.4 a holder of restricted securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those securities except as permitted by the Listing Rules or the ASX; and

2.7.5 if a holder of restricted securities breaches a restriction deed or a provision of this constitution restricting a disposal of those securities, the holder will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of those securities for so long as the breach continues.

For the avoidance of doubt, the terms of this constitution that were in force on 30 November 2019 will continue to govern any restricted securities issued on or before that date.

2.8 **Employee share plans**

Subject to the Listing Rules, the directors may:

2.8.1 implement an employee share plan on such terms as they think fit under which securities of the company or of a related body corporate may be issued or otherwise provided to or for the benefit of any officer (including a director) of the company or of a related body corporate or to a relative of that officer or to an entity in which that officer or a relative of that officer has an interest;

2.8.2 amend, suspend or terminate any employee share plan implemented by them; and

2.8.3 give financial assistance in connection with the acquisition of securities of the company or of a related body corporate under any employee share plan in any manner permitted by the Corporations Act.

3. CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER

3.1 Calls

- 3.1.1 Subject to this constitution and to the terms upon which any shares may be issued, the directors may make calls upon the members in respect of any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.
- 3.1.2 While the company is a listed company, calls must be made in accordance with the Listing Rules and the timetables set out in the Listing Rules.
- 3.1.3 A call may be required by the directors to be paid by instalments.
- 3.1.4 Upon receiving at least 30 days' notice specifying the time and place of payment, each member must pay to the company by the time and at the place so specified the amount called on the member's shares.
- 3.1.5 A call is to be taken as being made when the resolution of the directors authorising the call was passed.
- 3.1.6 The directors may revoke or postpone a call or extend the time for payment of a call.
- 3.1.7 The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member does not invalidate the call.
- 3.1.8 If a sum called in respect of a share is not paid in full by the day appointed for payment of the sum, the person from whom the sum is due must pay:
- (a) interest on so much of the sum as is unpaid from time to time, from the date appointed for payment of the sum to the date of actual payment, at a rate determined under rule 3.9; and
 - (b) any costs, expenses or damages incurred by the company in relation to the non-payment or late payment of the sum.
- 3.1.9 Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
- (a) is to be treated for the purposes of this constitution as if that sum was payable pursuant to a call duly made and notified; and
 - (b) must be paid on the date on which it is payable under the terms of issue of the share.
- 3.1.10 The directors may, to the extent permitted by law, waive or compromise all or any part of any payment due to the company under the terms of issue of a share or under this rule 3.1.

3.2 Proceedings for recovery of calls

- 3.2.1 In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
- (a) the name of the defendant is entered in the register as the holder or 1 of the holders of the share in respect of which the call is claimed;
 - (b) the resolution making the call is recorded in the minute book; and

- (c) notice of the call was given to the defendant in accordance with this constitution,
- (d) is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.

3.2.2 In rule 3.2.1, “defendant” includes a person against whom a set-off or counter-claim is alleged by the company and “action or other proceedings for the recovery of a call” is to be construed accordingly.

3.3 **Payments in advance of calls**

3.3.1 The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called.

3.3.2 The directors may authorise payment by the company of interest upon the whole or any part of an amount accepted under rule 3.3.1, until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.

3.3.3 The directors may repay to a member all or any of the amount accepted under rule 3.3.1.

3.4 **Forfeiture of partly paid shares**

3.4.1 If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member:

- (a) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the company by reason of the non-payment or late payment of the call or instalment;
- (b) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under rule 3.4.1(a) is to be paid; and
- (c) stating that, in the event of non-payment of the whole of the amount payable under rule 3.4.1(a) by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.

3.4.2 If the requirements of a notice served under rule 3.4.1 are not complied with, the directors may by resolution forfeit any share in respect of which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.

3.4.3 A forfeiture under rule 3.4.2 will include a forfeiture of all dividends, interest and other money payable by the company in respect of the forfeited share and not actually paid before the forfeiture.

3.4.4 Where a share has been forfeited:

- (a) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
- (b) an entry of the forfeiture, with the date, must be made in the register of members.

3.4.5 Failure to give the notice or to make the entry required under rule 3.4.4 does not invalidate the forfeiture.

- 3.4.6 A forfeited share becomes the property of the company and the directors may sell, reissue or otherwise dispose of the share in such manner as they think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former holder being credited as paid up.
- 3.4.7 A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay, and must immediately pay, to the company:
- (a) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
 - (b) interest on so much of the amount payable under rule 3.4.7(a) as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under rule 3.9.
- 3.4.8 Except as otherwise provided by this constitution or, while the company is a listed company, the Listing Rules, the forfeiture of a share extinguishes all interest in, and all claims and demands against the company in respect of, the forfeited share and all other rights incidental to the share.
- 3.4.9 The directors may:
- (a) exempt a share from all or any part of this rule 3.4;
 - (b) waive or compromise all or any part of any payment due to the company under this rule 3.4; and
 - (c) before a forfeited share has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as they think fit.

3.5 **Indemnity for payments by the company**

If the company becomes liable under any law to make any payment:

- 3.5.1 in respect of shares held solely or jointly by a member;
- 3.5.2 in respect of a transfer or transmission of shares by a member;
- 3.5.3 in respect of dividends, bonuses or other money due or payable or which may become due and payable to a member; or
- 3.5.4 otherwise for or on account of or in respect of a member,

whether as a consequence of:

- 3.5.5 the death of that member;
- 3.5.6 the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member;
- 3.5.7 the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
- 3.5.8 any other act or thing,

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

- 3.5.9 the member or, if the member is dead, the member's legal personal representative must:
 - (a) fully indemnify the company against that liability;

- (b) reimburse the company for any payment made under or as a consequence of that law immediately on demand by the company; and
- (c) pay interest on so much of the amount payable to the company under rule 3.5.9(b) as is unpaid from time to time, from the date the company makes a payment under that law until the date the company is reimbursed in full for that payment under rule 3.5.9(b), at a rate determined under rule 3.9;

3.5.10 the directors may:

- (a) exempt a share from all or any part of this rule 3.5; and
- (b) waive or compromise all or any part of any payment due to the company under this rule 3.5.

3.6 **Lien on shares**

3.6.1 The company has a first and paramount lien on:

- (a) each partly paid share for all calls and instalments which are due but unpaid in respect of that share;
- (b) each share acquired under an employee incentive scheme, where an amount is owed to the company for its acquisition; and
- (c) each share for all amounts that the company is required by law to pay, and has paid, in respect of that share.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.

3.6.2 The company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.

3.6.3 The directors may sell any share on which the company has a lien in such manner as they think fit where:

- (a) an amount in respect of which a lien exists under this rule 3.6 is presently payable; and
- (b) the company has, not less than 14 days before the date of the sale, given to the registered holder of the share a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.

3.6.4 The directors may do all things necessary or desirable under the Applicable Rules to protect any lien, charge or other right to which the company may be entitled under any law or under this constitution.

3.6.5 Registration by the company of a transfer of shares on which the company has a lien without giving to the transferee notice of its claim releases the company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

3.6.6 The directors may:

- (a) exempt a share from all or any part of this rule 3.6; and
- (b) waive or compromise all or any part of any payment due to the company under this rule 3.6.

3.7 Surrender of shares

- 3.7.1 The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the company.
- 3.7.2 Any share so surrendered may be sold, reissued or otherwise disposed in the same manner as a forfeited share.

3.8 General provisions applicable to a disposal of shares under this constitution

- 3.8.1 A reference in this rule 3.8 to a disposal of shares under this constitution is a reference to:
- (a) any sale, reissue or other disposal of a forfeited share under rule 3.4.6 or a surrendered share under rule 3.7; and
 - (b) any sale of a share on which the company has a lien under rule 3.6.3.
- 3.8.2 Where any shares are disposed of under this constitution, the directors may:
- (a) receive the purchase money or consideration given for the shares on the disposal;
 - (b) effect a transfer of the shares and execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
 - (c) register as the holder of the shares the person to whom the shares have been disposed of.
- 3.8.3 A person to whom shares are disposed of under this constitution is not bound to see to the regularity or validity of, or to the application of the purchase money or consideration on, the disposal and the title of that person to the shares is not affected by any irregularity or invalidity in the forfeiture or surrender of the shares or the exercise of the company's lien on the shares (as the case may be).
- 3.8.4 The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the company exclusively.
- 3.8.5 The proceeds of a disposal of shares under this constitution must be applied in the payment of:
- (a) first, the expenses of the disposal;
 - (b) second, all money presently payable by the former holder whose shares have been disposed of,
 - (c) and the balance (if any) must be paid (subject to any lien that exists under rule 3.6 in respect of money not presently payable) to the former holder as soon as practicable after the disposal.
- 3.8.6 A statement in writing signed by a director or secretary of the company to the effect that a share in the company has been:
- (a) duly forfeited under rule 3.4.2;
 - (b) duly sold, reissued or otherwise disposed of under rule 3.4.6 or rule 3.7; or

- (c) duly sold under rule 3.6.3,

on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and of the right of the company to forfeit, sell, reissue or otherwise dispose of the share.

