

**CONSTITUTION
OF
CERAMIC FUEL CELLS LIMITED
ACN 055 736 671**

PRELIMINARY

The name of the Company is Ceramic Fuel Cells Limited.

The Company is a public company limited by shares.

The replaceable rules in the Corporations Act do not apply to the Company.

INTERPRETATION

Definitions

1. In this Constitution unless the context requires otherwise:

ASX means Australian Stock Exchange Limited.

Auditor means any person appointed to perform the duties of an auditor of the Company.

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Business Day has the meaning given to that term in the Listing Rules.

Call includes any instalment of a call and any amount due on issue of any Share.

Certificate means a Certificate for Securities issued in accordance with the Corporations Act.

Chairperson means the chairperson of Directors.

CHES has the meaning given to that term in the Listing Rules.

CHES Approved Securities means Securities which are approved by SCH in accordance with the SCH Business Rules

Committee means a committee to which powers have been delegated by the Board under **clause 89**

Company means Ceramic Fuel Cells Limited.

Constitution means this constitution as amended.

Corporations Act means the *Corporations Act 2001* (Cth) and includes a reference to the Corporations Regulations.

Director means a person appointed to perform the duties of the office of Director of the Company in accordance with this Constitution and where appropriate includes an alternate Director.

Holder means:

- (a) in respect of a Share, a Member who holds Shares; and
- (b) in respect of any other Security, the person who is entered in the records kept by the Company as the Holder of that Security.

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.

Managing Director means any person appointed to perform the duties of managing director of the Company.

Marketable Parcel means the number of Securities which in aggregate constitutes a marketable parcel of Securities within the meaning of the Listing Rules.

Market Transfer means:

- (a) a transfer of Shares pursuant to or connected with a transaction entered into on the stock market operated by ASX and includes a Proper SCH Transfer; or
- (b) an allotment of Shares as a result of the exercise of any rights, options or convertible notes where such rights, options or notes are traded on a market operated by the ASX.

Meeting means a meeting of Members, other Holders or Directors, as the case may be.

Member means any person entered in the Register as the Holder of a Share.

Member Present means a Member present at any Meeting of the Company in person or by proxy or attorney or, in the case of a body corporate, by a duly appointed Representative.

Minority Holder under **clauses 33 to 37** means any Holder who from time to time holds less than a Marketable Parcel.

Notice under **clauses 33 to 37**, means the notice given to Minority Holders in accordance with **clause 34**.

Notice Date means the date of the Notice sent by the Company under **clause 34(a)**.

Office means the registered office of the Company.

Official Quotation in respect of Securities means quotation on the official list of ASX.

Person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.

Proper SCH Transfer means a transfer which is under the scope of and which complies with, or is taken to comply with, the SCH Business Rules.

Register means:

- (a) in respect of Shares, the register of Members kept pursuant to the Corporations Act; and
- (b) in respect of other Securities, the records of Holders of those Securities kept by the Company.

Registered Address means the address of a Shareholder specified on a transfer or any other address of which the Shareholder notifies the Company as a place at which the Shareholder is willing to accept service of notices.

Representative means a person authorised to act as a representative of a Holder which is a body corporate, as permitted by the Corporations Act.

Resolution means a Resolution other than a Special Resolution.

Restricted Securities has the meaning given to that term in the Listing Rules.

Restriction Agreement has the meaning given to that term in the Listing Rules.

Retiring Director means a Director who is required to retire under **clause 81(1)** and a Director who ceases to hold office under **clause 80**.

Rules means these rules, as amended.

Sale Consideration under **clauses 33** to **37** means the proceeds of any sale or other disposal of Securities pursuant to that clause.

SCH has the meaning given to that term in the Listing Rules.

SCH Business Rules means the Business Rules of the SCH and any other rules of SCH which are applicable while the Company has CHESSE Approved Securities, each as amended or replaced from time to time, except to the extent of any express written waiver by SCH.

Seal means any common Seal or duplicate Seal of the Company.

Secretary means a person appointed as, or to perform the duties of, a secretary of the Company.

Securities include Shares, units of Shares, rights to Shares, options to acquire Shares, instalment receipts and other securities with rights of conversion to equity in the Share capital of the Company.

Share means any Share in the Share capital of the Company.

Shareholders Present means Shareholders present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

Special Resolution has the meaning given to that term in the Corporations Act.

Takeover under **clauses 33** to **37** means:

- (a) a takeover bid; or
- (b) a similar bid under a foreign regime.

Writing and **written** includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.

Interpretation

2. A word or phrase which is given a meaning by the Corporations Act has the same meaning in this Constitution. Words in the singular include the plural and vice versa.
3. A reference to the Corporations Act or any other statute or regulation is to the Corporations Act, statute or regulation as modified or substituted.
4. A reference to a body or entity (whether corporate or unincorporated) includes, if the body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to the body or entity established or constituted in its place or nearly as may be succeeding to its power, objects or functions.
5. Unless the contrary intention appears:
 - (a) words in the singular include the plural and vice versa;
 - (b) "includes" means includes without limitation; and
 - (c) the term "person" or words importing persons includes bodies corporate.
6. The headings do not affect the construction of this Constitution.

Compliance with the Listing Rules

7. If any Securities of the Company are subject to Official Quotation, the following clauses 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 requires 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 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.

Compliance with SCH Business Rules

8. The Company shall, notwithstanding anything to the contrary in this Constitution, comply with the SCH Business Rules.

SHARES

Power to Issue Shares

9. Except as provided by this Constitution and the Listing Rules, all unissued Shares are under the control of the Board which may grant options on the Shares, issue or otherwise dispose of the Shares on the terms and conditions and for the consideration it thinks fit.

Class Rights

10. Without affecting any special rights conferred on the holders of any Shares, any Share in the capital of the Company may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of Share capital, payment of Calls or otherwise, as the Board may determine.

Surrender of Shares

11. In its discretion, the Board may accept a surrender of Shares by way of compromise of any question as to whether or not those Shares have been validly issued or in any other case where the surrender is within the powers of the Company. Any Shares surrendered may be sold or re-issued in the same manner as forfeited Shares.

Joint Holders

12. Where two or more persons are registered as the Holders of any Shares, they are considered to hold the Shares as joint tenants with benefits of survivorship subject to the following provisions:
- (a) the Company is not bound to register more than three persons as the Holders of the Shares (except in the case of personal representatives of a deceased shareholder);
 - (b) the joint Holders of the Shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Shares;
 - (c) on the death of any one of the joint Holders, the survivor is the only person recognised by the Company as having any title to the Shares but the Board may require evidence of death and the estate of the deceased joint Holder is not released from any liability in respect of the Shares;
 - (d) any one of the joint Holders may give a receipt for any dividend, bonus or return of capital payable to the joint Holders;
 - (e) only the person whose name stands first in the Register as one of the joint Holders of the Shares is entitled, if the Company determines to issue certificates for Shares, to delivery of a Certificate relating to the Shares or to receive notices from the Company and any notice given to that person is considered to be notice to all the joint Holders; and
 - (f) any one of the joint Holders may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the Shares as if that joint Holder was solely entitled to the Shares. If more than one of the joint Holders are present personally or by duly authorised representative, proxy or attorney, only the vote of the joint Holder whose name appears first in the Register counts.

