

CONSTITUTION
OF
CAP-XX LIMITED
ACN 050 845 291



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TABLE OF CONTENTS

1. PRELIMINARY	1
1.1 DEFINITIONS AND INTERPRETATION	1
1.2 APPLICATION OF THE CORPORATIONS ACT 2001	2
1.3 EXERCISE OF POWERS	2
1.4 REPLACEABLE RULES NOT TO APPLY	3
2. SHARE CAPITAL.....	3
2.1 SHARES.....	3
2.2 PREFERENCE SHARES	4
2.3 VARIATION OF CLASS RIGHTS	4
2.4 POWER TO BUY BACK ORDINARY SHARES	4
2.5 POWER TO ALTER SHARE CAPITAL.....	4
2.6 POWER TO RECLASSIFY SHARE CAPITAL	5
2.7 POWER TO REDUCE SHARE CAPITAL	5
2.8 POWER TO PAY BROKERAGE, COMMISSION AND INTEREST ON SHARE CAPITAL.....	5
2.9 JOINT HOLDERS OF SHARES	5
2.10 EQUITABLE AND OTHER CLAIMS.....	5
2.11 CURRENCY	6
2.12 EMPLOYEE SHARE SCHEMES	6
2.13 LOCK-INS.....	6
2.14 CERTIFICATES	6
3. CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER	6
3.1 CALLS	6
3.2 PROCEEDINGS FOR RECOVERY OF CALLS.....	7
3.3 PAYMENTS IN ADVANCE OF CALLS	7
3.4 FORFEITURE OF PARTLY PAID SHARES	8
3.5 INDEMNITY FOR PAYMENTS BY THE COMPANY	9
3.6 LIEN ON SHARES	9
3.7 SURRENDER OF SHARES	10
3.8 GENERAL PROVISIONS APPLICABLE TO A DISPOSAL OF SHARES UNDER THIS CONSTITUTION.....	10
3.9 INTEREST PAYABLE BY MEMBER.....	11
4. TRANSFER AND TRANSMISSION OF SHARES	11
4.1 TRANSFER OF SHARES.....	11
4.2 POWER TO DECLINE REGISTRATION OF TRANSFERS	12
4.3 TRANSMISSION OF SHARES.....	12
5. GENERAL MEETINGS	13
5.1 CONVENING OF GENERAL MEETINGS	13
5.2 NOTICE OF GENERAL MEETINGS	13
5.3 ADMISSION TO GENERAL MEETINGS	15
5.4 QUORUM AT GENERAL MEETINGS	15
5.5 CHAIRPERSON OF GENERAL MEETINGS.....	15
5.6 CONDUCT OF GENERAL MEETINGS	16
5.7 DECISIONS AT GENERAL MEETINGS	17
5.8 VOTING RIGHTS.....	18
5.9 REPRESENTATION AT GENERAL MEETINGS	19
6. DIRECTORS.....	21
6.1 APPOINTMENT AND REMOVAL OF DIRECTORS	21
6.2 VACATION OF OFFICE.....	23
6.3 REMUNERATION OF DIRECTORS	23
6.4 SHARE QUALIFICATION.....	24
6.5 INTERESTED DIRECTORS	24
6.6 POWERS AND DUTIES OF DIRECTORS	25
6.7 PROCEEDINGS OF DIRECTORS.....	26

6.8	CONVENING OF MEETINGS OF DIRECTORS	26
6.9	NOTICE OF MEETINGS OF DIRECTORS	26
6.10	QUORUM AT MEETINGS OF DIRECTORS.....	28
6.11	CHAIRPERSON AND DEPUTY CHAIRPERSON OF DIRECTORS	28
6.12	DECISIONS OF DIRECTORS	29
6.13	WRITTEN RESOLUTIONS	29
6.14	NOT USED	30
6.15	COMMITTEES OF DIRECTORS	30
6.16	DELEGATION TO INDIVIDUAL DIRECTORS	30
6.17	VALIDITY OF ACTS	30
7.	EXECUTIVE OFFICERS.....	30
7.1	MANAGING DIRECTORS.....	30
7.2	DEPUTY MANAGING DIRECTORS.....	31
7.3	EXECUTIVE DIRECTORS.....	31
7.4	ASSOCIATE DIRECTORS	31
7.5	SECRETARIES	31
7.6	PROVISIONS APPLICABLE TO ALL EXECUTIVE OFFICERS	31
8.	SEALS.....	32
8.1	SAFE CUSTODY OF SEAL.....	32
8.2	USE OF SEAL	32
8.3	SEAL REGISTER	32
8.4	DUPLICATE SEAL	32
8.5	AUTHORITY TO AFFIX A DUPLICATE SEAL.....	33
8.6	EFFECT OF DUPLICATE SEAL.....	33
8.7	SEALING AND SIGNING OF CERTIFICATES	33
8.8	REGISTER OF DOCUMENTS EXECUTED IN ACCORDANCE WITH SECTION 127	33
9.	DISTRIBUTION OF PROFITS	33
9.1	DIVIDENDS.....	33
9.2	CAPITALISATION OF PROFITS	34
9.3	ANCILLARY POWERS	35
9.4	RESERVES	35
9.5	CARRY FORWARD OF PROFITS	36
9.6	DIVIDEND REINVESTMENT PLANS.....	36
9.7	DIVIDEND SELECTION PLANS	36
10.	WINDING UP	36
10.1	DISTRIBUTION OF SURPLUS	36
10.2	DIVISION OF PROPERTY	36
11.	MINUTES AND RECORDS.....	37
11.1	MINUTES TO BE MADE.....	37
11.2	MINUTES TO BE ENTERED	37
11.3	SIGNATURE OF MINUTES.....	37
11.4	MINUTES AS EVIDENCE	38
11.5	INSPECTION OF RECORDS	38
12.	INDEMNITY AND INSURANCE.....	38
12.1	PERSONS TO WHOM RULES 12.2 AND 12.3 APPLY	38
12.2	INDEMNITY	38
12.3	EXTENT OF INDEMNITY.....	38
12.4	INSURANCE.....	39
12.5	SAVINGS	39
13.	NOTICES	39
13.1	NOTICES BY THE COMPANY TO MEMBERS.....	39
13.2	NOTICES BY THE COMPANY TO DIRECTORS.....	40
13.3	NOTICES BY MEMBERS OR DIRECTORS TO THE COMPANY	40

13.4	NOTICES POSTED TO ADDRESSES OUTSIDE THE COMMONWEALTH	40
13.5	TIME OF SERVICE	40
13.6	OTHER COMMUNICATIONS AND DOCUMENTS.....	41
13.7	NOTICES IN WRITING	41
14.	APPROVAL OF PROPORTIONAL TAKEOVER SCHEMES	41
14.1	DEFINITIONS	41
14.2	TRANSFERS NOT TO BE REGISTERED.....	41
14.3	RESOLUTION	41
14.4	SUNSET	42
15.	GENERAL.....	42
15.1	SUBMISSION TO JURISDICTION.....	42
15.2	PROHIBITION AND ENFORCEABILITY.....	42

CAP-XX LIMITED ACN 050 845 291

CONSTITUTION

1. PRELIMINARY

1.1 Definitions and Interpretation

- (a) In this Constitution, unless inconsistent with the context:

“**Business Day**” has the meaning given to that term in the *Corporations Act 2001*.