3.9 Interest payable by member

- 3.9.1 For the purposes of rules 3.1.8(a), 3.4.7(b) and 3.5.9(c), the rate of interest payable to the company is:
- (a) if the directors have fixed a rate, the rate so fixed; or
- (b) in any other case, 15% per annum.
- 3.9.2 Interest payable under rules 3.1.8(a), 3.4.7(b) and 3.5.9(c) accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

4. DISTRIBUTION OF PROFITS

4.1 Dividends

- 4.1.1 The directors may pay any interim and final dividends as, in their judgment, the financial position of the company justifies.
- 4.1.2 The directors may pay any dividend required to be paid under the terms of issue of a share.
- 4.1.3 The payment of a dividend does not require any confirmation by a general meeting.
- 4.1.4 Subject to any rights or restrictions attached to any shares or class of shares:
- (a) all dividends in respect of shares must be paid to the members in proportion to the number of shares held by a member but where shares are partly paid all dividends must be apportioned and paid proportionately to the amounts paid (not credited) on the shares;
- (b) all dividends must be apportioned and paid proportionately to the amounts so paid (not credited) during any portion or portions of the period in respect of which the dividend is paid;
- (c) for the purposes of rules 4.1.4(a) and 4.1.4(b), an amount paid or credited as paid on a share in advance of a call is to be ignored; and
- (d) interest is not payable by the company in respect of any dividend.
- 4.1.5 The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 5.3.
- 4.1.6 A dividend in respect of a share must be paid to the person who is registered, or entitled under rule 5.1.5 to be registered, as the holder of the share:
- (a) where the directors have fixed a record date in respect of the dividend, on that date; or
- (b) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,

and a transfer of a share that is not registered, or left with the company for registration in accordance with rules 5.1.4 and 5.1.5, on or before that date is not effective, as against the company, to pass any right to the dividend.

- 4.1.7 The directors when determining a dividend is payable may:
- (a) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific members; and
 - (b) direct that the dividend be paid to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- 4.1.8 The company may deduct from any dividend payable to a member all sums of money presently payable by the member to the company for calls due and payable which have not been paid and apply the amount deducted in or towards satisfaction of the money owing.
- 4.1.9 Where a person is entitled to a share as a result of a transmission event, the directors may, but are not obliged to, retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- 4.1.10 Without prejudice to any other method of payment the directors may adopt, any dividend, interest or other money payable in cash in respect of shares may be paid:
- (a) by such electronic or other means approved by the Board directly to an account (of a type approved by the Board) nominated in writing by the member or the joint holders; or
 - (b) by cheque and sent by post:
 - (i) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
 - (ii) to such other address as the holder or joint holders in writing directs or direct.
- 4.1.11 A cheque sent under rule 4.1.10 may be made payable to bearer or to the order of the member to whom it is sent or such other person as the member may direct and is sent at the member's risk.
- 4.1.12 If the Board decides that payments will be made by electronic transfer into an account (of a type approved by the Board) nominated by a member, but no such account is nominated by the member or an electronic transfer into a nominated account is rejected or refunded, the company may credit the amount payable to an account of the company to be held until the member nominates a valid account.
- 4.1.13 Where a member does not have a registered address or the company believes that a member is not known at the member's registered address, the company may credit an amount payable in respect of the member's shares to an account of the company to be held until the member claims the amount payable or nominates a valid account.
- 4.1.14 An amount credited to an account under rules 4.1.12 or 4.1.13 is to be treated as having been paid to the member at the time it is credited to that account. The company will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the

company until claimed, reinvested under rule 4.1.15 or disposed of in accordance with the laws relating to unclaimed monies.

- 4.1.15 If a cheque for an amount payable under rule 4.1.10 is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under rules 4.1.13 or 4.1.14 for at least 11 calendar months, the Board may reinvest the amount, after deducting reasonable expenses, into shares in the company on behalf of, and in the name of, the member concerned and may stop payment on the cheque. The shares may be acquired on market or by way of new issue at a price the Board accepts is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the member, as the Board decides. The company's liability to provide the relevant amount is discharged by an application under this rule 4.1.15. The Board may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 4.1.15. The Board may determine other rules to regulate the operation of this rule 4.1.15 and may delegate its power under this rule to any person.

4.2 Capitalisation of profits

- 4.2.1 Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, any amount:

- (a) forming part of the undivided profits of the company;
- (b) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the company;
- (c) arising from the realisation of any assets of the company; or
- (d) otherwise available for distribution as a dividend.

- 4.2.2 The directors may resolve that all or any part of the capitalised amount is to be applied:

- (a) in paying up in full shares in or other securities of the company to be issued to members;
- (b) in paying up any amounts unpaid on shares in or other securities of the company held by the members; or
- (c) partly as specified in rule 4.2.2(a) and partly as specified in rule 4.2.2(b),

and such an application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.

- 4.2.3 Rules 4.1.4, 4.1.5, 4.1.6 and 4.1.7 apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this rule 4.2 as if references in those rules to a dividend and to the date a dividend is fixed for payment were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 4.2 respectively.

4.3 Ancillary powers

- 4.3.1 For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in rule 4.1.7(a) or by the capitalisation of any amount under rule 4.2, the directors may:

- (a) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation;
- (b) fix the value for distribution of any specific assets;
- (c) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
- (d) vest any such specific assets, cash, shares or other securities in any trustee upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
- (e) authorise any person to make, on behalf of all the members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the company or another body corporate providing, as appropriate:
 - (i) for the issue to them of such further shares or other securities credited as fully paid up; or
 - (ii) for the payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this rule 4.3.1(e) is effective and binding on all members concerned.

4.3.2 If the company distributes to members (either generally or to specific members) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

4.4 Reserves

4.4.1 Subject to this constitution, the directors may set aside out of the profits of the company such reserves or provisions for such purposes as they think fit.

4.4.2 The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.

4.4.3 The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors think fit.

4.5 Carry forward of profits

The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

4.6 Dividend reinvestment plans

The directors may:

4.6.1 implement a dividend reinvestment plan on such terms as they think fit under which the whole or any part of any dividend due to members who participate in the plan on their shares or any class of shares may be applied in subscribing for securities of the company or of a related body corporate; and

- 4.6.2 amend, suspend or terminate any dividend reinvestment plan implemented by them.

4.7 **Dividend selection plans**

The directors may:

- 4.7.1 implement a dividend selection plan on such terms as they think fit under which participants may elect:
- (a) to receive a dividend from the company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
 - (b) to forego a dividend from the company in place of some other form of distribution from the company or another body corporate or a trust; and
- 4.7.2 amend, suspend or terminate any dividend selection plan implemented by them.

5. **TRANSFER AND TRANSMISSION OF SHARES**

5.1 **Transfer of shares**

- 5.1.1 Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, a member may transfer all or any of the member's shares by:
- (a) a proper transfer; or
 - (b) an instrument in writing in any usual form or in any other form that the directors approve.
- 5.1.2 A transferor of shares remains the holder of the shares transferred until the transfer is:
- (a) effected in accordance with the Applicable Rules; or
 - (b) registered and the name of the transferee is entered in the register of members in respect of the shares.
- 5.1.3 The company must not charge a fee for the registration of a transfer of shares.
- 5.1.4 An instrument of transfer referred to in rule 5.1.1 must:
- (a) be signed by or on behalf of both the transferor and the transferee unless:
 - (i) the instrument of transfer relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (ii) the transfer of the shares is effected by a document which is, or documents which together are, a proper transfer of those shares under the Corporations Act;
 - (b) if required by law to be stamped, be duly stamped;
 - (c) be left for registration at the registered office of the company, or at such other place as the directors determine, accompanied by such evidence as the directors may require to prove the title of the

transferor or the transferor's right to the shares (including the transferor's holding statement) and to prove the right of the transferee to be registered as the owner of the shares.