Non-recognition of equitable or other interests

13. Except as otherwise provided in this Constitution or as required by law, the Company is entitled to treat the registered Holder of any Share as the absolute owner of the Share and is not bound to recognise (even when having notice) any equitable or other claim to or interest in the Share on the part of any other person.

CERTIFICATES

Certificates

14. (a) If the Company participates in a computerised or electronic share transfer system conducted in accordance with the Listing Rules, the Company is not required to issue a Certificate for the Securities held by a Holder and may cancel a Certificate without issuing a duplicate Certificate where the non issue of a Certificate is permitted by the Listing Rules or the SCH Business Rules.
- (b) Where Securities are not subject to a computerised or electronic Share transfer system, a Certificate (including a duplicate Certificate) for the Securities shall be issued in accordance with the provisions of the Corporations Act, this Constitution and the Listing Rules.
- (c) Where the Company has determined not to issue Certificates or to cancel existing Certificates, a Holder shall have the right to receive such statements of holdings as are required to be distributed to a Holder under the Corporations Act, the Listing Rules or the SCH Business Rules.

CALLS

Power to make Calls

15. Subject to the terms on which any Shares may have been issued, the Board may make Calls on the Shareholders in respect of money unpaid on their Shares. Each shareholder is liable to pay the amount of each Call in the manner, at the time and at the place specified by the Board. Calls may be made payable by instalments.

Obligation for Calls

16. The Company may make arrangements on the issue of Shares for a difference between the Holders of those Shares in the amount of Calls to be paid and the time of payment of the Calls.

When a Call is made and notice of Call

17. (a) A Call is taken to have been made at the time when the Resolution of the Board authorising the Call was passed. The Call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the Call is due. The non-receipt of a notice of any Call by, or the accidental omission to give notice of any Call to, any Shareholder does not invalidate the Call.
- (b) The Directors shall send notice of a Call to the Holders of Securities upon whom a Call is made as required by the Listing Rules or, if the Listing Rules do not apply, at least 10 Business Days (or such other period of notice as provided by any terms of issue affecting the relevant Securities) before the due date for payment. The notice must specify the time or times and place of payment and such other information as the Directors determine and the Listing Rules require.

Interest on the late payment of Calls

18. If any sum payable in respect of a Call is not paid on or before the date for payment, the Shareholder from whom the sum is due is to pay interest on the unpaid amount from the

due date to the date of payment at the rate the Board determines. The Board may waive the whole or part of any interest paid or payable under this Rule.

Recovery of unpaid calls

19. (a) In the event of non-payment of any call, the Company may proceed to recover the sum payable with interest and expenses (if any), by action, suit or otherwise. This right is without prejudice to the right under **clauses 22** to 32 to forfeit the Security of any Holder in arrears and either or both of such rights may be exercised by the Directors in their discretion.
- (b) On the trial of any action for the recovery of any call, or of any interest or expenses in respect of any call it is sufficient to prove that:
- (i) the name of the Holder sued is entered in the Register as the Holder or one of the Holders of the Securities in respect of which such debt accrued;
 - (ii) the Resolution making the call is duly recorded in the minute book;
 - (iii) notice of such call was duly given to the registered Holder of the Securities under this Constitution, or in the case of calls or instalments payable at fixed times, by the terms of issue of any Security; and
 - (iv) such sum or call has not been paid.
- (c) Proof of the matters described in **clause 19(b)** is conclusive evidence of the debt and it is not necessary to prove the appointment of the Directors who made the allotment or call, the passing of the Resolution or any other matters whatsoever.

Extinguishment of liability on calls

20. Subject to the Listing Rules and the Corporations Act, the Directors may at any time enter into contracts on behalf of the Company with any or all of the Holders holding partly paid Securities, to extinguish the liability of those Holders to pay to the Company any amount unpaid on the Securities held by them.

Instalments

21. If, by the terms of an issue of Shares, any amount is payable in respect of any Shares by instalments, every instalment is payable as if it is a Call duly made by the Board of which due notice had been given, and all provisions of this Constitution with respect to the payment of Calls and of interest or to the forfeiture of Shares for non-payment of Calls or with respect to liens or charges apply to the instalment and to the Shares in respect of which it is payable.

FORFEITURE AND LIEN

Notice requiring payment of sums payable

22. If any Shareholder fails to pay any sum payable in respect of any Shares, either for issue money, Calls or instalments, on or before the day for payment, the Board may serve a notice on the Shareholder requiring that Shareholder to pay the sum together with interest accrued and all expenses incurred by the Company by reason of the non-payment. The notice may be served at any time whilst any part of the sum remains unpaid.

Time and place for payment

23. The notice referred to in **clause 22** is to name a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made and that, if payment is not made by the time and at the place specified, the Shares in respect of which the sum is payable are liable to be forfeited.

Forfeiture on non-compliance with notice

24. If there is non-compliance with the requirements of any notice given under **clause 22**, any Shares in respect of which notice has been given may be forfeited by a Resolution of the Board passed at any time after the day specified in the notice for payment. The forfeiture is to include all dividends, interest and other money payable by the Company in respect of the forfeited Shares and not paid before the forfeiture.

Notice of forfeiture

25. When any Share is forfeited, notice of the Resolution of the Board must be given to the Shareholder in whose name the Share was registered immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Register. Failure to give notice or make the entry as required by this Rule does not invalidate the forfeiture.

Disposal of forfeited Shares

26. Any forfeited Share is considered to be the property of the Company and the Board may sell or otherwise dispose of or deal with the Share in any manner it thinks fit and with or without any money paid on the Share by any former Holder being credited as paid up.

Annulment of forfeiture

27. At any time before any forfeited Share is sold or otherwise disposed of the Board may annul the forfeiture of the Share on any condition it thinks fit.

Liability despite forfeiture

28. Any shareholder whose Shares have been forfeited is, despite the forfeiture, liable to pay and must immediately pay to the Company all sums of money, interest and expenses owing on or in respect of the forfeited Shares at the time of forfeiture, together with expenses and interest from that time until payment at the rate the Board determines. The Board may enforce the payment or waive the whole or part of any sum paid or payable under this Rule as it thinks fit.

Company's lien or charge

29. (1) The Company may do all things necessary or appropriate for it to do under the SCH Business Rules to protect any lien or other right to which it may be entitled under any law or this Constitution.
- (2) The Company has a first and paramount lien or charge for unpaid Calls, instalments, interest due in relation to any Calls or instalments and any amounts the Company is called on by law to pay in respect of the Shares of a shareholder on Shares registered in the name of the Shareholder in respect of which the Calls, instalments and interest are due and unpaid (whether then payable or not) or in

respect of which the amounts are paid and on the proceeds of sale of the Shares. The lien or charge extends to all dividends and bonuses declared in respect of the Shares but, if the Company registers a transfer of any Shares on which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the Shares are freed and discharged from the lien or charge of the Company in respect of that claim.