“**Certificated Holding**” means a share or shares for which a certificate has been issued, and not subsequently cancelled, by the Company.

“**Company**” means CAP-XX Limited ACN 050 845 291.

“**Dispose**” means to dispose or agree to dispose directly or through another person by any means including the following:

- (a) granting or exercising an option;
- (b) using an asset as collateral;
- (c) decreasing an economic interest; or
- (d) disposing of part of an asset.

“**Related Body Corporate**” has the meaning given to that term in the *Corporations Act 2001*.

“**Representative**” means, in relation to a body corporate, a representative of the body corporate appointed under section 250D(1) of the *Corporations Act 2001* or a corresponding previous law.

“**Seal**” means any common seal or duplicate common seal of the Company complying with section 123 of the *Corporations Act 2001*.

“**Transmission Event**” means:

- (i) in respect of a member of the Company who is an individual:
 - (A) the death of the member;
 - (B) the bankruptcy of the member;
 - (C) the member becoming of unsound mind; or
 - (D) the member becoming a person who is, or the member’s estate becoming liable to be dealt with in any way under the law relating to mental health; and
- (ii) in respect of a member of the Company 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.

“**Uncertificated Holding**” means a share or shares for which a certificate has not been issued by the Company, or in respect of which any certificate which was issued by the Company has been cancelled without the issue of a replacement certificate, in accordance with **rule 2.14**.

- (b) A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.

- (c) A reference in a rule to a call or an amount called in respect of a partly paid share includes a reference to a sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) In this Constitution, headings are for convenience only and do not affect the interpretation of this Constitution and:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) a reference to a person includes a natural person, company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to a person includes that person's successors and legal personal representatives;
 - (v) 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;
 - (vi) 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.

1.2 Application of the Corporations Act 2001

- (a) This Constitution is to be interpreted subject to the *Corporations Act 2001*.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the *Corporations Act 2001* has the same meaning as in that provision.

1.3 Exercise of powers

- (a) The Company may exercise in any manner permitted by the *Corporations Act 2001* any power which a company limited by shares may exercise under the *Corporations Act 2001* if authorised by its Constitution.
- (b) 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.
- (c) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken to include a power to repeal, rescind, revoke, amend or vary that act or thing.
- (d) 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.

- (e) 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:
 - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the Company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) 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.
- (f) Where this Constitution confers a power or impose 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.
- (g) Where this Constitution confers a power or impose a duty on the holder of an office, 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.
- (h) Where this Constitution confers power on a person or body to delegate a function or power:
 - (i) 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;
 - (ii) the delegation may be either general or limited in any manner set out in the terms of delegation;
 - (iii) 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;
 - (iv) the delegation may include the power to delegate;
 - (v) 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
 - (vi) 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 Replaceable Rules not to apply

The replaceable rules contained in the *Corporations Act 2001* do not apply to the Company except to the extent that they are repeated in this Constitution.

2. SHARE CAPITAL

2.1 Shares

- (a) Without prejudice to any special rights conferred on the holders of any shares or class of shares but subject to this Constitution the directors may issue, allot 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.

- (b) 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

The Company may issue preference shares on such terms and conditions as it thinks fit.

2.3 Variation of class rights

Unless otherwise provided by the terms of issue of a class of shares:

- (a) all or any of the rights or privileges attached to the class may be varied, whether or not the Company is being wound up, only with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;
- (b) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and
- (c) the rights conferred upon the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

2.4 Power to buy back ordinary shares

The Company may buy back ordinary shares in itself in any manner permitted by the *Corporations Act 2001*.

2.5 Power to alter share capital

- (a) The Company may, by resolution, alter its share capital in any one or more of the following ways:
 - (i) by increasing its share capital by the creation of new shares of such amount as is specified in the resolution;
 - (ii) by converting all or any of its Shares into a larger or smaller number of shares than its existing shares provided that in a conversion of partly paid shares the proportion between the amount paid and the amount unpaid on each share converted is the same as it was for the share from which it was converted; and
 - (iii) by cancelling shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorised share capital by the amount of the shares so cancelled.
- (b) Where fractions of shares are or would otherwise be created by a conversion of shares under rule 2.5(a)(ii), the directors may:
 - (i) issue fractional certificates for those shares;
 - (ii) determine that fractions of shares are to be disregarded or rounded down to the nearest whole share; or
 - (iii) determine that fractions of shares are to be rounded up to the nearest whole share by capitalising any amount available for capitalisation under rule 9.2 even though some only of the members may participate in that capitalisation.
- (c) Whenever any share is converted under rule 2.5(a)(ii), the Company may, by special resolution, determine that as between the shares resulting from the conversion one or more of the shares are to have some preference or advantage as regards dividend, voting, return of capital, participation in the property of the Company on a winding up or otherwise, as compared with the others or other.

2.6 Power to reclassify share capital

The Company may, by resolution, reclassify or convert shares from one class to another.

2.7 Power to reduce share capital

The Company may with members' approval as required by the *Corporations Act 2001* reduce its share capital.

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

- (a) The Company may make payments by way of brokerage or commission in the manner provided by the *Corporations Act 2001*.
- (b) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully paid shares, by the allotment of partly paid shares or by any combination of the above.
- (c) The Company may pay interest on its share capital in the manner provided by the *Corporations Act 2001*.

2.9 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:

- (a) 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;
- (b) subject to rule 2.9(a), on the death of any one of them the survivor or survivors are the only person or persons the Company will recognise as having any title to the share;
- (c) any one of them may give effectual receipts for any dividend, interest or other distribution or payment in respect of the share;
- (d) the Company is not bound to register more than 3 persons as joint holders of the share;
- (e) the Company is not bound to issue more than one certificate in respect of the share; and
- (f) delivery of a certificate for the share to any one of them is sufficient delivery to all of them.

2.10 Equitable and other claims

- (a) Except as otherwise required by law or provided by this Constitution, the Company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
 - (i) compelled in any way to recognise a person as holding a share upon any trust, even if the Company has notice of that trust; or
 - (ii) compelled in any way to recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right of ownership in the registered holder, even if the Company has notice of that claim or interest.
- (b) 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.
- (c) Nothing in rule 2.10(b) limits the operation of rule 2.10(a).

2.11 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.

2.12 Employee share schemes

The directors may:

- (a) implement an employee share scheme 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 any 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;
- (b) amend, suspend or terminate any employee share scheme implemented by them; and
- (c) give financial assistance in connection with the acquisition of securities of the Company or of a Related Body Corporate under any employee share scheme in any manner permitted by the *Corporations Act 2001*.