- 5.1.5 Subject to the powers vested in the directors under rules 5.2 and 5.3, where the company receives an instrument of transfer under rule 5.1.4, the company must register the transferee named in the instrument as the holder of the shares to which it relates.
- 5.1.6 The company may retain any registered instrument of transfer received by the company under rule 5.1.4 for such period as the directors think fit.
- 5.1.7 Except in the case of fraud, the company must return any instrument of transfer received under rule 5.1.4 which the directors decline to register to the person who deposited it with the company.
- 5.1.8 The directors may do anything that is necessary or desirable for the company to participate in any computerised, electronic or other system for facilitating the transfer of shares that may be owned, operated or sponsored by the ASX or a related body corporate of the ASX.
- 5.1.9 The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 5.1, whether for the purpose of giving effect to rule 5.1.8 or otherwise.

5.2 Power to decline registration of transfers

- 5.2.1 The directors may decline to register an instrument of transfer received under rule 5.1.4 where the transfer is not in registrable form or the refusal to register the transfer is permitted under the Listing Rules (whether or not the company is then a listed company) or the Applicable Rules.
- 5.2.2 If the directors decline to register a transfer under rule 5.2.1, the company must give to the party lodging the transfer written notice of the refusal and the precise reasons for the refusal within 5 business days after the date on which the transfer was lodged with the company, but failure to do so will not invalidate the decision of the directors to decline to register the transfer.

5.3 Power to suspend registration of transfers

Subject to the Listing Rules and the Applicable Rules while the company is a listed company, the directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

5.4 Transmission of shares

- 5.4.1 In the case of the death of a member, the only persons the company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
 - (a) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (b) the survivor or survivors where the deceased was a joint holder.
- 5.4.2 Nothing contained in rule 5.4.1 releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.
- 5.4.3 A person who becomes entitled to a share as a result of a transmission event may, upon producing such evidence as the directors may require to prove that person's entitlement to the share (including the holding statement in respect of the share) elect:

- (a) to be registered as the holder of the share by signing and serving on the company a notice in writing stating that election; or
- (b) to have some other person nominated by that person registered as the transferee of the share by executing a transfer of the share to that other person.

5.4.4 The provisions of this constitution relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with such changes as are necessary, to any transfer under rule 5.4.3(b) as if the relevant transmission event had not occurred and the transfer were signed by the registered holder of the share.

5.4.5 For the purpose of this constitution, where 2 or more persons are jointly entitled to any share in consequence of a transmission event they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants and rule 2.5 will apply to them.

5.4.6 Despite rule 5.4.1, the directors may register a transfer of shares signed by a member before a transmission event even though the company has notice of the transmission event.

5.5 Unmarketable Parcels

5.5.1 Subject to rule 5.6, the company may give notice to all Odd Lot Shareholders that it intends to sell those members' Unmarketable Parcels. The notice must be in writing and must nominate a date which is not earlier than 6 weeks after the date the notice is given as the effective date for the purpose of the sale (**Effective Date**).

5.5.2 If an Odd Lot Shareholder:

- (a) has not by the Effective Date given notice to the company that the member wishes to retain the member's shares; or
- (b) having given notice, revokes or withdraws the notice before the Effective Date,

then from the day after the Effective Date, the company and each of the company's officers is constituted the Odd Lot Shareholder's agent to sell that member's shares within a reasonable time through ASX and deal with the proceeds of sale in accordance with rule 5.5.4

5.5.3 An officer of the company may sign a transfer of, or otherwise facilitate the transfer of, shares sold under rule 5.5.2 on behalf of the Odd Lot Shareholder. If the shares of two or more Odd Lot Shareholders are transferred at or about the same time to one person, the transfer may be made by one share transfer.

5.5.4 After the company receives the proceeds of sale of an Odd Lot Shareholder's shares:

- (a) it may enter the name of the transferee of those shares in the company's share register as the holder of the shares sold, remove the name of the transferor of those shares from the company's share register and cancel any share certificate for those shares;
- (b) if the Odd Lot Shareholder whose shareholding has been sold had its Unmarketable Parcel held in a certificated form, the company is to give notice to the Odd Lot Shareholder not later than 14 days after receiving the proceeds of sale stating that:

- (i) the shares have been sold, the price per share and the total proceeds of sale received; and
 - (ii) the proceeds of sale will be retained by the company pending its receipt of the share certificate or other documentation sufficient to satisfy the company that the certificate has been lost or destroyed (**replacement documents**);
- (c) within 14 days after the later of the company receiving:
- (i) the proceeds of sale; or
 - (ii) any certificate or replacement documents for the shares sold,
 - (iii) the company is to ensure that the proceeds are sent to the Odd Lot Shareholder by cheque posted to the address of the member which is contained in the company's share register; and
- (d) if the proceeds are unclaimed or any certificate or replacement documents in respect of the shares sold are not given to the company, the company is to apply the proceeds of sale in accordance with the applicable law relating to unclaimed moneys.

5.5.5 An Odd Lot Shareholder whose shares are sold by the company in the exercise of the authority conferred by rule 5.5.2 hereby agrees to indemnify the company against any loss or liability suffered or incurred by the company arising from the sale of that member's shares.

5.5.6 The company may treat the Odd Lot Shareholder as the absolute owner of the shares and solely entitled to receive the proceeds of sale.

5.5.7 The transferee of the shares is not required to see to the regularity of the sale or the application of the proceeds of sale. After the transferee's name is entered in the company's share register as the holder of those shares, the validity of the transferee's title may not be questioned by any person. The remedy of any person aggrieved by the sale is in damages only and against the company exclusively.

5.5.8 The company is to bear all the costs incurred as a result of the sale of an Odd Lot Shareholder's shares which are not paid by the buyer of those shares.

5.6 **Restrictions on sale of Unmarketable Parcels**

5.6.1 Rule 5.5.1 can only be invoked once in any 12 month period.

5.6.2 The power to sell Unmarketable Parcels under rule 5.5 lapses immediately on the announcement of a takeover offer or takeover announcement. However, the procedure may be started again after the close of the offers made under the takeover offer or takeover announcement.

5.7 **Unmarketable Parcels created by transfer**

5.7.1 In addition to the powers contained in rule 5.5, the company may sell all the shares of an Odd Lot Shareholder without complying with the procedure in rule 5.5 if that Odd Lot Shareholders' holding was created by the transfer of an Unmarketable Parcel at the time a proper transfer was initiated or a paper based transfer was lodged. The proceeds of sale of those shares, less the costs of the sale, must be sent to the Odd Lot Shareholder within a reasonable time after the sale.

- 5.7.2 Rule 5.7.1 does not apply to any shares transferred prior to 1 September 1999.
- 5.7.3 The company may remove or change the right of an Odd Lot Shareholder whose shares may be sold under rule 5.7.1 to vote or receive dividends for those shares, provided that any dividends that have been withheld must be sent to the Odd Lot Shareholder within a reasonable time after those shares have been sold.

6. PLEBISCITE TO APPROVE PROPORTIONAL TAKEOVER SCHEMES

6.1 Definitions

In this rule 6:

"**prescribed resolution**", in relation to a proportional takeover scheme, means a resolution to approve the proportional takeover scheme passed in accordance with rule 6.3;

"**proportional takeover scheme**" means a takeover scheme that is made or purports to be made under section 618(1)(b) of the Corporations Act in respect of shares included in a class of shares in the company;

"**relevant class**", in relation to a proportional takeover scheme, means the class of shares in the company in respect of which offers are made under the proportional takeover scheme; and

"**relevant day**", in relation to a proportional takeover scheme, means the day that is 14 days before the end of the period during which the offers under the proportional takeover scheme remain open.

6.2 Transfers not to be registered

Subject to the Listing Rules and despite rules 5.1.5 and 5.2, a transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover scheme must not be registered unless and until a prescribed resolution to approve the proportional takeover scheme has been passed or is taken to have been passed in accordance with rule 6.3.

6.3 Resolution

6.3.1 Where offers have been made under a proportional takeover scheme, the directors must:

- (a) convene a meeting of the persons entitled to vote on the prescribed resolution for the purpose of considering and, if thought fit, passing a prescribed resolution to approve the proportional takeover scheme; and
- (b) ensure that such a resolution is voted on in accordance with this rule 6.3,

before the relevant day in relation to that proportional takeover scheme.

6.3.2 The provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to a meeting that is convened pursuant to rule 6.3.1.

6.3.3 The offeror under a proportional takeover scheme and any associates of the offeror are not entitled to vote on the prescribed resolution relating to that proportional takeover scheme and if they do vote, their votes must not be counted.

