
Constitution of Bonlac Supply Company Pty Limited

ABN 21 095 271 266

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general meeting on 29 November 2005**

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CONSTITUTION OF BONLAC SUPPLY COMPANY PTY LIMITED
ABN 21 095 271 266

1. PRELIMINARY

1.1 Proprietary company

The Company is a proprietary company and must comply with section 113.

1.2 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this constitution.

1.3 Definitions

In this constitution, unless the context requires otherwise:

"**Alternate**" means an alternate Director appointed under rule 3.1;

"**Appointer**" in relation to an Alternate, means the Director who appointed the Alternate;

"**BFL**" means Fonterra Australia Pty Ltd (formerly called Bonlac Foods Limited) ACN 006 483 665;

"**Board**" means the Directors acting collectively under this constitution;

"**Called Amount**" in respect of a share means:

- (a) the amount of a call on that share that is due and unpaid; and
- (b) any amount the Board requires a member to pay under rule 31.6;

"**Company**" means the company named at the beginning of this constitution whatever its name is for the time being;

"**Corporations Act**" means the *Corporations Act 2001* (Cth);

"**Dairy Farmer**" means a person who conducts a dairy farming business and includes a person who conducts a dairy farming business as a share farmer, on leased land, or otherwise on land beneficially owned by another person;

"**Director**" means a person who is, for the time being, a director of the Company (and includes, where appropriate, an Alternate other than in rules 2.1, 2.2.1, 2.10, 3.1, 12.5, 13.3.1 and 20.3);

"**dividend**" includes bonus;

"**Eastern Region**" means the part of Victoria not included in the Northern Region or Western Region;

"Eastern Supplier Director" means a Supplier Director who is a Supplier to a factory specified by the Board from time to time in the Eastern Region;

"Executive Director" means a Director who:

- (a) is a full-time, permanent employee of the Company or a subsidiary; or
- (b) acts full-time in an executive capacity for the Company or a subsidiary under a contract for services;

"Fonterra Director" means a director who has been appointed under rule 2.3A;

"Independent Director" means a director who has been appointed under rule 2.3;

"Interest Rate" means, in each rule in which that term is used:

- (a) 15% each year; or
- (b) any lower rate for the time being set by the Board for the purposes of that rule;

"Managing Director" means a managing director appointed under rule 7.1;

"member" means a person whose name is entered in the Register as a holder of a share;

"MSAA" means the 'Milk Supply Agency Agreement' between the Company and Fonterra Milk Australia Pty Ltd;

"Non-regional Supplier Director" means a Supplier Director who is determined by the Board to be a Non-regional Supplier Director;

"Northern Region" means the part of Victoria which lies above the 37^o parallel;

"Northern Supplier Director" means a Supplier Director who is a Supplier to a factory specified by the Board from time to time in the Northern Region;

"ordinary resolution" means a resolution of members other than a special resolution;

"Region" means the Eastern Region, Northern Region, Southern Region or Western Region;

"Register" means the register of members kept as required by sections 168 and 169;

"Remuneration" in relation to a Director (other than an Executive Director):

- (a) includes salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
- (b) excludes a payment made as compensation for loss of office or in connection with retirement from office and an insurance premium paid by the Company or indemnity under rule 11;

"**Secretary**" means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this constitution;

"**Southern Region**" means Tasmania;

"**Southern Supplier Director**" means a Supplier Director who is a Supplier to a factory specified by the Board from time to time in the Southern Region;

"**Special Qualifications Director**" means a Director who is neither an Executive Director nor a Supplier Director and who is appointed by the Board under rule 2.3;

"**special resolution**" has the meaning given by section 9;

"**Supplier**" means:

- (a) a Dairy Farmer who supplies milk or in whose name milk is supplied to, or at the direction of, the Company; or
- (b) a person who is, or has within a reasonable period been, a Dairy Farmer and who is approved as a Supplier by the Board;

"**Supplier Director**" means a Director who:

- (a) is also a Supplier; or
- (b) holds more than 20% of the issued voting shares in, or is a director of, a company which is a Supplier,

and a Supplier Director for a Region is a Supplier Director who is a Supplier to a factory specified by the Board located in that Region;

"**Voting Member**" in relation to a general meeting, or meeting of a class of members, means a member who has the right to be present, and to vote on at least 1 item of business to be considered at the meeting;

"**Western Region**" means the part of Victoria that lies below the 37° parallel and west of a notional perpendicular line drawn from the 37° parallel through the intersection of Bourke Street and Elizabeth Street in Melbourne;

"**Western Supplier Director**" means a Supplier Director who is a Supplier to a factory specified by the Board from time to time in the Western Region.

1.4 Interpretation

1.3.1 Headings are for convenience only and do not affect the meaning of this constitution.

1.3.2 Unless the context requires otherwise:

- (a) words (other than those defined in rule 1.2) that are defined by the Corporations Act have the same meaning in this constitution;

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- (b) a reference to:
 - (i) a Chapter, Part, Division or section is reference to a Chapter, Part, Division or section of the Corporations Act; and
 - (ii) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes subordinate legislation issued under it;
 - (c) a singular word includes the plural, and vice versa;
 - (d) a word which suggests one gender includes the other genders;
 - (e) if a word or phrase is defined, another grammatical form of it has a corresponding meaning;
 - (f) a reference to:
 - (i) something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form;
 - (ii) a document or agreement, or provision of it, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (iv) a power is also a reference to an authority or discretion;
 - (v) anything (including a right, obligation or concept) includes each part of it;
 - (g) a power to do something includes a power to revoke or undo it;
 - (h) if an example is given of anything, the example does not limit the scope of that thing;
 - (i) the word "**agreement**" includes an undertaking or other binding arrangement or understanding whether or not it is in writing.