2.13 Lock-ins

Notwithstanding any other provision of this Constitution:

- (a) the holder of any shares which are the subject of a lock-in agreement or restriction agreement cannot Dispose of those shares during the period of the lock-in or restriction except as permitted by the terms of the agreement;
- (b) the Company must refuse to acknowledge, deal with or accept a Disposal (including registering a transfer) which is or might be in breach of any lock-in agreement or restriction agreement entered into by the Company; and
- (c) during a breach of a lock-in agreement or a restriction agreement relating to shares, the member holding the Restricted Securities in question ceases to be entitled to any dividend or distribution, or any voting rights in respect of those shares.

2.14 Certificates

If it is not contrary to the *Corporations Act 2001*, the directors may resolve:

- (a) not to issue a certificate for a share; and
- (b) to cancel a certificate for a share and not to issue a replacement certificate.

3. CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER

3.1 Calls

- (a) 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.
- (b) A call may be required by the directors to be paid by instalments.

- (c) Upon receiving at least 11 Business 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.
- (d) A call is to be taken as having been made when the resolution of the directors authorising the call was passed.
- (e) The directors may revoke a call.
- (f) 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.
- (g) 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:
 - (i) 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
 - (ii) any costs, expenses or damages incurred by the Company in relation to the non-payment or late payment of the sum.
- (h) Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on allotment or at a fixed date:
 - (i) 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
 - (ii) must be paid on the date on which it is payable under the terms of issue of the share.
- (i) 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

- (a) 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:
 - (i) the name of the defendant is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
 - (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was given to the defendant in accordance with this Constitution,
 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.
- (b) In rule 3.2(a), "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

- (a) 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.
- (b) The directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted under rule 3.3(a), until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.

- (c) The directors may repay to a member all or any of the amount accepted under **rule 3.3(a)**.

3.4 Forfeiture of partly paid shares

- (a) 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:
- (i) 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;
 - (ii) 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(a)(i)** is to be paid; and
 - (iii) stating that, in the event of non-payment of the whole of the amount payable under **rule 3.4(a)(i)** by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.
- (b) If the requirements of a notice served under **rule 3.4(a)** 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.
- (c) A forfeiture under **rule 3.4(b)** will include all dividends, interest and other money payable by the Company in respect of the forfeited share and not actually paid before the forfeiture.
- (d) Where a share has been forfeited:
- (i) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under **rule 3.4(d)** does not invalidate the forfeiture.
- (f) 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.
- (g) 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:
- (i) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
 - (ii) interest on so much of the amount payable under **rule 3.4(g)(i)** 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**.
- (h) Except as otherwise provided by this Constitution 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 incident to the share.
- (i) The directors may:
- (i) exempt a share from all or any part of this **rule 3.4**;
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.4**; and

- (iii) 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:

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

whether as a consequence of:

- (e) the death of that member;
- (f) 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;
- (g) 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
- (h) any other act or thing,

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

- (i) the member or, if the member is dead, the member's legal personal representative must:
 - (i) fully indemnify the Company against that liability;
 - (ii) reimburse the Company for any payment made under or as a consequence of that law immediately on demand by the Company; and
 - (iii) pay interest on so much of the amount payable to the Company under **rule 3.5(i)(ii)** 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(i)(ii)**, at a rate determined under **rule 3.9**; and
- (j) the directors may:
 - (i) exempt a share from all or any part of this **rule 3.5**; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.5**.

3.6 Lien on shares

- (a) The Company has a first and paramount lien on:
 - (i) each partly paid share for all unpaid calls and instalments due in respect of that share; and
 - (ii) each share for such amounts (if any) as the Company may be called upon by law to pay (and has paid) in respect of that share.

- (b) 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.
- (c) The directors may sell any share on which the Company has a lien in such manner as they think fit where:
 - (i) an amount in respect of which a lien exists under this **rule 3.6** is presently payable; and
 - (ii) 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.
- (d) The directors may do all things necessary or desirable to protect any lien, charge or other right to which the Company may be entitled under any law or under this Constitution.
- (e) 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.
- (f) The directors may:
 - (i) exempt a share from all or any part of this **rule 3.6**; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.6**.

3.7 Surrender of shares

- (a) 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.
- (b) 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

- (a) A reference in this **rule 3.8** to a "disposal of shares under this Constitution" is a reference to:
 - (i) any sale, reissue or other disposal of a forfeited share under **rule 3.4(f)** or a surrendered share under **rule 3.7**; and
 - (ii) any sale of a share on which the Company has a lien under **rule 3.6(c)**.
- (b) Where any shares are "disposed of under this Constitution", the directors may:
 - (i) receive the purchase money or consideration given for the shares on the disposal;
 - (ii) 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
 - (iii) register as the holder of the shares the person to whom the shares have been "disposed of under this Constitution".
- (c) 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).

- (d) 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.
- (e) The proceeds of a “disposal of shares under this Constitution” must be applied in the payment of:
 - (i) the expenses of the disposal; and then
 - (ii) all money presently payable by the former holder whose shares have been “disposed of under this Constitution”; and then
 - (iii) 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:
 - (A) in the case of an Uncertificated Holding, as soon as practicable after the disposal; and
 - (B) in the case of a Certificated Holding, on the former holder delivering to the Company the certificate for the shares that have been “disposed of under this Constitution” or such other proof of title as the directors may accept.
- (f) A statement in writing signed by a director or secretary of the Company to the effect that a share in the Company has been:
 - (i) duly forfeited under **rule 3.4(b)**;
 - (ii) duly sold, reissued or otherwise “disposed of under **rule 3.4(f)** or **rule 3.7** of this Constitution”; or
 - (iii) duly sold under **rule 3.6(c)**,

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 under this Constitution”.

3.9 Interest payable by member

- (a) For the purposes of **rules 3.1(g)(i), 3.4(g)(ii) and 3.5(i)(iii)**, the rate of interest payable to the Company is:
 - (i) if the directors have fixed a rate, the rate so fixed; or
 - (ii) in any other case, 15% per annum.
- (b) Interest payable under **rules 3.1(g)(i), 3.4(g)(ii) and 3.5(i)(iii)** accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

4. TRANSFER AND TRANSMISSION OF SHARES

4.1 Transfer of shares

- (a) Subject to this Constitution and the *Corporations Act 2001* 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:
 - (i) a proper transfer; or
 - (ii) an instrument in writing in any usual form or in any other form that the directors approve.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

- (c) The Company must not charge a fee for the registration of a transfer of shares.
- (d) An instrument of transfer referred to in **rule 4.1(a)(ii)** must:
 - (i) be signed by or on behalf of both the transferor and the transferee unless:
 - (A) the instrument of transfer relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (B) the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the *Corporations Act 2001*;
 - (ii) if required by law to be stamped, be duly stamped;
 - (iii) 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, in the case of a Certificated Holding, the certificate for the shares) and to prove the right of the transferee to be registered as the owner of the shares.
- (e) Subject to the powers vested in the directors under **rule 4.2**, where the Company receives an instrument of transfer under **rule 4.1(d)**, the Company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (f) The Company may retain any registered instrument of transfer received by the Company under **rule 4.1(d)** for such period as the directors think fit.
- (g) Except in the case of fraud, the Company must return any instrument of transfer received under **rule 4.1(d)** which the directors decline to register to the person who deposited it with the Company.
- (h) 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 operator of any market on which shares are quoted.
- (i) The directors may, to the extent permitted by law, waive all or any of the requirements of this **rule 4.1**, whether for the purpose of giving effect to **rule 4.1(h)** or otherwise.