- 6.3.4 Subject to rule 6.3.3, a person who, as at the end of the day on which the first offer under the proportional takeover scheme was made, held shares of the relevant class is entitled to vote on the prescribed resolution relating to the proportional takeover scheme and, for the purposes of so voting, is entitled to 1 vote for each such share held at that time.
- 6.3.5 A prescribed resolution is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one half, and otherwise is to be taken to have been rejected.
- 6.3.6 If a prescribed resolution to approve a proportional takeover scheme has not been voted on in accordance with this rule 6.3 before the relevant day, a prescribed resolution to approve the proportional takeover scheme will be taken to have been passed in accordance with this rule 6.3 on the relevant day.

6.4 **Sunset**

Rules 6.1, 6.2 and 6.3 cease to have effect at the end of 3 years beginning:

- 6.4.1 where those rules have not been renewed in accordance with the Corporations Act, on the date that those rules were adopted by the company; or
- 6.4.2 where those rules have been renewed in accordance with the Corporations Act, on the date those rules were last renewed.

7. **GENERAL MEETINGS**

7.1 **Calling general meetings**

- 7.1.1 The directors may, whenever they think fit, call and arrange to hold a general meeting.
- 7.1.2 A general meeting may be called and arranged to be held only as provided by this rule 7.1 or as provided by sections 249D, 249E, 249F and 249G of the Corporations Act.
- 7.1.3 The directors may, by notice to the ASX, while the company is a listed company, change the venue for, postpone or cancel a general meeting unless the meeting is called and arranged to be held by the members or the court under the Corporations Act.
- 7.1.4 If a general meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

7.2 **Notice of general meetings**

- 7.2.1 Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Corporations Act and in the manner authorised by rule 14.1 to each person who is at the date of the notice:
- (a) a member;
 - (b) a director; or
 - (c) an auditor of the company;
 - (d) and, while the company is a listed company, to the ASX.

- 7.2.2 A notice of a general meeting must;
- (a) specify the date, time and place of the meeting;
 - (b) state the general nature of the business to be transacted at the meeting and any other matter that the Listing Rules require particular notice of; and
 - (c) specify a place and fax number or electronic address for the receipt of proxy appointments.
- 7.2.3 It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the appointment of the auditor or the fixing of the auditor's remuneration.
- 7.2.4 A person may waive notice of any general meeting by notice in writing to the company.
- 7.2.5 The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 7.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (a) the non-receipt or failure occurred by accident or error; or
 - (b) before or after the meeting, the person:
 - (i) has waived or waives notice of that meeting under rule 7.2.4; or
 - (ii) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- 7.2.6 A person's attendance at a general meeting:
- (a) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (b) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 7.2.3, unless the person objects to considering the matter when it is presented.

7.3 Admission to general meetings

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- 7.3.1 in possession of a pictorial-recording or sound-recording device;
- 7.3.2 in possession of a placard or banner;
- 7.3.3 in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- 7.3.4 who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;

- 7.3.5 who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- 7.3.6 who is not:
 - (a) a member or a proxy, attorney or representative of a member;
 - (b) a director; or
 - (c) an auditor of the company.

7.4 **Quorum at general meetings**

- 7.4.1 No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- 7.4.2 A quorum consists of:
 - (a) if the number of members entitled to vote is 2 or more - 2 of those members; or
 - (b) if only 1 member is entitled to vote - that member;
 - (c) present at the meeting.
- 7.4.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (a) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
 - (b) in any other case:
 - (i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

7.5 **Chairperson of general meetings**

- 7.5.1 The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- 7.5.2 If at a general meeting:
 - (a) there is no chairperson of directors;
 - (b) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (c) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at the meeting.

- 7.5.3 Subject to rule 7.5.1 and 7.5.2, if at a general meeting:
- (a) there is no deputy chairperson of directors;
 - (b) the deputy chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (c) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting;
- then the members present must elect as chairperson of the meeting;
- (d) another director who is present and willing to act; or
 - (e) if no other director willing to act is present at the meeting, a member who is present and willing to act.

7.6 Conduct of general meetings

- 7.6.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
- (a) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
 - (b) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- 7.6.2 The chairperson of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
- (a) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (b) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- 7.6.3 Subject to sections 250S and 250T of the Corporations Act, the chairperson of a general meeting may:
- (a) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 7.2.3; and
 - (b) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 7.2.2.
- 7.6.4 A decision by a chairperson under rule 7.6.1, 7.6.2 or 7.6.3 is final.
- 7.6.5 The chairperson of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- 7.6.6 If the chairperson exercises his or her right under rule 7.6.5, it is in the chairperson's sole discretion whether to seek the approval of the members present to the adjournment.

- 7.6.7 The chairperson's rights under rule 7.6.5 are exclusive and, unless otherwise required by the chairperson, no vote may be taken or demanded by the members present in respect of any adjournment.
- 7.6.8 No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 7.6.9 Where a meeting is adjourned, notice of the adjourned meeting must be given to the ASX while the company is a listed company, but need not be given to any other person. It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 7.6.10 Where a meeting is adjourned, the directors may, by notice to the ASX while the company is a listed company, change the venue of, postpone or cancel the adjourned meeting unless the meeting was called and arranged to be held by the members or the court under the Corporations Act. If a meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

7.7 Decisions at general meetings

- 7.7.1 Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.
- 7.7.2 In the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- 7.7.3 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands:
- (a) by the chairperson of the meeting;
 - (b) by at least 5 members present and having the right to vote on the resolution; or
 - (c) by a member or members present at the meeting and representing at least 5% of the total voting rights of all the members having the right to vote on the resolution on a poll.
- 7.7.4 A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- 7.7.5 Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 7.7.6 If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

7.7.7 A poll cannot be demanded at a general meeting on the election of a chairperson of the meeting or the adjournment of a meeting.

7.7.8 The demand for a poll may be withdrawn.

7.8A Direct voting

7.8A.1 Despite anything to the contrary in this constitution, the Board may decide that, at any general meeting or class meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the company by post, fax or other electronic means approved by the directors.

7.8A.2 The Board may prescribe regulations, rules and procedures in relation to direct voting, including the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

7.8 Voting rights

7.8.1 Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:

- (a) on a show of hands, every member present in person or by proxy, attorney or representative has 1 vote; and
- (b) on a poll, every member present has:
 - (i) 1 vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
 - (ii) a fraction of a vote for each partly paid share held by the member and in respect of which the member is entitled to vote, equivalent to the proportion which the amount paid up (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited). Amounts paid or credited as paid in advance of a call are ignored when calculating the fraction.

7.8.2 Where a person present at a general meeting represents personally or by proxy, attorney or representative more than 1 member:

- (a) on a show of hands the person is entitled to 1 vote only despite the number of members the person represents;
- (b) that vote will be taken as having been cast for all the members the person represents; and
- (c) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 7.9.7 in any instrument appointing the person as a proxy or attorney.

7.8.3 A joint holder may vote at any meeting in person or by proxy, attorney or representative as if that person was the sole holder. If more than 1 joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.

7.8.4 The parent or guardian of an infant member may vote at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the directors may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.

- 7.8.5 A person entitled to a share as a result of a transmission event may vote at any general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, not less than 48 hours before the meeting (or such shorter time as the directors determine), the directors have:
- (a) admitted that person's right to vote at that meeting in respect of the share; or
 - (b) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 5.4.3,
- and any vote so tendered by such a person must be accepted to the exclusion of the vote of the registered holder of the share.
- 7.8.6 Where a member holds any share upon which any call or other sum of money payable to the company has not been duly paid:
- (a) that member is only entitled to be present at a general meeting and vote if other shares are held by that member upon which no money is then due and payable; and
 - (b) upon a poll, that member is not entitled to vote in respect of that share but may vote in respect of any other shares held upon which no money is then due and payable.
- 7.8.7 A member's vote on a resolution must be disregarded where that is required by the Listing Rules.
- 7.8.8 An objection to the qualification of a person to vote at a general meeting:
- (a) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (b) must be referred to the chairperson of the meeting, whose decision is final.
- 7.8.9 A vote not disallowed by the chairperson of a meeting under rule 7.8.8 is valid for all purposes.