Sale of Shares to enforce lien

30. For the purpose of enforcing a lien or charge, the Board may sell the Shares which are subject to the lien or charge in any manner it thinks fit and with or without giving any notice to the Shareholder in whose name the Shares are registered.

Title to Shares forfeited or sold to enforce lien

31. (1) In a sale or a re-issue of forfeited Shares or in the sale of Shares to enforce a lien or charge, an entry in the Board's minute book that the Shares have been forfeited, sold or re-allotted in accordance with this Constitution is sufficient evidence of that fact as against all persons entitled to the Shares immediately before the forfeiture, sale or re-issue of the Shares. The Company may receive the purchase money or consideration (if any) given for the Shares on any sale or re-issue.
- (2) In a re-issue, a Certificate signed by a Director or the Secretary to the effect that the Shares have been forfeited and the receipt of the Company for the price of the Shares constitutes a good title to them.
- (3) In a sale, the Company may appoint a person to execute a transfer in favour of the person to whom the Shares are sold.
- (4) On the issue of the receipt or the execution of the transfer the person to whom the Shares have been re-allotted or sold is to be registered as the Holder of the Shares, discharged from all Calls or other money due in respect of the Shares prior to the re-issue or purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration and the person's title to the Shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-issue.
- (5) The net proceeds of any sale or re-issue are to be applied first in payment of all costs in relation to the enforcement of the lien or charge or the forfeiture and of the sale or re-issue, next in satisfaction of the amount in respect of which the lien or charge exists as is then payable to the Company (including interest) or the amount in respect of the forfeited Shares then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the Holder of the Shares immediately prior to the sale or re-issue or to the person's executors, administrators or assigns on the production of any evidence as to title required by the Board.

Cancellation of forfeited Securities

32. Subject to the Listing Rules and the Corporations Act, the Company may cancel any Securities forfeited under this **clause 32**.

SALE OF NON-MARKETABLE PARCELS

Power to sell non-marketable parcels

33. (a) Subject to the Listing Rules, the Company may, and is authorised to, dispose of the Security holdings of Minority Holders' Securities in the manner set out in this **clause 33**. Subject to **clause 33(b)**, this **clause 33** may be invoked only once in any twelve month period.
- (b) **Clause 33(a)** shall cease to have effect following the announcement of a Takeover and begins to have effect once more after the close of the offers made under the Takeover.

Notice

34. (a) The Company shall not sell the Securities of a Minority Holder unless it has, not less than 42 days prior to the sale, given a Notice in writing to the Minority Holder of its intention to dispose of the Minority Holder's Securities.
- (b) Each Minority Holder on whom a Notice has been served, may by notice in writing addressed to the Secretary and delivered to the registered office of the Company within 42 days after the Notice Date request the Company to exempt the Minority Holder's Securities from this clause, in which event the provisions of this **clause 34** shall not apply to that Minority Holder.

Procedure

35. (a) For the purposes of the sale of Securities under this clause, each Minority Holder:
- (i) appoints the Company as the Minority Holder's agent, to sell, within a reasonable period after the period ending 42 days after the Notice Date, all of the Minority Holder's Securities in the ordinary course of trading on the stock market conducted by ASX and acting in good faith and to receive the sale consideration on behalf of the Minority Holder; and
 - (ii) appoints the Company and each of its Directors from time to time as the Minority Holder's attorney in the name and on behalf of the Minority Holder to effect all transfers and execute all deeds or other documents or instruments necessary to transfer the Securities from the Minority Holder to the transferee.
- (b) The transferee of Securities sold pursuant to this clause shall not be responsible for the regularity of proceedings or to the application of the purchase money in respect of the sale of a Minority Holder's Securities. After the transferee's name has been entered in the Register in respect of such Securities, the validity of the sale or other disposal shall not be impeached by any person and the remedy of any person aggrieved by the sale or other disposal shall be in damages only and against the Company exclusively.
- (c) The Company may issue to the transferee such Certificates as may be required in order to vest title in the transferee. The title of the transferee to Securities sold pursuant to this **clause 35** shall not be affected by any irregularity in connection with the sale or disposal of the Securities to the transferee.

- (d) If the relevant Securities are certificated, the Company shall cancel the Certificates of all Minority Holders whose Securities are sold under this **clause 35**.
- (e) If all the Securities of two or more Minority Holders to whom this **clause 35** applies are sold to one purchaser the transfer may be effected by one transfer document.

Sale consideration

36. (a) The Sale Consideration shall be received by the Company and paid to the Minority Holder or as the Minority Holder may direct. The Company shall bear all costs as a result of the sale or disposal of Securities pursuant to this **clause 36**.
- (b) Payment by the Company of any consideration under this **clause 36** shall be at the risk of the Minority Holder to whom it is sent.
- (c) The Sale Consideration so received by the Company shall be paid into a bank account opened and maintained by the Company for that purpose only.
- (d) The Company shall hold the Sale Consideration so received in trust for a Minority Holder whose Securities are sold pursuant to this **clause 36** pending distribution of the Sale Consideration. The Company shall as soon as practicable after the sale of the Securities of a Minority Holder, and to the extent that it may reasonably do so, distribute the Sale Consideration received to such Minority Holder provided that the Company has received any Certificates issued to the Minority Holder with respect to the Security or, in the case of loss or destruction of any such Certificate, any additional documentation required by the Corporations Act.
- (e) Where the Sale Consideration is held in trust by the Company for a Minority Holder under this **clause 36** and has been held for not less than two years, the Company shall pay the money in accordance with applicable legislative requirements.

Certificates

37. A certificate in writing under the hand of any two Directors or of any one Director and Secretary that:
- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
 - (b) any advertisement required to be published was published; and
 - (c) any resolution of Directors required to be made was made,
- shall, for the purpose of this Constitution, be sufficient evidence of the facts stated as against all persons claiming to be entitled to such Securities and to the right and title of the Company to dispose of such Securities.