4.2 Power to decline registration of transfers

- (a) The directors may decline to register an instrument of transfer received under **rule 4.1(d)** where the transfer is not in registrable form or the refusal to register the transfer is permitted under the *Corporations Act 2001* or this Constitution.
- (b) If the directors decline to register a transfer under **rule 4.2(a)**, the Company must give:
 - (i) in the case of a proper transfer, the holder of the shares;
 - (ii) in the case of any other instrument of transfer, the party lodging the transfer,

written notice of the refusal and the precise reasons for it 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 or apply for the holding lock.

4.3 Transmission of shares

- (a) 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:

- (i) the legal personal representative of the deceased where the deceased was a sole holder; and
 - (ii) the survivor or survivors where the deceased was a joint holder.
- (b) Nothing contained in **rule 4.3(a)** releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased member solely or jointly with other persons.
- (c) 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, in the case of a Certificated Holding, the certificate for the share), elect:
 - (i) to be registered as the holder of the share by signing and serving on the Company a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the share by executing or otherwise effecting a transfer of the share to that other person.
- (d) The provisions of this Constitution relating to the right to transfer shares, 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 4.3(c)(ii)** as if the relevant Transmission Event had not occurred and the transfer were executed or effected by the registered holder of the share.
- (e) For the purpose of this Constitution, where 2 or more persons are jointly entitled to any share as a result 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 2.10** will apply to them.
- (f) Notwithstanding **rule 4.3(a)**, the directors may register a transfer of shares signed by a member prior to a Transmission Event even though the Company has notice of the Transmission Event.

5. GENERAL MEETINGS

5.1 Convening of general meetings

- (a) The directors may, whenever they think fit, convene a general meeting.
- (b) A general meeting may be convened only as provided by this **rule 5.1(a)** or as provided by the *Corporations Act 2001*.
- (c) The directors may postpone, cancel or change the venue for a general meeting, but a general meeting convened under section 249D of the *Corporations Act 2001* may not be postponed beyond the date by which section 249D of the *Corporations Act 2001* requires it to be held and may not be cancelled without the consent of the requisitioning member or members.

5.2 Notice of general meetings

- (a) Subject to this Constitution and to the rights or restrictions attached to any shares or class of shares at least 28 days' notice of a general meeting must be given in the manner authorised by **rule 13.1** to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Company.
- (b) A notice of a general meeting must:

- (i) specify the place, date and time of the meeting and except as provided in **Rule 5.2(c)** state the general nature of the business to be transacted at the meeting;
 - (ii) contain any statement or information required by the Law;
 - (iii) be accompanied by a proxy form which will:
 - (A) enable the member to vote for or against, or abstain from, each resolution to be put to the meeting; and
 - (B) allow for the insertion by the member of the name of the person or persons to be appointed as proxy and may also provide that, in such circumstances and on such conditions specified in the form as are not inconsistent with this Constitution, the chairperson of the relevant meeting (or another person specified in the proxy form) is appointed as proxy; and
 - (iv) specify a place and a fax number, and may specify an electronic address, for the purposes of receipt of proxy appointments.
- (c) 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 accounts and the reports of the directors and auditor, the election of directors in place of those retiring, the appointment and fixing of the remuneration of the auditor of the Company or any other business which under the *Corporations Act 2001* ought to be transacted at the annual general meeting.
- (d) A person may waive notice of any general meeting by notice in writing to the Company.
- (e) 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 5.2** does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under **rule 5.2(d)**; or
 - (B) 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.
- (f) A person's attendance at a general meeting:
- (i) 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
 - (ii) 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 5.2(c)**, unless the person objects to considering the matter when it is presented.
- (g) A general meeting may be held at two or more venues simultaneously using any technology which gives the members as a whole a reasonable opportunity to participate.
- (h) Where notice of a general meeting has been given, the directors may by notice given to all persons entitled to be given notice of the general meeting, postpone or cancel the general meeting.
- (i) No person shall as regards any business of which notice has been duly given or otherwise be at liberty to move at any meeting any resolution or any amendment of a resolution not previously approved of by the directors unless he has given not less than 5 business days notice of his

intention to move such resolution or amendment at such meeting by leaving a copy of the resolution or amendment at the registered office of the Company.

5.3 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:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of a rule considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any rule, or the contents of any rule, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
 - (i) a member or a proxy, attorney or Representative of a member;
 - (ii) a director; or
 - (iii) an auditor of the Company.

5.4 Quorum at general meetings

- (a) 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.
- (b) Two or more members present personally or separately represented by proxy representative or attorney shall be a quorum for a general meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) 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
 - (B) 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.

5.5 Chairperson of general meetings

- (a) 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.
- (b) If at a general meeting:
 - (i) there is no chairperson of directors;

- (ii) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
- (iii) 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.

(c) Subject to rule 5.5(a), if at a general meeting:

- (i) there is no deputy chairperson of directors;
- (ii) the deputy chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
- (iii) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting;

the members present must elect as chairperson of the meeting:

- (iv) another director who is present and willing to act; or
- (v) if no other director willing to act is present at the meeting, a member who is present and willing to act.

5.6 Conduct of general meetings

- (a) 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:
 - (i) 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
 - (ii) 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.
- (b) 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:
 - (i) 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
 - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) The chairperson of a general meeting may:
 - (i) subject to paragraphs (iii) and (iv) 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 5.2(d); and
 - (ii) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 5.2(c).

- (d) The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (e) If the Company's Auditor or their representative is at the meeting, the chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.
- (f) A decision by a chairperson under rule 5.6(a), (b) or (c) is final.
- (g) 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.
- (h) If the chairperson exercises his or her right under rule 5.6(g), it is in the chairperson's sole discretion whether to seek the approval of the members present to the adjournment.
- (i) The chairperson's rights under rule 5.6(g) 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.
- (j) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (k) Where a meeting is adjourned, notice of the adjourned meeting need not to be given to any person.
- (l) Where a meeting is adjourned, the directors may cancel or change the venue of the adjourned meeting.

5.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting will be decided by a majority of votes cast by the members present at the meeting and any such decision is a decision of the members for all purposes.
- (b) If there is an equality of votes upon any proposed resolution, the chairperson of the meeting, has a casting vote in addition to his or her deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded before or immediately after the declaration of the result of the show of hands:
 - (i) by the chairperson of the meeting;
 - (ii) by at least 5 members entitled to vote on the resolution;
 - (iii) by a member or members representing not less than 5% of the votes that may be cast on the resolution on a poll; or
 - (iv) by a member or members holding shares in the Company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- (d) 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.
- (e) 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.