7.9 **Representation at general meetings**

- 7.9.1 Subject to this constitution, each member entitled to vote at a meeting of members may attend and vote:
- (a) in person or, where a member is a body corporate, by its representative;
 - (b) by proxy; or
 - (c) by attorney.
- If the member may cast 2 or more votes at a meeting the member may vote by 2 proxies or 2 attorneys.
- 7.9.2 A proxy, attorney or representative may, but need not, be a member of the company.
- 7.9.3 A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

- 7.9.4 Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Corporations Act, an appointment will be taken to confer authority:
- (a) to agree to a meeting being called by shorter notice than is required by the Corporations Act or by this constitution;
 - (b) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
 - (c) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
 - (d) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (iii) to act generally at the meeting; and
 - (e) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- 7.9.5 The chairperson of a meeting may:
- (a) permit a person claiming to be a representative to exercise his or her powers, even if the person is unable to establish to the chairperson's satisfaction that he or she has been validly appointed; or
 - (b) permit the person to exercise his or her powers on the condition that, if required by the company, he or she can produce evidence of the appointment within the time set by the chairperson.
- 7.9.6 Where a member appoints 2 proxies or attorneys, the following rules apply:
- (a) each proxy or attorney, as the case may be, may exercise half of the member's voting rights if the appointment does not specify a proportion or number of the member's voting rights the proxy or attorney may exercise;
 - (b) on a show of hands, neither proxy or attorney may vote; and
 - (c) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- 7.9.7 An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- 7.9.8 An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointer or the appointer's attorney.

- 7.9.9 (a) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received at the place and fax number or electronic address and before the time specified for that purpose in the notice calling the meeting.
- (b) The place may be the company's registered office or other place specified in the notice and the fax number may be the fax number at the company's registered office or other fax number specified in the notice.
- (c) The time may be a time, not less than 48 hours, before the time for holding the meeting and a time before the time for holding an adjourned meeting.
- 7.9.10 A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
- (a) a transmission event occurring in relation to the appointer; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed,
- if no notice in writing of the transmission event or revocation has been received by the company by the time and at 1 of the places at which the instrument appointing the proxy or attorney is required to be received under rule 7.9.9
- 7.9.11 A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under rule 7.9.9.
- 7.9.12 The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.
- 7.9.13 A proxy form issued by the company must provide for the appointer to appoint a proxy of the appointer's choice and may specify who is to be appointed as proxy if the appointer does not make a choice.

8. DIRECTORS

8.1 Appointment and removal of directors

- 8.1.1 The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but must not be more than 8 unless the company in general meeting determines otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- 8.1.2 The directors in office on the date that this constitution was adopted by the company continue in office but on the terms and conditions set out in this constitution.
- 8.1.3 Subject to rules 8.1.1, 8.1.5 and 8.1.12, the company may by resolution elect any natural person to be a director, either as an addition to the existing directors or as otherwise provided in this constitution.

- 8.1.4 Subject to rules 8.1.1 and 8.1.5, the directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy (including any casual vacancy arising where a director is removed from office under rule 8.1.10(a) and no person is appointed in place of that director under rule 8.1.10(b).
- 8.1.5 At each annual general meeting of the company, the following directors must retire from office:
- (a) each director, other than the managing director, appointed under rule 8.1.4 since the last annual general meeting;
 - (b) any director other than the managing director who, if he does not retire, will at the conclusion of the meeting have been in office for 3 or more years and for 3 or more annual general meetings since he or she was last elected to office; and
 - (c) if no director is otherwise required to retire from office under rules 8.1.5(a) or 8.1.5(b), at least one director other than the managing director.
- 8.1.6 The director or directors who must retire at an annual general meeting in accordance with rule 8.1.5(c) are those who have been longest in office since their last election but, as between persons who were last elected as directors on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- 8.1.6A If there is more than one managing director, only one of them, nominated by the Board, is entitled not to be subject to vacation of office under rule 8.1.5.
- 8.1.7 Subject to rule 8.1.12, the company may by resolution fill the office vacated by a director under rule 8.1.5 by electing a person to that office.
- 8.1.8 A director retiring from office under rule 8.1.5 is eligible for re-election and if the office vacated by that director is not filled by a resolution under rule 8.1.7 that director (if offering himself or herself for re-election) is to be taken as having been re-elected to that office unless:
- (a) it is expressly resolved not to fill the vacated office; or
 - (b) a resolution for the re-election of that director is put and lost.
- 8.1.9 The retirement of a director from office under rule 8.1.5 and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- 8.1.10 The company may:
- (a) by resolution in accordance with section 203D of the Corporations Act remove a director from office; and
 - (b) subject to rule 8.1.12, by resolution fill the office vacated by a director who is removed under rule 8.1.10(a) by electing another person to that office.
- 8.1.11 A person elected as a director under rule 8.1.10(b) must retire under rule 8.1.5 on the same day that the director in whose place he or she was appointed would have had to retire under rule 8.1.5 (as applicable) if that director had not been removed from office under rule 8.1.10(a).
- 8.1.12 A person may only be elected to the office of a director at a general meeting if:

- (a) he or she is a director retiring from office under rule 8.1.5 and standing for re-election at that meeting;
- (b) he or she has been nominated by the directors for election at that meeting;
- (c) if the person is a member, he or she has, at least 60 days before the meeting served on the company:
 - (i) a notice signed by him or her signifying his or her desire to be a candidate for election at that meeting;
 - (ii) an Affiliation Declaration signed by him or her; and
 - (iii) sufficient material in writing to permit the Prudential Committee to conduct the inquiries necessary to determine whether or not the candidate complies with the Prudential Criteria;

or;

- (d) whether or not the person is a member, some member intending to nominate him or her for election at that meeting, has at least 60 days before the meeting served on the company a notice signed by the member signifying the member's intention to nominate the person for election, which notice is accompanied by:
 - (i) a notice signed by the proposed nominee signifying his or her consent to the nomination;
 - (ii) an Affiliation Declaration signed by the proposed nominee; and
 - (iii) sufficient material in writing to permit the Nomination and Prudential Committee to conduct the inquiries necessary to determine whether or not the proposed nominee complies with the Prudential Criteria.

8.2 Independent Individuals to Comprise Majority of Directors

Notwithstanding the provisions of rule 8.1:

8.2.1 No person other than an Independent Individual shall be elected or appointed to the Board where, immediately following such election or appointment, Independent Individuals shall not comprise the majority of directors at the relevant time. Any such purported election or appointment in breach of this rule shall be void.

8.2.2 Where, as a result of:

- (a) the vacation of the office of director by any Independent Individual; or
- (b) any individual who was previously an Independent Individual ceasing to have the status of an Independent Individual;

or for any other reason the Independent Individuals who are directors cease to comprise the majority of directors, then one or more Executive Directors designated by rule 8.2.3 (together with any alternate(s) appointed by such Executive Director(s)) shall cease to hold or exercise any voting rights as a director until such time as the majority of Independent Individuals is restored, whether through:

- (c) vacation of office by any director who is not an Independent Individual;
- (d) the appointment or election of any Independent Individual(s); or
- (e) any change in the status of any director such that they become an Independent Individual when they did not previously have that status.

8.2.3 Where rule 8.2.2 requires any Executive Director(s) to cease to hold or exercise any voting rights as a director at any time then the Executive Director who shall be designated to cease to hold such rights will be the Executive Director last appointed or elected as a director, or, as between Executive Directors appointed on the same day, an Executive Director determined by lot (in the absence of agreement) to be the director so designated.

8.3 Ineligible Individuals

8.3.1 Notwithstanding the provisions of rule 8.1, no person who is an Ineligible Individual shall be elected or appointed to the Board and any such purported election or appointment in breach of this clause shall be void.

8.3.2 Where an individual becomes an Ineligible Individual solely by virtue of being the subject of a Prudential Notification then such person shall continue to be an Ineligible Individual unless and until the relevant Prudential Notification:

- (a) has been withdrawn or revoked; or
- (b) has been overturned by a due judicial or administrative process.

8.3.3 Where any director ceases to hold office by virtue of being the subject of:

- (a) any determination of non-compliance with the Prudential Criteria; or
- (b) any Prudential Notification;

then they cease to hold office effective upon such determination being made or such Prudential Notification being given and shall not be reinstated as director where the relevant determination or Prudential Notification is withdrawn, revoked or overturned without being duly re-elected or re-appointed.

8.4 Affiliation Declarations and Affiliation Limits:

8.4.1 Where at any time:

- (a) a director is appointed or elected who is Affiliated with a Substantial Holder where such director had not declared that Affiliation prior to their appointment or election;
- (b) a director becomes Affiliated with any Substantial Holder; or
- (c) a Holder with whom a director is Affiliated becomes a Substantial Holder;

then the director must within 2 business days give the company a signed Affiliation Declaration declaring the relevant Affiliation with that Substantial Holder.