PAYMENTS BY THE COMPANY

Payments by the Company

38. If any law of any place imposes or purports to impose any immediate or future or possible liability on the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment, in respect of any Securities held either jointly or solely by any Holder or in respect of any transfer of

those Securities or in respect of any interest, dividends, bonuses or other money due or payable or accruing due or which may become due or payable to the Holder by the Company on or in respect of any Securities or for or on account or in respect of any Holder of Securities, whether because of:

- (a) the death of the Holder;
- (b) the non-payment of any income tax or other tax by the Holder;
- (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the Holder or a personal representative of that Holder or by or out of the Holder's estate;
- (d) any assessment of income tax against the Company in respect of interest or dividends paid or payable to the Holder; or
- (e) any other act or thing,

the Company in each case:

- (i) is to be fully indemnified from all liability by the Holder or the Holder's personal representative and by any person who becomes registered as the Holder of the Securities on the distribution of the deceased Holder's estate;
- (ii) has a lien or charge on the Securities for all money paid by the Company in respect of the Securities because of any law;
- (iii) has a lien on all dividends, bonuses and other money payable in respect of the Securities registered in the Register as held either jointly or solely by the Holder for all money paid or payable by the Company in respect of the Securities because of any law, together with interest at a rate the Board may determine from the date of payment to the date of repayment, and may deduct or set off against any dividend, bonus or other money payable any money paid or payable by the Company together with interest;
- (iv) may recover as a debt due from the Holder or the Holder's personal representative or any person who becomes registered as the Holder of the Securities on the distribution of the deceased Holder's estate, any money paid by the Company because of any law which exceeds any dividend, bonus or other money then due or payable by the Company to the Holder together with interest at a rate the Board may determine from the date of payment to the date of repayment; and
- (v) may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any Securities by the Holder or the Holder's personal representative until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend, bonus or other money then due or payable by the Company to the Holder, until the excess is paid to the Company.

Nothing in this Rule prejudices or affects any right or remedy which any law confers on the Company and any right or remedy enforceable by the Company, whether against the Holder or the Holder's personal representatives.

TRANSFER OF SECURITIES

Form of transfers

39.

- (a) Subject to this Constitution, a Holder may transfer all or any of the Holder's securities by:
 - (i) any computerised or electronic system established or recognised by the Listing Rules of the Corporations Act for the purpose of facilitating dealings in Securities, including a transfer that may be effected pursuant to the SCH Business Rules or other electronic transfer process; or
 - (ii) an instrument in writing in any usual or common form or in any other form that the Directors approve.
- (b) Except in the case of a proper SCH Transfer, the transferor remains the Holder of the Securities and (in the case of Shares) a Member in respect of those Securities until the name of the transferee is entered into the Register.
- (c) In the case of a Market Transfer the Company shall comply with the obligations imposed on it by the Listing Rules and the SCH Business Rules and any applicable legislation in connection with any transfer of Securities.
- (d) Restricted Securities cannot be disposed of during the escrow period which applies in relation to those Securities except as permitted by the Listing Rules or the ASX.

Registration procedure

40. Where an instrument of transfer referred to in **clause 39** is used by a Holder to transfer Securities, the following provisions apply:
- (a) the instrument of transfer shall be executed by or on behalf of both the transferor and the transferee unless it is a proper SCH Transfer;
 - (b) the instrument of transfer shall be left at the Share registry of the Company for registration accompanied by the Certificate for the Securities to be transferred (if any) and, subject to the Listing Rules, such other evidence as the Directors may require to prove the title of the transferor and the transferor's right to transfer the Shares;
 - (c) a fee shall not be charged on the registration of a transfer of Securities; and
 - (d) on registration of a transfer of Securities, the Company shall cancel the old Certificate (if any).

Transfer and Certificates

41. Securities shall be transferred and Certificates relating to them shall be issued and delivered in accordance with the Corporations Act and the Listing Rules.

Directors' power to apply a holding lock and to decline to Register a transfer of Shares

42. If permitted to do so by the Listing Rules or the SCH Business Rules, the Directors may:

- (a)
 - (i) request SCH to apply a holding lock to prevent a transfer of CHESSE Approved Securities registered on the CHESSE subregister; or
 - (ii) decline to register a transfer of Shares in the Company.
- (b) The Directors shall:
 - (i) request SCH to apply a holding lock to prevent transfer of CHESSE Approved Securities registered on the CHESSE subregister; or
 - (ii) decline to register any transfer of other Shares;if:
 - (iii) the Listing Rules require the Company to do so; or
 - (iv) the transfer is in breach of the Listing Rules or a Restriction Agreement.
- (c) If in the exercise of their powers under **clause 42(a) or (b)**, the Directors request the application of a holding lock to prevent a transfer of CHESSE Approved Securities or refuse to register a transfer of a Security, they shall give written notice to the Holder of the Security and the broker lodging the transfer, if any, of the refusal to transfer. Failure to give such notice does not invalidate the decision of the Directors.

Non-interference with Registration

43. Subject to **clause 42**, the Company may not prevent, delay or interfere with the generation of a Proper SCH Transfer, or the registration of a proper-based transfer of Securities in registrable form.

Participation in computerised or electronic systems

44. The Directors may do anything they consider necessary and which is permitted under the Corporations Act and the Listing Rules to facilitate the Company's participation in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in Securities.

Closure of transfer books and Register

45. Subject to the Corporations Act, the Listing Rules and the SCH Business Rules, the transfer books may be closed during such time (not exceeding 30 Business Days in each year) as the Directors think fit.

TRANSMISSION OF SECURITIES

Transmission on death, bankruptcy or infirmity

46. A person or persons entitled to a Security in consequence of the death, bankruptcy or infirmity of a Holder of a Security or a vesting order may be registered as a Holder of the Security. The person or persons entitled to a Security under this clause must first produce such evidence of entitlement as is properly required by the Directors. That person or persons will be entitled to the same dividends and other advantages, and to the same rights and obligations, as the registered Holder would have been. Subject to compliance

by the transferee with this Constitution, the Board may register any transfer signed by a Holder prior to the Holder's death, despite the Company having notice of the Holder's death.

Estates

47. Subject to **clause 46**, a person lawfully administering the estate of a Member under the provisions of a law relating to mental health or the administration of the estates of patients or infirm persons may, upon producing such evidence as is properly required by the Directors, either be registered as the Holder of the Security or subject to the provisions of this Constitution as to transfers, transfer the Security to some other person nominated by that person.

Transmission by operation of law

48. A person (a **transmittee**) who establishes to the satisfaction of the Board that the right to any Securities has devolved on the transmittee by will or by operation of law may be registered as a Holder in respect of the Securities or may (subject to the provisions in this Constitution relating to transfers) transfer the Securities. The Board has the same right to refuse to register the transmittee as it would have had if the transmittee was the transferee named in a transfer presented for registration.

SCH Business Rules

49. The provisions of **clauses 46 to 48** are subject to any provisions of the SCH Business Rules which deal with notification of transmission on death or by operation of law.

ALTERATION OF CAPITAL

Power to alter Share capital

50. The Company in general meeting may reduce or alter its Share capital in any manner provided for by the Corporations Act. The Board may do anything which is required to give effect to any Resolution authorising reduction or alteration of the Share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or sale of fractions of Shares and distribution of net proceeds as it thinks fit.

GENERAL MEETINGS

General meetings

51. A Director may convene a general meeting of the Company whenever the Director thinks fit.

Notice of general meeting

52. (a) A notice of a general meeting is to specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by law.
- (b) A notice of Meeting of Members shall be accompanied by a form of proxy which satisfies the requirements of the Listing Rules and the Corporations Act.