- (f) 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.
- (g) A poll cannot be demanded at a general meeting on the election of a chairperson of the meeting.
- (h) The demand for a poll may be withdrawn.

5.8 Voting rights

- (a) Subject to this Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every member present has one vote; and
 - (ii) on a poll, every member present has:
 - (A) one vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
 - (B) 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) on the share.
 - (iii) for the purposes of **rule 5.8(a)(ii)B**, an amount paid on a share in advance of a call is to be taken as not having been paid on the share.
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member:
 - (i) on a show of hands the person is entitled to one vote only despite the number of members the person represents;
 - (ii) that vote will be taken as having been cast for all the members the person represents;
 - (iii) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with **rule 5.9(g)** in any instrument appointing the person as a proxy or attorney; and
 - (iv) if the person has been appointed as a proxy under two or more instruments that specify different ways to vote on a resolution, the person may not vote as a proxy on a show of hands; however, if the person is a Member, the person may vote on a show of hands without regard to the proxies the person holds.
- (c) 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 one 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.
- (d) 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.
- (e) 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, the directors have:

- (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under **rule 4.3(c)**,
- 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.
- (f) Where a member holds any share upon which any call or other sum of money payable to the Company has not been duly paid:
 - (i) 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
 - (ii) 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.
 - (g) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (ii) must be referred to the chairperson of the meeting, whose decision is final.
 - (h) A vote not disallowed by the chairperson of a meeting under **rule 5.8(g)** is valid for all purposes.

5.9 Representation at general meetings

- (a) Subject to this Constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a member of the Company.
- (c) 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.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or Representative will be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the *Corporations Act 2001* or by this Constitution;
 - (ii) to agree to a resolution being proposed and passed at a meeting of which less than 28 days' notice has been given;
 - (iii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iv) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (v) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions;

- (A) 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;
 - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
- (vi) 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.
- (e) The chairperson of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chairperson that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (f) Where a member appoints 2 proxies or attorneys to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
 - (i) the appointment is of no effect and a proxy or attorney may not vote unless each proxy or attorney, as the case may be, is appointed to represent a specified proportion of the member's voting rights;
 - (ii) on a show of hands, only the first person named in the instrument appointing the proxies, or if they are named in separate instruments, the person whose name is earlier in alphabetical sequence, may vote; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (g) 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.
- (h) An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and:
 - (i) in the case of a natural person, signed by the appointer;
 - (ii) in the case of a body corporate, executed by the appointer;
 - (iii) in either case, signed by the appointer's attorney; or
 - (iv) otherwise authenticated in a manner permitted by the *Corporations Act 2001* or prescribed by the *Corporations Regulations 2001*.
- (i) An instrument of proxy is not invalid or ineffective merely if any or all of the following applies:
 - (i) it does not contain the address of the Member giving it;
 - (ii) it does not contain the address of the person appointed by it;
 - (iii) it is not dated; and
 - (iv) it does not contain a direction to the appointee as to how to vote on any or all items of business.

- (j) 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 original or an attested copy of the power of attorney or other authority (if any) under which the instrument is signed, are received at the registered office of the Company or at such other place specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be).
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
 - (i) a Transmission Event occurring in relation to the appointer; or
 - (ii) 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 one of the places at which the instrument appointing the proxy or attorney is required to be deposited under **rule 5.9(i)**.
- (l) 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 deposited under **rule 5.9(i)**.
- (m) 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.
- (n) A proxy form issued by the Company must allow for the insertion of the name of the person to be primarily appointed as proxy and may provide that, in such circumstances and on such conditions specified in the form as are not inconsistent with this Constitution, the chairperson of the relevant meeting (or another person specified in the proxy form) is appointed as proxy.

6. DIRECTORS

6.1 Appointment and removal of directors

- (a) 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 12 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.
- (b) 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.
- (c) Subject to **rules 6.1(a)** and **(l)**, 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.
- (d) Subject to **rules 6.1(a)** and **(e)**, 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 6.1(k)** and no person is appointed in place of that director under **rule 6.1(k)(ii)**).
- (e) A director, other than the managing director (or if there is more than one managing director, the managing director appointed first in time), appointed under **rule 6.1(d)** must retire from office at the next general meeting following his or her appointment.
- (f) An election of directors must take place each year and at that meeting:

- (i) excluding any director who is required to retire at that meeting under **rule 6.1(e)** and the managing director (or if there is more than one managing director, the managing director appointed first in time):
 - (A) one-third of the remaining directors (rounded down, if necessary, to the nearest whole number); and
 - (B) any other 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,
 must retire from office as directors; and
- (ii) if no director is required to retire from office under **rule 6.1(f)(i)**, at least one director, excluding a managing director (or if there is more than one managing director, the managing director appointed first in time) but including a director appointed under **rule 6.1(d)** who is required to retire at that meeting under **rule 6.1(e)**, must retire from office as a director.
- (g) The director or directors who must retire at an annual general meeting in accordance with **rule 6.1(f)(i)** or **(f)(ii)** (as the case may be) is the director who has, or are the directors who have, been longest in office since their last election but, as between persons who were last elected as directors on the same day, the director or directors to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- (h) Subject to **rule 6.1(m)**, the Company may by resolution fill the office vacated by a director under **rule 6.1(e)** or **(f)** by electing a person to that office.
- (i) A director retiring from office under **rule 6.1(e)** or **(f)** is eligible for re-election and that director may by resolution of the Company be re-elected to that office.
- (j) The retirement of a director from office under **rule 6.1(e)** or **(f)** 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.
- (k) The Company may:
 - (i) by resolution in accordance with section 203D of the *Corporations Act 2001* remove a director from office; and
 - (ii) subject to **rule 6.1(m)**, by resolution fill the office vacated by a director who is removed under **rule 6.1(k)(i)** by electing another person to that office.
- (l) A person elected as a director under **rule 6.1(k)(ii)** must retire under **rule 6.1(e)** or **(f)** (as the case may be) on the same day that the director in whose place he or she was appointed would have had to retire under **rule 6.1(e)** or **(f)** if that director had not been removed from office under **rule 6.1(k)(i)**.
- (m) A person may only be elected to the office of a director at a general meeting if:
 - (i) he or she is a director retiring from office under **rule 6.1(e)** or **(f)** and standing for re-election at that meeting;
 - (ii) he or she has been nominated by the directors for election at that meeting;
 - (iii) if the person is a member, he or she has at least 35 Business Days before the meeting served on the Company a notice signed by him or her signifying his or her desire to be a candidate for election at that meeting; or

- (iv) whether or not the person is a member, some member intending to nominate him or her for election at that meeting has at least 35 Business Days before the meeting served on the Company a notice signed by the member and signifying the member's intention to nominate the person for election, which is accompanied by a notice signed by the person and signifying his or her consent to the nomination.
- (n) If there is more than one managing director at any time:
 - (i) a managing director will be regarded as being appointed first in time if that managing director was appointed as managing director prior to the appointment of any other person as managing director who is also a managing director at the relevant time; and
 - (ii) if it is not possible to determine which managing director was appointed first in time because more than one was appointed as managing director at the same time, the managing director whose name first appears in the minutes noting the appointment of those persons as managing directors will be deemed to have been appointed first in time.