8.4.2 The Board or the Nomination and Prudential Committee at its own initiative may at any time determine to enquire of any director or Proposed Director:

-
- (a) whether or not full disclosure of all material information, facts or circumstances has been made in any Affiliation Declaration given by the relevant individual to the company; or
- (b) where no Affiliation Declaration has been made - whether or not there are facts or circumstances into which the Board or the Nomination and Prudential Committee should enquire to determine whether or not an Affiliation Declaration should have been made by the relevant individual.
- 8.4.3 The Board or Prudential Committee (as the case may be) may require the relevant individual to provide further information or evidence or otherwise assist and expedite such enquiries as requested by the Board or Nomination and Prudential Committee;
- 8.4.4 The Board may at its absolute discretion at any time after determining to commence or during the course of making enquiries:
- (a) declare that such director shall cease to hold or exercise any voting rights as a director effective from the time of commencement of such enquiries until those enquiries are completed; or
- (b) determine that such director should cease to hold or exercise any voting rights as a director pending the provision of further information evidence or assistance requested by the Board or by the Nomination and Prudential Committee.
- 8.4.5 Notwithstanding the foregoing provisions the Board may at any time at its absolute direction resolve that a director to be Affiliated with a particular Substantial Holder whether or not the relevant director has declared such Affiliation, and upon such resolution being passed that director shall be deemed so Affiliated unless and until that resolution is rescinded.
- 8.4.6 Notwithstanding the provisions of rule 8.1, no person Affiliated with a Substantial Holder shall be elected or appointed to the Board where, immediately following such election or appointment, the Affiliation Limit is breached in respect of the relevant Substantial Holder. Any such purported election or appointment in breach of this rule shall be void.
- 8.4.7 Where at any time the number of directors Affiliated with a Substantial Holder exceeds the Affiliation Limit for any reason whatsoever, then one or more of the relevant Affiliated directors designated by rule 8.4.8 (together with any alternate(s) appointed by such Affiliated director(s)) shall cease to hold or exercise any voting rights as a director until such time as compliance with the Affiliation Limit is restored, whether through:
- (a) vacation of office by any director who is an Affiliated director;
- (b) the appointment or election of any non-Affiliated directors; or
- (c) any change in the status of any director such that they become non-Affiliated directors when they did not previously have that status.
- 8.4.8 Where sub-rule 8.4.6 requires any Affiliated director(s) to cease to hold or exercise any voting rights as a director at any time then the Affiliated director who shall be designated to cease to hold such rights will be the Affiliated director last appointed or elected as a director, or, as between Affiliated directors appointed on the same day, an Affiliated director determined by lot (in the absence of agreement) to be the director so designated.

8.5 **Vacation of office**

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

- 8.5.1 becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- 8.5.2 becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- 8.5.3 is convicted on indictment of an offence and the directors do not within 1 month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- 8.5.4 fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors;
- 8.5.5 resigns by notice in writing to the company; or
- 8.5.6 becomes an Ineligible Individual.

8.6 **Remuneration of directors**

8.6.1 Each director is entitled to such remuneration out of the funds of the company as the directors determine, but the remuneration of non-executive directors may not exceed in aggregate in any financial year the amount fixed by the company in general meeting for that purpose.

8.6.2 The remuneration of a director:

- (a) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
- (b) may be a share of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under rule 8.6.2(a) or a share of a fixed sum under rule 8.6.2(b), will be taken to accrue from day to day.

8.6.3 The remuneration payable by the company to a director (other than a managing director, deputy managing director or executive director) must not include a commission on, or percentage of, profits or operating revenue.

8.6.4 In addition to his or her remuneration under rule 8.6.1, a director is entitled to be paid all travelling and other expenses properly incurred by that director in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.

8.6.5 If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 8.6.1.

8.6.6 Nothing in rule 8.6.1 restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 8.6.1.

- 8.6.7 The directors may:
- (a) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 8.6.1, a pension or lump sum payment in respect of past services rendered by that director; and
 - (b) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- 8.6.8 The directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.

8.7 Director need not be a member

- 8.7.1 A director is not required to hold any shares in the company to qualify for appointment.
- 8.7.2 A director is entitled to attend and speak at general meetings even though that director is not a member of the company.

8.8 Interested directors

- 8.8.1 A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- 8.8.2 A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a member or otherwise and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- 8.8.3 The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- 8.8.4 A director is not disqualified merely because of being a director from contracting with the company in any respect including:
- (a) selling any property to, or purchasing any property from, the company;
 - (b) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
 - (c) guaranteeing the repayment of any money borrowed by the company for a commission or profit;
 - (d) underwriting or guaranteeing the subscription for securities in the company or in any related body corporate or any other body

corporate promoted by the company or in which the company may be interested as a member or otherwise, for a commission or profit; or

- (e) being employed by the company or acting in any professional capacity (other than auditor) on behalf of the company.

- 8.8.5 No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- 8.8.6 No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- 8.8.7 Subject to rule 8.8.8, a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- (a) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
- (b) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
- (c) sign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.
- 8.8.8 Rule 8.8.7 does not apply if, and to the extent that, it would be contrary to the Corporations Act or, while the company is a listed company, the Listing Rules.
- 8.8.9 The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate and any regulations made under this constitution will bind all directors.

8.9 Powers and duties of directors

- 8.9.1 The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the Corporations Act, this constitution or while the company is a listed company, the Listing Rules, to be exercised by the company in general meeting.
- 8.9.2 Without limiting the generality of rule 8.9.1, the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- 8.9.3 The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- 8.9.4 The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.

- 8.9.5 The directors may:
- (a) appoint or employ any person to be an officer, agent or attorney of the company for such purposes, with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
 - (b) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (c) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

8.9.6 A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

8.9.7 The directors may do anything required to give effect to any resolution altering the company's share capital, including, where a member becomes entitled to a fraction of a share on a consolidation:

- (a) determining that fractions may be rounded up, down or to the nearest whole share in order to adjust the rights of all parties; and/or
- (b) appointing a trustee to sell any fractions on behalf of members, and to deal with the proceeds of any such sale in accordance with the following provisions.

If they determine to exercise their powers under paragraph (b), the directors shall procure as soon as is reasonably practicable that the aggregate of all the fractional entitlements to shares resulting from the consolidation are sold on ASX and that the appointed trustee distribute the net proceeds of the sale to those members entitled to a fraction of a share on consolidation in proportion to their fractional entitlements or to one of more charitable bodies nominated by the directors to receive such net proceeds. For this purpose, each member entitled to or who would otherwise be entitled to a fraction of a share on consolidation in proportion to their fractional entitlements shall irrevocably appoint each of the company and the secretary of the company severally as its attorney to complete and execute such instruments on the member's behalf as the attorney thinks necessary or desirable to give effect to the sale. The company shall bear all the costs of a sale made pursuant to this rule.

8.10 Proceedings of directors

8.10.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

8.10.2 The contemporaneous linking together by telephone or other electronic means of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and the rules relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or other electronic means.

8.10.3 A director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.

8.10.4 A meeting by telephone or other electronic means is to be taken to be held at the place determined by the chairperson of the meeting provided that at least 1 of the directors involved was at that place for the duration of the meeting.

8.11 Convening of meetings of directors

8.11.1 A director may, whenever the director thinks fit, convene a meeting of the directors.

8.11.2 A secretary must, on the requisition of a director, convene a meeting of the directors.

8.12 Notice of meetings of directors

8.12.1 Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:

- (a) a director, other than a director on leave of absence approved by the directors; or
- (b) an alternate director appointed under rule 8.17 by a director on leave of absence approved by the directors.

8.12.2 A notice of a meeting of directors:

- (a) must specify the time and place of the meeting;
- (b) need not state the nature of the business to be transacted at the meeting;
- (c) may be given immediately before the meeting;
- (d) may be given in person or by post or by telephone, fax or other electronic means; and
- (e) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.

8.12.3 A director or alternate director may waive notice of any meeting of directors by notifying the company to that effect in person or by post or by telephone, fax or other electronic means.

8.12.4 The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:

- (a) the non-receipt or failure occurred by accident or error;
- (b) before or after the meeting, the director or an alternate director appointed by the director:
 - (i) has waived or waives notice of that meeting under rule 8.12.3; or
 - (ii) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
- (c) the director or an alternate director appointed by the director attended the meeting.

8.12.5 The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:

- (a) the non-receipt or failure occurred by accident or error;
- (b) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (i) has waived or waives notice of that meeting under rule 8.12.3; or
 - (ii) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
- (c) the alternate director or the director who appointed the alternate director attended the meeting.