- (c) The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice, does not invalidate any Resolution passed at that meeting.

Quorum

- 53. (1) Two shareholders present constitute a quorum for a meeting. No business may be transacted at any meeting, except the election of a Chairperson and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.
- (2) If there is not a quorum at a general meeting within 15 minutes after the time specified in the notice of meeting, the meeting is dissolved unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 15 minutes after the time for the meeting the meeting is dissolved.

Chairperson

- 54. (1) If the Board has elected a Chairperson of Board Meetings that person is entitled to chair every general meeting.
- (2) If at any general meeting:
 - (a) a Chairperson has not been elected as provided in **clause 54(1)**; or
 - (b) the Chairperson is not present within 15 minutes after the time for the holding of the meeting; or
 - (c) the Chairperson is present but unwilling to act as chairperson of the meeting,

the Directors present may choose another Director as Chair of the meeting and if no Director is present or if each of the Directors present is unwilling to act as Chairperson of the meeting, a shareholder chosen by the shareholders present is entitled to chair the meeting.

General conduct of meeting

- 55. (1) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairperson.
- (2) At any time the Chairperson considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairperson may demand the cessation of 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 shareholders present.
- (3) The Chairperson may require the adoption of any procedures which are in the Chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

- (4) Any determination by the Chairperson in relation to matters of procedure or any other matter arising directly or indirectly from the business is final. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairperson whose decision is final.

Adjournment

56. During the course of the meeting the Chairperson may adjourn the meeting or any business, motion, question or Resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairperson exercises a right of adjournment of a meeting under this Rule, the Chairperson has the sole discretion to decide whether to seek the approval of the shareholders present to the adjournment and, unless the Chairperson exercises that discretion, no vote may be taken by the shareholders present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Cancellation and postponement of a Meeting of Members

57. (a) Subject to this clause the Directors may, by advertisement published in a newspaper circulating in the capital city of every Australian State or Territory, on or before the day of a proposed Meeting of Members, cancel a proposed Meeting convened by them.
- (b) (i) Where a proposed Meeting was requisitioned by Members pursuant to the Corporations Act, that Meeting may only be cancelled by the Directors if a written notice of withdrawal of the requisition signed by the requisitioning Members has been deposited at the Office.
- (ii) The Directors shall, in addition to publication of advertisements in accordance with this **clause 57(b)** and if time permits, endeavour to notify each Member of the cancellation of a proposed Meeting of Members.
- (iii) Failure to notify any Member or the non-receipt of such notice by any Member does not affect the validity of the cancellation of the proposed Meeting of Members.
- (c) (i) The Directors may, by advertisement published in a newspaper circulating in the capital city of every Australian State or Territory, on or before the day of a proposed Meeting of Members, postpone the proposed Meeting for a period not exceeding 40 days or vary the venue of the proposed Meeting, but no business may be transacted at any postponed Meeting other than the business stated in the notice to Members of the postponed Meeting.
- (ii) The Directors shall, in addition to publication of advertisements in accordance with this **clause 57(c)** and if time permits, endeavour to notify each Member of postponement or variation of venue of a proposed Meeting of Members.
- (iii) Such notice shall include details of the day, time and place on and at which the postponed Meeting will be held or in the case of variation of venue, details of the new venue.

- (iv) Failure to notify any Member, or the non-receipt of such notice by any Member, does not affect the validity of the postponement or variation of venue of the proposed Meeting of Members, or invalidate the proceedings at, or any Resolution, or Special Resolution passed at, any such Meeting.
- (d) A proposed Meeting of Members may not be postponed on more than two occasions.

Voting on show of hands

58. Each question submitted to a general meeting is to be decided by a show of hands of the shareholders present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the Chairperson has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairperson may be entitled as a shareholder or as a proxy, attorney or duly appointed representative of a shareholder. Unless a poll is demanded, a declaration by the Chairperson that a Resolution has been passed or lost is conclusive.

When a poll may be demanded

59. A poll may be demanded by a shareholder in accordance with the Corporations Act (and not otherwise) or by the Chairperson. No poll may be demanded on the election of a chairperson of a meeting or, unless the Chairperson otherwise determines, the adjournment of a meeting. The demand for a poll may be withdrawn.

Taking a poll

60. (1) If a poll is demanded as provided in **clause 59**, it is to be taken in the manner and at the time and place as the Chairperson directs, and the result of the poll is the meeting's Resolution of the motion on which the poll was demanded.
- (2) A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

Special meetings

61. All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Shareholders which may be held under the operation of this Constitution or the Corporations Act.

VOTES OF SHAREHOLDERS

Voting rights

62. Subject to restrictions on voting affecting any class of Shares and to **clauses 12(f)** and **65**:
- (a) on a show of hands:
 - (i) subject to paragraphs (ii) and (iii), each Shareholder present has one vote;
 - (ii) where a Shareholder has appointed more than one person as representative, proxy or attorney for the Shareholder, none of the representatives, proxies or attorneys is entitled to vote;

- (iii) where a person is entitled to vote because of paragraph (i) in more than one capacity, that person is entitled only to one vote; and
- (b) on a poll, each shareholder present:
 - (i) has one vote for each fully paid Share held; and
 - (ii) for each other Share held, has a vote in respect of the Share which carries the same proportionate value as the proportion of the amount paid up or agreed to be considered as paid up on the total issue price of that Share at the time the poll is taken bears to the total issue price of the Share.

Voting rights of personal representatives, etc

63. Where a person satisfies the Board at least 48 hours before the holding of a general meeting (unless the person has previously satisfied the Board as to the person's right to vote) that the person is a personal representative as referred to in **clause 46** or a transmittee as referred to in **clause 48**, the person may vote at the general meeting in the same manner as if the person were the registered Holder of the Securities referred to in **clause 46 or 48**, as the case requires.

Proxies

64. (1) A Shareholder who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the member in accordance with the Corporations Act but not otherwise. A proxy appointed to attend and vote in accordance with the Corporations Act may exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (2) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form which the Board may prescribe or accept.
- (3) Any appointment or proxy under **clause 64** which is incomplete may be completed by the Secretary on the authority of the Board and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (4) Voting instructions given by a Shareholder to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy or, in the case of new instructions or variations to earlier instructions, if received at the Office before the meeting or adjourned meeting by a notice in writing signed by the Shareholder.

Validity, revocation

65. (1) The validity of any Resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing shareholder.
- (2) A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid despite the previous death or mental capacity of the appointing Shareholder, revocation of the instrument of proxy or power of attorney or transfer of the Shares in respect of which the vote is given, provided no notice in writing of

the death, mental incapacity, revocation or transfer has been received at the Office before the meeting or any adjourned meeting.

- (3) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the Resolution for which the proxy is proposed to be used.