6.2 Vacation of office

In addition to the circumstances prescribed by the *Corporations Act 2001*, the office of a director becomes vacant if the director:

- (a) 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;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted of a felony and the directors do not within one month of that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend meetings of the directors for more than 4 consecutive months without leave of absence from the directors; or
- (e) resigns by notice in writing to the Company.

6.3 Remuneration of directors

- (a) 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 year the amount fixed by the Company in general meeting for that purpose.
- (b) The remuneration of directors:
 - (i) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
 - (ii) 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 6.3(b)(i)** or a share of a fixed sum under **rule 6.3(b)(ii)**, will be taken to accrue from day to day.

- (c) The remuneration payable by the Company to a director must not include a commission on, or percentage of operating revenue.
- (d) In addition to their remuneration under **rule 6.3(a)**, the directors are entitled to be paid all travelling and other expenses properly incurred by them 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.

- (e) 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 6.3(a)**.
- (f) Nothing in **rule 6.3(a)** 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 6.3(a)**.
- (g) The directors may:
 - (i) 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 6.3(a)**, a pension or lump sum payment in respect of past services rendered by that director; and
 - (ii) cause the Company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- (h) 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.

6.4 Share qualification

- (a) A director is not required to hold any shares in the Company to qualify for appointment.
- (b) A director who is not a member of the Company is nevertheless entitled to attend and speak at general meetings.

6.5 Interested directors

- (a) 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.
- (b) 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 shareholder 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.
- (c) 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.
- (d) A director is not disqualified merely because of being a director from contracting with the Company in any respect including, without limitation:
 - (i) selling any property to, or purchasing any property from, the Company;

- (ii) lending any money to, or borrowing any money from, the Company with or without interest and with or without security;
 - (iii) guaranteeing the repayment of any money borrowed by the Company for a commission or profit;
 - (iv) 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 shareholder or otherwise, for a commission or profit; or
 - (v) being employed by the Company or acting in any professional capacity (other than auditor) on behalf of the Company.
- (e) 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.
- (f) 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.
- (g) Subject to **rule 6.5(h)**, a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- (i) 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;
 - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the Seal is affixed; and
 - (iii) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (h) The provisions of **rule 6.5** do not apply if, and to the extent that, they would be contrary to the *Corporations Act 2001*.
- (i) 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 rule will bind all directors.

6.6 Powers and duties of directors

- (a) 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 2001* or this Constitution to be exercised by the Company in general meeting.
- (b) Without limiting the generality of **rule 6.6(a)**, 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.
- (c) 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.

- (d) 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.
- (e) The directors may:
 - (i) 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;
 - (ii) 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
 - (iii) 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.
- (f) 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.

6.7 Proceedings of directors

- (a) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this Constitution 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 audio or audio visual communication.
- (c) A director participating in a meeting by telephone or audio or audio visual communication is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the meeting provided that at least one of the directors involved was at that place for the duration of the meeting.

6.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

6.9 Notice of meetings of directors

- (a) 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:
 - (i) a director, other than a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under **rule 6.14** by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;

- (iii) may be given immediately before the meeting;
 - (iv) may be given in person or by post, facsimile transmission, email or other electronic means, telephone or other method of written, audio or audio visual communication; and
 - (v) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) 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, facsimile transmission, email or other electronic means, telephone or other method of written, audio or audio visual communication.
- (d) 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:
- (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) has waived or waives notice of that meeting under **rule 6.9(c)**; or
 - (B) has notified or notifies the Company of agreement to that act, matter, thing or resolution personally or by post, facsimile transmission, email or other electronic means, telephone or other method of written, audio or audio visual communication; or
 - (iii) the director or an alternate director appointed by the director attended the meeting.
- (e) 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:
- (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (A) has waived or waives notice of that meeting under **rule 6.9(c)**; or
 - (B) has notified or notifies the Company of agreement to that act, matter, thing or resolution personally or by post, facsimile transmission, email or other electronic means, telephone or other method of written, audio or audio visual communication; or
 - (iii) the alternate director or the director who appointed the alternate director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person and:
- (i) if the person is a director, an alternate director appointed by that person; or
 - (ii) 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.

6.10 Quorum at meetings of directors

- (a) 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.
- (b) A quorum consists of:
 - (i) if the directors have fixed a number for the quorum, that number of directors; and
 - (ii) in any other case, 2 directors,present at the meeting of directors.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.

6.11 Chairperson and deputy chairperson of directors

- (a) The directors may elect one 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.
- (b) The directors may elect one 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.
- (c) 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 6.3(e).
- (d) 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.
- (e) If at a meeting of directors:
 - (i) there is no chairperson of directors;
 - (ii) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) 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.
- (f) Subject to rule 6.11(d), if at a meeting of directors:
 - (i) there is no deputy chairperson of directors;
 - (ii) the deputy chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) 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 one of themselves to be chairperson of the meeting.

6.12 Decisions of directors

- (a) 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.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.
- (c) Subject to rule 6.12(d), 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.
- (d) Where only two directors are present or qualified to vote at a meeting of directors and there is an equality of votes upon any proposed resolution:
 - (i) the chairperson of the meeting will not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.

6.13 Written resolutions

- (a) If:
 - (i) all of the directors, other than:
 - (A) any director on leave of absence approved by the directors;
 - (B) 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
 - (C) 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
 - (ii) 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.
- (b) For the purposes of rule 6.13(a):
 - (i) the meeting is to be taken as having been held:
 - (A) 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
 - (B) 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;
 - (ii) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
 - (iii) 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, telex, facsimile transmission, telephone or other method of written, audio or audio visual communication.

- (c) 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.
- (d) Where a document is assented to in accordance with **rule 6.13(a)**, the document is to be taken as a minute of a meeting of directors.

6.14 Not used

6.15 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this Constitution 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.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of **rule 6.3(e)**.

6.16 Delegation to individual directors

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) 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 6.3(e)**.

6.17 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:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) 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.

7. EXECUTIVE OFFICERS

7.1 Managing directors

- (a) The directors may appoint one or more of the directors to the office of managing director.
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

7.2 Deputy managing directors

- (a) The directors may appoint one or more of the directors to the office of deputy managing director.
- (b) A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

7.3 Executive directors

- (a) A reference in this rule 7.3 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.
- (b) The directors may confer on an executive director such title as they think fit.
- (c) An executive director may be appointed on the basis that the executive director's appointment:
 - (i) 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
 - (ii) 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.