8.12.6 Attendance by a person at a meeting of directors waives any objection that person and:

- (a) if the person is a director, any alternate director appointed by that person; or
- (b) if the person is an alternate director, the director who appointed that person as alternate director,

may have to a failure to give notice of the meeting.

8.13 **Quorum at meetings of directors**

8.13.1 No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.

8.13.2 A quorum consists of:

- (a) if the directors have fixed a number for the quorum, that number of directors; and
- (b) in any other case, 2 directors,

present at the meeting of directors provided that any Non-Voting Director must not be counted towards a quorum.

8.13.3 If there is a vacancy in the office of a director then, subject to rule 8.13.4, the remaining director or directors may act.

8.13.4 If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors fixed under this constitution, the remaining director or directors must act as soon as possible:

- (a) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution; or
- (b) to convene a general meeting of the company for that purpose,

and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

8.14 Chairperson and deputy chairperson of directors

- 8.14.1 The directors may elect 1 of the directors to the office of chairperson of directors and may determine the period for which that director is to be chairperson of directors.
- 8.14.2 The directors may elect 1 of the directors to the office of deputy chairperson of directors and may determine the period for which that director is to be deputy chairperson of directors.
- 8.14.3 The office of chairperson of directors or deputy chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 8.6.5.
- 8.14.4 The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- 8.14.5 If at a meeting of directors:
- (a) there is no chairperson of directors;
 - (b) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (c) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
- then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chairperson of the meeting.
- 8.14.6 Subject to rules 8.14.4 and 8.14.5, if at a meeting of directors:
- (a) there is no deputy chairperson of directors;
 - (b) the deputy chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (c) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
- the directors present must elect 1 of themselves to be chairperson of the meeting.

8.15 Decisions of directors

- 8.15.1 A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- 8.15.2 Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present (excluding any Non-Voting Director(s)) and any such decision is for all purposes a determination of the directors.
- 8.15.3 Subject to rule 8.15.4, in the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- 8.15.4 Where only 2 directors are present or qualified to vote at a meeting of directors and there is an equality of votes upon any proposed resolution:

- (a) the chairperson of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is taken as having been lost.

8.16 Written resolutions

8.16.1 If:

- (a) all of the directors, other than:
 - (i) any director who is a Non-Voting Director or a director on leave of absence approved by the directors;
 - (ii) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (b) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

8.16.2 For the purposes of rule 8.16.1:

- (a) the meeting is to be taken as having been held:
 - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- (b) 2 or more separate documents in identical terms each of which is assented to by 1 or more directors are to be taken as constituting 1 document; and
- (c) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, or by telephone, fax or other electronic means.

8.16.3 Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

8.17 Alternate directors

- 8.17.1 A director may, with the approval of the directors, appoint a person to be the director's alternate director for such period as the director thinks fit.
- 8.17.2 An alternate director may, but need not, be a member or a director of the company.
- 8.17.3 One person may act as alternate director to more than 1 director.
- 8.17.4 An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- 8.17.5 An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- 8.17.6 In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
- 8.17.7 The office of an alternate director is vacated if and when the appointer vacates office as a director.
- 8.17.8 The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- 8.17.9 An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the company has received notice in writing of the appointment or termination.
- 8.17.10 An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- 8.17.11 In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- 8.17.12 An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- 8.17.13 An alternate director is not entitled to be remunerated by the company for his or her services as alternate director except as provided in rule 8.17.12.
- 8.17.14 An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

8.18 Committees of directors

- 8.18.1 The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- 8.18.2 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- 8.18.3 The rules applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.

- 8.18.4 Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the directors for the purposes of rule 8.6.5.

8.19 **Nomination and Prudential Committee**

- 8.19.1 The Board must have a standing committee of not less than 3 directors to be known as the "**Nomination and Prudential Committee**".
- 8.19.2 The majority of members of the Nomination and Prudential Committee must be Independent Individuals.
- 8.19.3 The Nomination and Prudential Committee must perform the following functions:
- (a) to formulate and modify from time to time as it thinks fit:
 - (i) Prudential Criteria;
 - (ii) guidelines identifying the nature of the written material required to permit the Nomination and Prudential Committee to conduct the enquiries necessary to form a view as to whether or not any Proposed Director complies with the Prudential Criteria;
 - (iii) a form of Affiliation Declaration;
 - (b) to determine whether or not individuals who are Proposed Directors from time to time comply with the Prudential Criteria;
 - (c) to determine from time to time at its own initiative or where directed by the Board whether or not any incumbent director, or Proposed Director whom the Nomination and Prudential Committee has previously determined to be a person complying with the Prudential Criteria should continue to be regarded as complying with those Prudential Criteria whether by virtue of any act, matter, thing or circumstance occurring or existing before or after the relevant director first held the office of director or became a Proposed Director as applicable and regardless of whether or not such act, matter, thing or circumstance was disclosed to the company or the Nomination and Prudential Committee at any time or was ascertainable from publicly available sources of information having regard to:
 - (i) the receipt by the company of any fresh facts or information;
 - (ii) the adoption of revised Prudential Criteria;
 - (iii) any change in circumstances; or
 - (iv) the receipt by the company of any Prudential Notification;
 - (d) to determine from time to time at its own initiative or where directed by the Board whether or not:
 - (i) any incumbent director, or Proposed Director, has disclosed all material facts, events and circumstances to the company in any Affiliation Declaration that person has previously made;
 - (ii) there are any facts, circumstances or information which indicates that a relevant individual should have given the company an Affiliation Declaration or an updated Affiliation Declaration.

- (e) to notify the Specified Regulator where it makes a determination under rule 8.19.3(c) that a director does not satisfy the Prudential Criteria which notification must occur immediately following the making of such determination;
- (f) to notify the directors or the members as applicable where it makes a determination under rule 8.19.3(c) that a Proposed Director does not satisfy the Prudential Criteria which notification must occur immediately following the making of such determination;
- (g) to perform such other functions delegated by the Board from time to time.

8.19.4 Where any notice is served on the company under rule 8.1.12(c) or 8.1.12(d), the Nomination and Prudential Committee must determine within 30 days of such notice being served on the company whether or not the relevant Proposed Director complies with the Prudential Criteria. The Nomination and Prudential Committee must communicate promptly the outcome of its determination to both the Proposed Director and the company in writing.

8.19.5 The Nomination and Prudential Committee may decline at its discretion to determine whether or not any Proposed Director complies with the Prudential Criteria if it forms the opinion at its absolute discretion that the relevant person has provided insufficient material or assistance in any enquiries of the Nomination and Prudential Committee for it to make such a determination, provided that any such decision by the Nomination and Prudential Committee to decline to determine compliance must be communicated promptly in writing to the Proposed Director and the company.

8.20 Delegation to individual directors

8.20.1 The directors may delegate any of their powers to 1 director.

8.20.2 A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

8.20.3 Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 8.6.5.

8.21 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

8.21.1 a defect in the appointment of the person as a director;

8.21.2 the person being disqualified to be a director or having vacated office; or

8.21.3 the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

9. EXECUTIVE OFFICERS

9.1 Managing directors

9.1.1 The directors may appoint 1 or more of the directors to the office of managing director.

9.1.2 A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

9.2 Deputy managing directors

9.2.1 The directors may appoint 1 or more of the directors to the office of deputy managing director.

9.2.2 A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

9.3 Executive directors

9.3.1 A reference in this rule 9.3 to an executive director is a reference to a director who is also an officer of the company or of a related body corporate in a capacity other than director, managing director or deputy managing director.

9.3.2 The directors may confer on an executive director such title as they think fit.

9.3.3 An executive director may be appointed on the basis that the executive director's appointment:

- (a) as a director automatically terminates if the executive director ceases to be an officer of the company or of a related body corporate in a capacity other than director; or
- (b) as an officer of the company or of a related body corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

9.4 Secretaries

9.4.1 The directors must appoint at least 1 secretary and may appoint additional secretaries.

9.4.2 The directors may appoint 1 or more assistant secretaries.

9.5 Provisions applicable to all executive officers

9.5.1 A reference in this rule 9.5 to an executive officer is a reference to a managing director, deputy managing director, executive director, secretary or assistant secretary appointed under this rule 9.

9.5.2 The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.

9.5.3 The remuneration payable by the company to an executive officer who is also a director must not include a commission on, or percentage of, operating revenue.

9.5.4 Subject to any contract between the company and the relevant executive officer, any executive officer of the company may be removed or dismissed by the directors at any time, with or without cause.