Board may issue forms of proxy

66. The Board may issue with any notice of general meeting of shareholders or any class of Shareholders forms of proxy for use by the Shareholders. Each form may include the names of any of the Directors or of any other persons willing to act as proxies. Where the form does not contain the name of a proxy the form is not for that reason to be invalid and is to be taken to be given in favour of the Chairperson of the meeting. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

Attorneys of Shareholders

67. Any Shareholder may, by duly executed power of attorney, appoint an attorney to act on the Shareholder's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Shareholder granting the power of attorney.

DIRECTORS

Number of Directors

68. The number of Directors (not including Alternate Directors) must be not less than three nor more than ten unless otherwise determined by general meeting. All Directors are to be natural persons.

Period of office

69. Each of the Directors will hold office until the Director vacates the office or is removed under this constitution.

Power to appoint Directors

70.
 - (1) Without limiting **clause 71**, a Shareholder who holds 20% or more of the issued Share capital of the Company may, for so long as it does so, appoint one person as a Director of the Company.
 - (2) A Director appointed pursuant to **clause 70(1)** may be removed or replaced at the discretion of the appointing shareholder. The approval or replacement of the Director will be effective upon the appointing Shareholder giving notice to the Board of the removal or replacement of the appointed Director.
 - (3) A Director appointed pursuant to **clause 70(1)** ceases to hold office as a Director if his or her appointing Shareholder ceases to hold at least 20% of the issued Share capital of the Company and otherwise is subject to the same provisions as to

termination of office under **clause 80** and removal as the other Directors of the Company.

- (4) Nothing in this **clause 70** will limit the operation of **clause 81**.

Power to appoint Directors

71. For so long as a Shareholder is entitled to appoint one or more persons as Directors of the Company under any written agreement between the Shareholder and the Company entered into prior to 31 December 2002, the following rules will apply:
- (1) A Director appointed pursuant to any such agreement may be removed or replaced at the discretion of the appointing Shareholder. The removal or replacement of the Director will be effective upon the appointing Shareholder giving notice to the Board of the removal or replacement of the Director.
 - (2) If a Shareholder's right of appointment under any such agreement is relinquished or ends for any other reason, the office of any Director appointed by that Shareholder is immediately vacated. A Director appointed pursuant to any such agreement is otherwise subject to the same provisions as to termination of office under **clause 80** and removal as the other Directors of the Company.
 - (3) **Clause 81** will apply despite any provision in that agreement to the contrary, and nothing in this **clause 71** will limit the operation of **clause 81**.
72. The Board has the power at any time to appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the number of Directors does not exceed the maximum number determined under **clause 68**. Any Director appointed under this **clause 72** may hold office only until the next Annual General Meeting of the Company and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who to are to retire by rotation at the meeting.

Remuneration of directors

73. (1) The Directors shall be entitled to receive remuneration for their services as Directors as determined by the Company in general meeting. Unless otherwise directed by the resolution approving the remuneration, the sum is to be divided among the Directors in any proportions as the Directors may agree, or failing agreement, equally. If a Director holds office for less than the whole of the relevant period in respect of which the remuneration is paid, that Director is only entitled to receive remuneration in proportion to the time during the period for which the Director has held office. Any amount which may be paid by the Company under clause 73(5), 74 or 114 does not constitute remuneration for the purpose of this clause.
- (2) Fees payable to non-executive Directors shall be by a fixed sum and not by a commission on or percentage of profit or operating revenue. Remuneration and fees payable to executive Directors shall not include a commission on or percentage of operating revenue.
 - (3) The Directors may grant special remuneration to any Director who performs any special or extra services for or at the request of the Company. Any special remuneration may be made payable to a Director in addition to or in substitution for the Director's ordinary remuneration.
 - (4) The total amount of Directors fees paid by the Company (or any entity with which it is associated) to its Directors shall not be increased without the prior approval of

Shareholders. The notice convening the meeting shall include the amount of the increase and the maximum sum that may be paid.

- (5) Every Director may be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Director in attending meetings of the Company or of the Board or of any Committees or while engaged on the business of the Company.

Retirement benefits

74. Upon a Director ceasing, or at any time after ceasing, whether by retirement or otherwise to hold that office, the Directors may, subject to the Corporations Act and the Listing Rules, pay to the former Director, or in the case of death of the former Director, to the former Director's spouse, legal personal representatives, or to the Director's dependants or any of them a gratuity, pension, allowance or lump sum payment in respect of past services of such former Director, of an amount not exceeding the amount permitted by or approved in accordance with the Corporations Act and the Listing Rules.

Directors may contract with Company

75. (1) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, subscriber, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit derived from the contract or arrangement by reason only of the office as director or the fiduciary relationship it entails.
- (2) Except where a Director is constrained by the Corporations Act, a Director may be present at a meeting of the Board while a matter in which the Director has an interest is being considered and may vote in respect of that matter.
- (3) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, Sealing or otherwise.

Director may hold other office

76. (1) A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- (2) A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or Shareholder or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a Director or Shareholder of, or Holder of any other office or position under, the corporation or organisation.

Exercise of voting power in other corporations

77. The Board may exercise the voting power conferred by the Shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any Resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration to the directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights despite the fact that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

Directors may lend to the Company

78. Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company or underwrite or guarantee the subscription of Shares or Securities of the Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

ALTERNATE DIRECTORS

Director may appoint Alternate Director

79. Subject to this Constitution, each Director may appoint any person approved by a majority of the other Directors to act as an Alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the Office or to a meeting of the Board. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:
- (a) the appointment of the alternate Director is terminated or suspended from office on receipt at the Office of notice in writing from the Director by whom the alternate Director was appointed;
 - (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
 - (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed had not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
 - (d) the alternate Director is not, unless the Board otherwise determines, (without affecting the right to reimbursement for expenses under **clause 72(5)**) entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for

- expenses) paid to the alternate Director by the Company is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
 - (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
 - (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

TERMINATION OF OFFICE OF DIRECTOR

Termination of office by Director

80. (1) The office of a Director is terminated on the Director:
- (a) being absent from meetings of the Board during a period of six consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
 - (b) resigning office by notice in writing to the Company;
 - (c) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) being removed from office under the Corporations Act;
 - (e) being prohibited from being a Director by reason of the operation of the Corporations Act;
 - (f) being removed or replaced by their appointor in accordance with **clause 70(2)** or **clause 71(1)**; or
 - (g) having his or her office terminated in accordance with **clause 70(3)** or **clause 71(2)**.
- (2) No proceedings of the Board, or any Resolution passed at any Meeting, will be invalidated by reason of any Director taking part or concurring in such Meeting or Resolution and then being disqualified, until an entry is made in the minutes of the Board of the Director's office having been so vacated.
- (3) A Director whose office is terminated under **clause 80(1)** is not to be taken into account in determining the number of Directors who are to retire by rotation at any general meeting.
- (4) The office of a Director who is an employee of the Company or any of its subsidiaries is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director of the Company.