7.4 Associate directors

- (a) The directors may appoint one or more associate directors.
- (b) The directors may confer on an associate director such title as they think fit.
- (c) Even though the word "director" may appear in an associate director's title, an associate director is not to be taken to be a director of the Company and is not entitled:
 - (i) to attend any meeting of directors except by the invitation and with the consent of the directors; or
 - (ii) to vote at any meeting of directors.

7.5 Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.

7.6 Provisions applicable to all executive officers

- (a) A reference in this rule 7.6 to an executive officer is a reference to a managing director, deputy managing director, executive director, associate director, secretary or assistant secretary appointed under this part 7.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) 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.
- (d) 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.
- (e) The directors may:

- (i) 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;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (f) An executive officer is not required to hold any shares to qualify for appointment.
- (g) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

8. SEALS

8.1 Safe custody of Seal

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

8.2 Use of Seal

- (a) 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.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Subject to rule 8.6, until the directors otherwise determine, every document to which the Seal is affixed must be signed by a director and countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

8.3 Seal register

- (a) The Company must keep a Seal register and, upon the affixing of the Seal to any document (other than a certificate for securities of the Company), must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons signing and countersigning the document under rule 8.2(c).
- (b) 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 8.3.
- (c) Failure to comply with rule 8.3(a) or (b) does not invalidate any document to which the Seal is properly affixed.

8.4 Duplicate Seal

The Company may have, for use in any place out of the State or Territory where the Common Seal is kept, a duplicate common seal (known as the Duplicate Seal for that place) whose impression must be identical to that of the Common Seal but with "duplicate seal", "share seal" or "certificate seal" added.

8.5 Authority to affix a Duplicate Seal

The Company may by instrument under the Common Seal authorise any person either generally or in specified circumstances to affix the Duplicate Seal for a particular place in that place to any instrument to which the Company is a party and determine any manner required for the affixing by that person of that Duplicate Seal in that place.

8.6 Effect of Duplicate Seal

Where an Duplicate Seal is affixed to an instrument in the place to which it relates by a person authorised and in the circumstances authorised for that person under **rule 8.5** in the manner described in **rule 8.5** (if any), that instrument is to be treated for all purposes as having been validly executed under the Common Seal.

8.7 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Company by some mechanical or other means.

8.8 Register of documents executed in accordance with Section 127

The Company must keep a register of the documents it executes in accordance with section 127 of the *Corporations Act 2001* and, upon so executing a document, must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons who signed the document.

9. DISTRIBUTION OF PROFITS

9.1 Dividends

- (a) The directors may declare and pay such interim and final dividends as, in their judgment, the financial position of the Company justifies.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) The payment of a dividend does not require any confirmation by a general meeting.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:
 - (i) all dividends in respect of shares must be declared and paid in proportion to the amounts paid (not credited) of the total amounts paid and payable (excluding amounts credited) on the shares;
 - (ii) all dividends must be apportioned and paid proportionately to the amounts so paid during any portion or portions of the period in respect of which the dividend is paid;
 - (iii) for the purposes of **rules 9.1(d)(i)** and **(ii)**, an amount paid on a share in advance of a call is to be taken as not having been paid on the share; and
 - (iv) interest is not payable by the Company in respect of any dividend.
- (e) The directors may fix a record date in respect of a dividend..
- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled under **rule 4.1(e)** to be registered, as the holder of the share:
 - (i) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that dividend, on the date the dividend is declared,

and a transfer of a share that is not registered, or left with the Company for registration in accordance with **rule 4.1(d)**, on or before that date is not effective, as against the Company, to pass any right to the dividend.

- (g) The directors when declaring a dividend may:
 - (i) 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 shareholders; and
 - (ii) direct that the dividend be paid 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 or generally.
- (h) The directors may deduct from any dividend payable to a member all sums of money presently payable by the member to the Company and apply the amount deducted in or towards satisfaction of the money owing.
- (i) 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.
- (j) 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 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.
- (k) A cheque sent under **rule 9.1(j)** 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.

9.2 Capitalisation of profits

- (a) 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:
 - (i) forming part of the undivided profits of the Company;
 - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company;
 - (iii) arising from the realisation of any assets of the Company; or
 - (iv) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (i) in paying up in full at a price determined by the resolution any unissued shares in or other securities of the Company;
 - (ii) in paying up any amounts unpaid on shares or other securities held by the members; or
 - (iii) partly as specified in **rule 9.2(b)(i)** and partly as specified in **rule 9.2(b)(ii)**,

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.

- (c) **Rules 9.1(e) and (f)** apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this **rule 9.2** as if references in those rules to a dividend and to the date a dividend is declared were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this **rule 9.2** respectively.

9.3 Ancillary powers

For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in **rule 9.1(g)(i)** or by the capitalisation of any amount under **rule 9.2**, the directors may:

- (a) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other securities in the Company are or would otherwise be issuable in fractions:
 - (i) issue fractional certificates for those shares or other securities;
 - (ii) determine that such fractions are to be disregarded or are to be rounded down to the nearest whole number; or
 - (iii) determine that such fractions are to be rounded up to the nearest whole number;
- (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 9.3(e)** is effective and binding on all members concerned.

9.4 Reserves

- (a) 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.
- (b) The directors may appropriate to the profits of the Company any amount previously set aside as a reserve or provision.
- (c) 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.

9.5 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.

9.6 Dividend reinvestment plans

The directors may:

- (a) 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
- (b) amend, suspend or terminate any dividend reinvestment plan implemented by them.

9.7 Dividend selection plans

The directors may:

- (a) implement a dividend selection plan on such terms as they think fit under which participants may elect:
 - (i) 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
 - (ii) 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
- (b) amend, suspend or terminate any dividend selection plan implemented by them.

10. WINDING UP

10.1 Distribution of surplus

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

- (a) if the Company is wound up and the property of the Company available for distribution among the members is more than sufficient:
 - (i) to pay all of the debts and liabilities of the Company; and
 - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in **rule 10.1(a)**, any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under **rule 10.1(a)** must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under **rule 10.1(c)** 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.

10.2 Division of property

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

- (i) divide among the members the whole or any part of the property of the Company; and
 - (ii) determine how the division is to be carried out as between the members or different classes of members.
- (b) Any division under **rule 10.2(a)** 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.
 - (c) Where a division under **rule 10.2(a)** 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 2001*.
 - (d) If any of the property to be divided under **rule 10.2(a)** 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.
 - (e) Nothing in this **rule 10.2** derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
 - (f) **Rule 9.3** applies, so far as it can and with such changes as are necessary, to a division by a liquidator under **rule 10.2(a)** as if references in **rule 9.3** to the directors and to a distribution or capitalisation were references to the liquidator and to the division under **rule 10.2(a)** respectively.

11. MINUTES AND RECORDS

11.1 Minutes to be made

The directors must cause minutes to be made of:

- (a) the names of the Directors present at each directors meeting;
- (b) the names of the committee members present at each meeting of a committee appointed under **rule 6.15**;
- (c) the proceedings and resolutions of each general meeting;
- (d) the proceedings and resolutions of each directors meeting;
- (e) the proceedings and resolutions of each meeting of a committee appointed under **rule 6.15**; and
- (f) written resolutions of Directors passed without a meeting.