9.5.5 The directors may:

- (a) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
- (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.

- 9.5.6 An executive officer is not required to hold any shares to qualify for appointment as executive officer.
- 9.5.7 An act done by a person acting as an executive officer is not invalidated by reason only of:
- (a) a defect in the person's appointment as an executive officer; or
 - (b) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

10. INDEMNITY AND INSURANCE

10.1 Persons to whom rules 10.2 and 10.4 apply

Rules 10.2 and 10.4 apply:

- 10.1.1 to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 9.5.1) of the company; and
- 10.1.2 to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine.

10.2 Indemnity

The company must

- 10.2.1 indemnify; and
- 10.2.2 if requested by a person to whom this rule 10.2 applies enter into a deed indemnifying,

on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 10.2 applies for all losses or liabilities incurred by the person as an officer of the company or of a related body corporate including a liability for negligence or for reasonable costs and expenses incurred:

- 10.2.3 in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- 10.2.4 in connection with an application, in relation to such proceedings, in which a court grants relief to the person under the Corporations Act.

10.3 Extent of indemnity

The indemnity in rule 10.2:

- 10.3.1 is a continuing obligation and is enforceable by a person to whom rule 10.2 applies even though that person may have ceased to be an officer of the company or of a related body corporate;
- 10.3.2 applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- 10.3.3 operates only to the extent that the loss or liability is not covered by insurance.

10.4 Insurance

The company may, to the extent permitted by law:

- 10.4.1 purchase and maintain insurance; or
- 10.4.2 pay or agree to pay a premium for insurance,

for any person to whom this rule 10.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate including a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

10.5 **Savings**

Nothing in rule 10.2 or 10.4:

- 10.5.1 affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- 10.5.2 limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

11. **WINDING UP**

11.1 **Distribution of surplus**

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- 11.1.1 if the company is wound up and the property of the company is more than sufficient:
- (a) to pay all of the debts and liabilities of the company; and
 - (b) the costs, charges and expenses of the winding up,
- the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- 11.1.2 for the purpose of calculating the excess referred to in rule 11.1.1, any amount unpaid on a share is to be treated as property of the company;
- 11.1.3 the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 11.1.1 must be reduced by the amount unpaid on that share at the date of the distribution; and
- 11.1.4 if the effect of the reduction under rule 11.1.3 would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

11.2 **Division of property**

- 11.2.1 If the company is wound up, the liquidator may, with the sanction of a special resolution:
- (a) divide among the members the whole or any part of the property of the company; and
 - (b) determine how the division is to be carried out as between the members or different classes of members.
- 11.2.2 Any division under rule 11.2.1 may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.

- 11.2.3 Where a division under rule 11.2.1 is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- 11.2.4 If any of the property to be divided under rule 11.2.1 includes securities with a liability to calls, any person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- 11.2.5 Nothing in this rule 11.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- 11.2.6 Rule 4.3 applies, so far as it can and with such changes as are necessary, to a division by a liquidator under rule 11.2.1 as if references in rule 4.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 11.2.1 respectively.

12. MINUTES AND RECORDS

12.1 Minutes of meetings

- 12.1.1 The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors are recorded in books kept for the purpose, within 1 month after the relevant meeting is held.
- 12.1.2 The directors must ensure that the company records in the minutes of a meeting in respect of each resolution in the notice of meeting;
- (a) the total number of proxy votes exercisable by all validly appointed proxies; and
- (b) how many proxy votes were for, against or abstained from the resolution or were to vote at the proxy's discretion.
- 12.1.3 If a poll is taken on the resolution, in addition to the information in rules 12.1.2(a) and 12.1.2(b), the minutes must also record the total number of votes cast on the poll, and the number of votes for, against and abstaining from the resolution.

12.2 Minutes of resolutions passed without a meeting

The directors must ensure minutes of resolutions passed by directors without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.

12.3 Signing of minutes

- 12.3.1 The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.
- 12.3.2 The minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

12.4 Minutes as evidence

A minute that is recorded and signed under rules 12.1, 12.2 and 12.3 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

12.5 Inspection of records

- 12.5.1 The directors must ensure the minute books for general meetings are open for inspection by members free of charge.
- 12.5.2 Subject to rule 12.5.1 the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members (other than directors).
- 12.5.3 A member (other than a director) does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

13. EXECUTION OF DOCUMENTS**13.1 Manner of execution**

The company may execute a document if the document is signed by:

- 13.1.1 2 directors; or
- 13.1.2 a director and a secretary.

13.2 Common seal

The company may have a common seal. If the company has a common seal, rules 13.3 to 13.6 will apply.

13.3 Safe custody of seal

The directors must provide for the safe custody of the seal.

13.4 Use of seal

- 13.4.1 The seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- 13.4.2 The authority to use the seal may be given before or after the seal is used.
- 13.4.3 Until the directors otherwise determine, every document to which the seal is fixed must be signed by:
- (a) 2 directors;
 - (b) a director and a secretary; or
 - (c) a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

13.5 Seal register

- 13.5.1 The company may keep a seal register. If the company does keep a seal register the company must enter in the register particulars of any document on which the seal is fixed (other than a certificate for securities of the company), giving in each case:
- (a) the date of the document;
 - (b) the names of the parties to the document;

- (c) a short description of the document; and
- (d) the names of the persons signing the document under rule 13.4.3.

13.5.2 The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this rule 13.5.

13.5.3 Failure to comply with rules 13.5.1 or 13.5.2 does not invalidate any document to which the seal is properly fixed.

13.6 Duplicate seal

13.6.1 The company may have 1 or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept. Each duplicate seal must be a facsimile of the common seal of the company with the addition on its face of the words “duplicate seal” and the name of the place where it is to be used.

13.6.2 A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

14. NOTICES

14.1 Notices by the company to members

14.1.1 A notice may be given by the company to a member:

- (a) by serving it personally at, or by sending it by post in a prepaid envelope to, the member’s address as shown in the register of members or such other address, or by sending it to the fax number or electronic address the member has supplied to the company for the giving of notices; or
- (b) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.

14.1.2 A notice may be given by the company to the joint holders of a share by giving the notice in the manner authorised by rule 14.1.1 to the joint holder first named in the register of members in respect of the share.

14.1.3 A notice may be given by the company to a person entitled to a share as a result of a transmission event by serving it or sending it in the manner authorised by rule 14.1.1(a) addressed to the name or title of the person, at or to such address, fax number or electronic address supplied to the company for the giving of notices to that person, or if no address, fax number or electronic address has been supplied, at or to the address, fax number or electronic address to which the notice might have been sent if the relevant transmission event had not occurred.

14.1.4 The fact that a person has supplied a fax number or an electronic address for the giving of notices does not require the company to give any notice to that person by fax or electronic means.

14.1.5 A notice given to a member in accordance with rules 14.1.1 or 14.1.2 is, despite the occurrence of a transmission event and whether or not the company has notice of that occurrence:

- (a) duly given in respect of any shares registered in that person’s name, whether solely or jointly with another person; and
- (b) sufficient service on any person entitled to the shares as a result of the transmission event.

- 14.1.6 A notice given to a person who is entitled to a share as a result of a transmission event is sufficient service on the member in whose name the share is registered.
- 14.1.7 Any person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 14.1.
- 14.1.8 A signature to any notice given by the company to a member under this rule 14.1 may be in writing or a facsimile printed or affixed by some mechanical or other means.
- 14.1.9 A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

14.2 **Notices by the company to directors**

Subject to this constitution, a notice may be given by the company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or such other address, or by sending it to the fax number or electronic address, as the director or alternate director has supplied to the company for the giving of notices.

14.3 **Notices by members or directors to the company**

Subject to this constitution, a notice may be given by a member, director or alternate director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by sending it to the principal fax number or principal electronic address of the company at its registered office.

14.4 **Notices posted to addresses outside the Commonwealth**

A notice sent by post to an address outside the Commonwealth must be sent by airmail, fax or in another way that ensures it is received quickly.

14.5 **Time of service**

- 14.5.1 Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
- (a) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (b) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 14.5.2 Where a notice is sent by fax or electronic means, service of the notice is to be taken to be effected on the day after the date it is sent.
- 14.5.3 Where the company gives a notice under rule 14.1.1(b) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

14.6 **Other communications and documents**

Rules 14.1 to 14.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

14.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by fax or electronic means.

15. GENERAL

15.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the company is registered, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

15.2 Prohibition and enforceability

15.2.1 Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.

15.2.2 Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.