ELECTION OF DIRECTORS

Retirement and nomination of Directors

81. (1) Subject to **clause 80(3)**, at every annual general meeting, one-third of the Directors (other than an exempt Managing Director under **clause 83** or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third must retire from office. A Director (other than an exempt Managing Director under **clause 83** must retire from office at the conclusion of the third annual general meeting after which the Director was elected or re-elected. Without limiting any right of appointment and removal under **clause 70** or **clause 71**, a retiring director will be eligible for re-election. Any Director who retires (whether under this Rule or otherwise) at a general meeting and seeks re-election at the meeting retains office until the dissolution or adjournment of the meeting at which the Director retires.
- (2) The Directors to retire under **clause 81(1)** are the Directors or Director longest in office since last being elected. As between Directors who were elected on the same day the Directors to retire are (in default of agreement between them) determined by ballot. The length of time a Director has been in office is calculated from the Director's last election or appointment. A retiring Director is eligible for re-election.
- (3) No person (other than a retiring Director) is eligible for election to the office of Director at any general meeting unless the person or a shareholder intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the shareholder to nominate the nominee. To be valid, the notice is required to be left at the Office not less than 35 days before the meeting unless the nominee has been recommended by the Board for election, in which case the notice is required to be left at the Office at least 28 days before the meeting.

Retiring Directors to remain in office until successors appointed

82. If, at any general meeting at which an election of Directors ought to occur, the places of the retiring Directors are not filled, the retiring Directors or any who have not had their places filled shall be deemed to have been re-elected and shall, if willing, continue in office until the next annual general meeting and so on from year to year until their places are filled unless:
- (a) it is determined at the meeting to reduce the number of Directors;
- (b) it is resolved at the meeting not to fill the vacated offices;
- (c) in any case, the resolution for re-election of a Director is put to the meeting and lost, or the Shareholder who is entitled to appoint and remove or replace that particular Director elects not to re-appoint him or her; or
- (d) the Director has given notice in writing to the Company that he or she is not willing to be re-elected.

MANAGING DIRECTOR

Appointment of a Managing Director

83. (1) The Board may appoint one or more members of the Board to be Managing Director (who may bear that title or any other title determined by the Board) for a period ending on the happening of events (if any) stipulated by the Board (and, in any event, upon the Managing Director ceasing to hold office as a Director), and at a remuneration which may be by way of salary or commission on or participation in profits or by any or all of these methods and otherwise on terms determined by the Board. The Board may confer on and withdraw from a Managing Director any of the powers exercisable under this Constitution by the Board as it thinks fit and on any conditions it thinks expedient but the conferring of powers by the Board on a Managing Director does not exclude the exercise of those powers by the Board. A Managing Director's appointment automatically terminates if the Managing Director ceases to be a Director for any reason.
- (2) An exempt Managing Director is the Managing Director or, if there is more than one Managing Director, the Managing Director designated by the Board to be an exempt Managing Director. An exempt Managing Director is not subject to retirement as a Director by rotation while continuing to hold the office of Director and is not to be taken into account in determining the rotation or retirement of Directors or the number of Directors to retire, but is subject to the same provisions as to termination of office under **clause 80** and removal as the other Directors of the Company.

PROCEEDINGS OF DIRECTORS

Procedures relating to Directors' meetings

84. The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit. Until otherwise determined by the Board, two Directors form a quorum. The Board may at any time, and the Secretary, on the request of any two Directors, must, convene a meeting of the Board. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

Meetings by telephone or other means of communication

85. The Directors may meet either in person or by telephone or by using any other technology consented to by all the Directors. A consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is considered to be held at the place agreed on by the Directors attending the meeting, if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

Votes at meetings

86. Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the Chairperson has (except when only two Directors are

present or except when only two Directors are competent to vote on the question then at issue) a second or casting vote. A Director with a material personal interest in a matter that is being considered at a meeting of the Board may be counted in a quorum and, subject to the Corporations Act, may vote on the matter.

Chairperson

87. The Board may elect a Chairperson and a Deputy Chairperson of its meetings and determine the period for which each is to hold office. If no Chairperson or Deputy Chairperson is elected or if at any meeting the Chairperson and the Deputy Chairperson are not present at the time specified for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

Powers of meetings

88. A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

Committees

89. (1) The Board may delegate any of its powers to Committees consisting of any one or more Directors or any other person or persons as the Board thinks fit. In the exercise of delegated power, any Committee formed or person or persons appointed to the Committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (2) The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under **clause 89(1)**.

Validity of acts

90. (1) All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
- (2) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

Resolution in writing

91. A Resolution in writing signed by all Directors or a Resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the Resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid Resolution of the Board. The Resolution may consist of several

documents in the same form, each signed by one or more of the Directors. For the purposes of this Rule the references to *Directors* include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director.

POWERS OF THE BOARD

General powers of the Board

92. The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on them by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.

Power to borrow and guarantee

93. Without limiting the generality of **clause 92**, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

Power to give security

94. Without limiting the generality of **clause 92**, the Board may charge any property or business of the Company or any of its uncalled capital and may issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, in each case in the manner and on the terms it thinks fit.

Power to authorise debenture Holders, etc to make Calls

95. Without limiting the generality of **clause 92** if any uncalled capital of the Company is included in or charged by any debenture, mortgage or other security, the Board, by instrument under the Seal, may authorise the person in whose favour the debenture, mortgage or other security is executed or any other person in trust for the person to make Calls on the shareholders in respect of that uncalled capital and to sue in the name of the Company or otherwise for the recovery of money becoming due in respect of Calls made and to give valid receipts for that money, and the authority continues for the duration of the debenture, mortgage or other security, despite any change in the Directors, and is assignable if expressed to be.

Power to issue bond debenture or other security

96. Any bond, debenture or other security may be issued with or without the right of or obligation on the Holder to exchange the bond, debenture or security in whole or in part for Shares in the Company at any time and with any special privileges as to redemption, surrender, drawings, allotment of Shares, attending and voting at general meetings of the Company, appointment of Directors and with the general rights and on the conditions as the Board thinks fit.

Personal liability of officer

97. If any Director or any officer of the Company is or may become personally liable for the payment of any sum which is or may become primarily due from the Company, the Board may charge the whole or any part of the assets of the Company by way of indemnity to secure the Director or officer from any loss in respect of the liability.

Seal

98. The Company may have a common Seal and a duplicate common Seal, which are to be used by the Company as determined by the Board.

DIVIDENDS

Declaration of dividend

99. Subject to the Listing Rules, the Board may declare that a dividend is payable to the Shareholders entitled and fix the:

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

The dividend is (subject to the rights of, or any restrictions on, the Holders of Shares created or raised under any special arrangement as to dividend) payable on each Share on the basis of the proportion which the amount paid is of the total amounts paid, agreed to be considered to be paid or payable on the Share. The dividend may be declared at a rate per annum in respect of a specified period but no amount paid on a Share in advance of Calls is to be treated as paid on that Share.