11.2 Minutes to be entered

The Directors must cause all minutes made under **rule 11.1** to be entered in the relevant minute book of the Company within one month after the relevant meeting is held.

11.3 Signature of Minutes

The minutes of a meeting made under **rule 11.1**, if appearing on their face to be signed by the chairperson of the meeting or the chairperson of the next succeeding meeting of the relevant body, are sufficient but (except where this Constitution otherwise provides) not conclusive evidence without proof of any further facts of the matters stated in them.

11.4 Minutes as evidence

Any minutes of a meeting purporting to be signed by the chairperson of the meeting or of the next succeeding meeting are (in the absence of proof to the contrary) sufficient evidence of:

- (a) the matters stated in the minutes of the meeting;
- (b) the meeting having been duly convened and held; and
- (c) the validity of all proceedings at the meeting.

11.5 Inspection of records

- (a) 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.
- (b) 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.

12. INDEMNITY AND INSURANCE

12.1 Persons to whom rules 12.2 and 12.3 apply

Rules 12.2 and 12.3 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 7.6(a)) of the Company;
- (b) to such other officers or former officers of the Company or of its Related Bodies Corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Company or of its Related Bodies Corporate.

12.2 Indemnity

The Company must indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 12.2 applies for all losses or liabilities incurred by the person as an officer or, if the directors so determine, an auditor of the Company or of a Related Body Corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) 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
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the *Corporations Act 2001*.

12.3 Extent of Indemnity

The indemnity in rule 12.2:

- (a) is a continuing obligation and enforceable by a person to whom rule 12.2 applies even though that person may have ceased to be an officer or auditor of the Company or of a Related Body Corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not covered by insurance.

12.4 Insurance

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this **rule 12.3** applies against any liability incurred by the person as an officer or auditor of the Company or of a Related Body Corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

12.5 Savings

Nothing in **rules 12.2 or 12.4**:

- (a) affects any other right or remedy that a person to whom this Constitution apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

13. NOTICES

13.1 Notices by the Company to members

- (a) A notice may be given by the Company to a member:
 - (i) 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 telex, facsimile transmission or electronically to such telex, facsimile number or electronic address, as the member has supplied to the Company for the giving of notices; or
 - (ii) 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.
- (b) 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 13.1(a)** to the joint holder first named in the register of members in respect of the share.
- (c) 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 13.1(a)(i)** addressed to the name or title of the person, at or to such address or telex or facsimile number supplied to the Company for the giving of notices to that person, or if no address or telex or facsimile number has been supplied, at or to the address or telex or facsimile number to which the notice might have been sent if the relevant Transmission Event had not occurred.
- (d) A notice may be given by the Company to a person appointed as a proxy by giving the notice in the manner authorised by **rule 13.1(a)(i)** addressed to the name or title of the person, at such address or telex or facsimile number supplied to the Company for the giving of notices to that person.
- (e) The fact that a person has supplied a telex, facsimile number or electronic address for the giving of notices does not require the Company to give any notice to that person by telex, facsimile or electronically.

- (f) A notice given to a member in accordance with rules 13.1(a) or (b) is, despite the occurrence of a Transmission Event and whether or not the Company has notice of that occurrence:
 - (i) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficient service on any person entitled to the shares as a result of the Transmission Event.
- (g) 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.
- (h) 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 13.1.
- (i) A signature to any notice given by the Company to a member under this rule 13.1 may be in writing or a facsimile printed or affixed by some mechanical or other means.
- (j) 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.

13.2 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 telex or facsimile transmission to such telex or facsimile number, as the director or alternate director has supplied to the Company for the giving of notices.

13.3 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 telex or facsimile transmission to the principal telex or facsimile number at the registered office of the Company.

13.4 Notices posted to addresses outside the Commonwealth

A notice sent by post to an address outside the Commonwealth of Australia and its external territories must be sent by airmail or facsimile transmission.

13.5 Time of service

- (a) 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:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by telex, service of the notice is to be taken to be effected if the correct answer back code appears at the commencement and the end of the telex message and to have been effected at the time the telex is sent.
- (c) Where a notice is sent by facsimile transmission or other electronic means, that notice is treated as duly given where the notice is addressed in accordance with rule 13.1 and transmitted by facsimile

transmission to the facsimile number supplied or electronically to the electronic address supplied, as the case may be, if the correct facsimile number appears on a complete facsimile transmission report generated by the sender's facsimile machine or, if sent by electronic means if the sender's computer shows the notice as having been sent to the correct electronic address, and to have been effected on the day the report is received or the date the computer indicates the notice was sent, and is treated as duly given and received (whether it is in fact received or not) on the day of transmission of the notice if a Business Day, otherwise on the next Business Day.

- (d) Where the Company gives a notice under **rule 13.1(a)(ii)** 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.

13.6 Other communications and documents

Rules 13.1 to 13.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

13.7 Notices in writing

A reference in this Constitution to a notice in writing includes a notice given by telex or facsimile transmission or any other form of written communication or electronically.

14. APPROVAL OF PROPORTIONAL TAKEOVER SCHEMES

14.1 Definitions

In this part 14:

- (a) **Associate** has the meaning given to that term in the *Corporations Act 2001*;
- (b) **Prescribed Resolution**, in relation to a Proportional Takeover Scheme, means a resolution to approve the Proportional Takeover Scheme passed in accordance with **rule 14.3**;
- (c) **Proportional Takeover Scheme** means a takeover scheme that is made or purports to be made under section 618 of the *Corporations Act 2001* in respect of shares included in a class of shares in the Company;
- (d) **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
- (e) **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.

14.2 Transfers not to be registered

Notwithstanding **rules 4.1(e)** and **4.2**, 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 14.3**.

14.3 Resolution

- (a) Where offers have been made under a Proportional Takeover Scheme, the directors must:
 - (i) 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
 - (ii) ensure that such a resolution is voted on in accordance with this **rule 14.3**,

before the relevant day in relation to that Proportional Takeover Scheme.

- (b) 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 14.3(a)**.
- (c) 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.
- (d) Subject to **rule 14.3(c)**, 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 one vote for each such share held at that time.
- (e) 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.
- (f) If a Prescribed Resolution to approve a Proportional Takeover Scheme has not been voted on in accordance with this **rule 14.3** 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 14.3** on the relevant day.

14.4 Sunset

Rules 14.1, 14.2 and 14.3 cease to have effect at the end of 3 years beginning:

- (a) where those rules have not been renewed in accordance with the *Corporations Act 2001*, on the date on which those rules were adopted by the Company; or
- (b) where those rules have been renewed in accordance with the *Corporations Act 2001*, on the date those rules were last renewed.

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 registered office of the Company is located, the Federal Court of Australia and the courts which may hear appeals from those courts.

15.2 Prohibition and enforceability

- (a) 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.
- (b) 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.