Interim Dividends

100. The Board may pay to the shareholders on account of any dividend any interim dividend it thinks fit.

Distribution otherwise than in cash

101. When declaring a dividend, the Board may determine that:
- (1) payment of the dividend be effected wholly or in part by the distribution of specific assets or documents of title and in particular by the issue of paid-up Shares, debentures, debenture stock or grant of options of the Company or any other corporation. Where any difficulty arises in regard to the distribution, the Board may settle the difficulty as it thinks fit, and in particular, may issue fractional certificates, may fix the value for distribution of the specific assets, may determine that cash payments are to be made to any Shareholders on the basis of the value fixed in order to adjust the rights of all parties and may vest the specific assets in trustees on trusts for the persons entitled to the dividend as the Board thinks fit; and
 - (2) the dividend be payable to particular Shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining Shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source. The Board may

determine this despite the fact that the dividend may form part of the assessable income for taxation purposes of some Shareholders, and may not form part of the assessable income of others.

Capitalisation of profits

102. (1) The Board may resolve that the whole or any portion of any sum forming part of the undivided profits of the Company or standing to the credit of any reserve or other account and which is available for distribution, be capitalised and distributed to Shareholders in the same proportions in which the Shareholders would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any Shares or the terms of any plan for the issue of Securities for the benefit of officers or employees and that all or any part of the sum be applied on their behalf either in paying up the amounts for the time being unpaid on any issued Shares held by them, or in paying up in full unissued Shares or other Securities of the Company to be issued to them accordingly, or partly in one way and partly in the other.
- (2) The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution under **clause 99 or clause 102(1)** are to be dealt with, including specifying that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made.
- (3) The Board may make all necessary appropriations and applications of the amount to be capitalised under **clause 102(1)** and all necessary allotments and issues of fully paid Shares or debentures.
- (4) Where required, the Board may appoint a person to sign a contract on behalf of the shareholders entitled on a capitalisation to any Shares or debentures, which provides for the issue to them, credited as fully paid of any further Shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised.

Transfer of Shares

103. A transfer of Shares registered after the transfer books close for dividend purposes, but before a dividend is payable, does not pass the right to any dividend declared before the books are closed.

Retention of dividends

104. The Board may retain the dividends payable on Shares which any person is under **clause 46 or 48** entitled to transfer until the person becomes registered as a shareholder in respect of the Shares or duly transfers them. The Board may retain any dividends in respect of which (or in respect of the Shares on which the dividend is payable) the Company has a lien or charge under **clause 29** and may apply any retained dividends towards satisfaction of the Calls, instalments or sums owing in respect of which the lien or charge exists.

How dividends are payable

105. Subject to the Listing Rules, payment of any dividend may be made in any manner and by any means as determined by the Board. Without affecting any other method of payment which the Board may adopt, in each case at the risk of the Shareholder, payment may be made to the Shareholder entitled to the dividend or, in the case of joint Holders, to the Shareholder whose name stands first in the Register in respect of the joint holding.

Unclaimed dividends

106. All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise disposed of according to law.

NOTICES

Service of notices

107. A notice may be given by the Company to any Shareholder, or in the case of joint Holders to the Shareholder whose name stands first in the Register, personally, by leaving it at the Shareholder's registered address or by sending it by prepaid post or facsimile transmission addressed to the Shareholder's registered address or, in any other case, by other electronic means determined by the Board. If the notice is signed the signature may be original or printed.

When notice taken to be served

108. Any notice sent by post is taken to have been served at the expiration of 24 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Shareholder personally or left at the Shareholder's registered address is taken to have been served when delivered. Any notice served on a Shareholder by facsimile transmission is taken to have been served when the transmission is sent.

Shareholder not known at registered address

109. Where a Shareholder does not have a registered address or where the Company has a reason in good faith to believe that a Shareholder is not known at the Shareholder's registered address, all future notices are taken to be given to the Shareholder if the notice is exhibited in the Office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Shareholder informs the Company of a registered place of address.

Calculation of period of notice

110. If a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be counted in the number of days or other period.

Notice to transferor binds transferee

111. Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the Holder of any Shares is bound by every notice which, prior to the person's name and address being entered in the Register in respect of the Shares, was duly given to the person from whom title to the Shares is derived.

Service on deceased shareholders

112. A notice delivered or sent by post to the Shareholder's registered address under this Constitution is (despite the fact that the Shareholder is then dead and whether or not the Company has notice of the Shareholder's death) taken to have been duly served in respect of any registered Shares, whether held solely or jointly with other persons by the Shareholder, until some other person is registered in the Shareholder's place as the Holder or joint Holder. The service is sufficient service of the notice or document on the Shareholder's personal representative and any persons jointly interested with the Shareholder in the Shares.

WINDING UP

Distribution in specie

113. (1) If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.
- (2) Any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a Special Resolution passed under the Corporations Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.
- (3) If any Shares to be divided in accordance with **clause 113(1)** involve a liability to Calls or otherwise, any person entitled under the division to any of the Shares may by notice in writing within ten business days after the passing of the Special Resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is required, if practicable, to act accordingly.

INDEMNITY AND ACCESS

Indemnity of officers

114. (1) The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer unless the liability was incurred by the officer through his or her own dishonesty, negligence, lack of good faith or breach of duty.
- (2) In addition to **clause 114(1)**, an officer of the Company and an officer of a subsidiary of the Company may be indemnified to the relevant extent out of the assets of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the subsidiary or in or arising

out of the discharge of the duties of the officer where the Board considers it appropriate to do so.

- (3) Where the Board considers it appropriate, the Board may execute a documentary indemnity in any form in favour of any officer of the Company or a subsidiary.
- (4) Where the Board considers it appropriate and to the extent to which the Company is not precluded by law from doing so, the Company may:
 - (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the subsidiary or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company or a subsidiary to make the payments.
- (5) In this Rule:
 - (a) **officer** means:
 - (i) a Director, Secretary, executive officer or employee;
or
 - (ii) a person appointed as a trustee by, or acting as a trustee at the request of, the Company or, where applicable, the subsidiary of the Company,
and includes a former officer.
 - (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation.
 - (c) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
 - (d) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or

judicial) or appearing before any court, tribunal, government authority or other body.

Access to Company documents

115. Where the Board considers it appropriate, the Company may:
- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
 - (b) bind itself in any contract with a Director or former Director to give the access.

RESTRICTED SECURITIES

- 116 (1) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement relating to the Restricted Securities, the Holder of the Restricted Securities shall not be entitled to:
- (a) any dividend in respect of the Restricted Securities; and
 - (b) any voting rights in respect of the Restricted Securities.
- (2) Restricted Securities cannot be disposed of during the escrow period which applies in relation to those Securities except as permitted by the Listing Rules.

ACCOUNTS

Accounts and Audits

117. The Company shall comply with the Corporations Act and the Listing Rules with respect to the preparation of accounts, financial reports, directors' reports and auditor's reports.