2. **DIRECTORS**

2.1 **Number of Directors**

The Board must consist of:

- (a) 6 Supplier Directors, of which:
 - (i) 1 must be an Eastern Supplier Director;

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- (ii) 1 must be a Northern Supplier Director;
 - (iii) 1 must be a Southern Supplier Director;
 - (iv) 1 must be a Western Supplier Director; and
 - (v) 2 must be Non-regional Supplier Directors; and
- (b) for so long as rule 2.3A applies, 2 Independent Directors; and
- (c) for so long as rule 2.3B applies, 1 Fonterra Director,
- and whilst both rule 2.3A and rule 2.3B do not apply, may also include 1 Special Qualifications Directors (who may be an Executive Director).

2.2 **Qualification as a Director**

- 2.2.1 Unless the Board decides otherwise, a person must be a Supplier to be eligible to act as a Supplier Director.
- 2.2.2 A Director need not be a member.
- 2.2.3 Neither the auditor of the Company for the time being nor any partner or employee of the auditor is eligible to act as a Director of the Company.
- 2.2.4 A person is not eligible to be appointed a Non-regional Supplier Director unless the person has been nominated for appointment by a sub-committee of the Board comprising at least 3 Directors comprising:
- (a) if there is at least 1 Independent Director, an Independent Director; and
 - (b) if there is a Fonterra Director, the Fonterra Director; and
 - (c) not less than 1 Supplier Director.

2.3 **Appointment of Special Qualifications Directors**

- 2.3.1 Subject to this constitution, the Board may at any time appoint one person it considers has particular knowledge, experience or expertise that is necessary or desirable to further the interests of the Company at the relevant time as a Special Qualifications Director for a term no longer than 2 years.
- 2.3.2 Subject to the appointment being confirmed at the next annual general meeting, a Special Qualifications Director so appointed holds office for the period set by the Board at the time of appointment and is then eligible for re-appointment by the Board under this rule.

2.3A **Appointment of Independent Directors**

- 2.3A.1 Subject to this constitution, the Board may at any time appoint a person (not being a full-time, permanent employee of the Company or any subsidiary, or acting full-time in an executive capacity for the Company or a subsidiary under a contract for

services) it considers has particular knowledge, experience or expertise that is necessary or desirable to further the interests of the Company at the relevant time as a Director for a term determined by the Board at the time of appointment.

2.3A.2 Subject to the appointment being confirmed at the next annual general meeting, a Director so appointed holds office for the period set by the Board at the time of appointment and is then (subject to rule 2.3A.1) eligible for re-appointment by the Board under this rule.

2.3A.3 This rule ceases to apply on termination or expiry of the MSAA.

2.3B Appointment of Fonterra Director

If the Company is required under the MSAA to appoint a person nominated by Fonterra Milk Australia Pty Ltd as a director, the Board must appoint the person (provided the person has consent to act as a director).

2.4 Other appointments by the Board

Subject to this constitution, and to the number of Supplier Directors permitted under rule 2.1 not being exceeded, the Board may appoint a person to be a Supplier Director at any time except during a general meeting. Any Supplier Director so appointed:

- (a) automatically retires at the next annual general meeting and is eligible for re-election by that meeting; and
- (b) is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under rule 2.10 at that meeting.

2.5 Election by general meeting

2.5.1 Subject to this constitution, section 201E, and to the number of Supplier Directors permitted under rule 2.1 not being exceeded, the Company may elect Supplier Directors by ordinary resolution at an annual general meeting or any other general meeting, or by postal ballot under rule 2.9.

2.5.2 A Director elected or appointed under rule 2.5.1 to replace one removed from office under rule 2.14 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

2.5.3 If the vacancy created by a Directors' retirement under rule 2.10 is not filled, the retiring Director:

- (a) if willing, continues in office until the next annual general meeting, at which that Director automatically retires and is eligible for re-election; and
- (b) is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under rule 2.10 at that meeting.

2.6 Eligible Candidates

2.6.1 The Company in general meeting cannot validly elect a person as a Supplier Director unless:

- (a) the person retires under rule 2.4, 2.5, 2.10 or 2.13 and seeks re-election; or
- (b) at least 30 days before the meeting at which the relevant resolution will be considered (or, if the election is to take place by postal ballot under rule 2.9, before the dead-line for nominations set by the Board in relation to the ballot), the Company receives both:
 - (i) a nomination of the person by at least 10 Suppliers; and
 - (ii) a consent to act as a director of the Company signed by the person, and either:
 - (iii) there is a vacancy for a Non-regional Supplier Director, or for a Supplier Director for the Region in which the factory specified by the Board is located to which that person is a Supplier; or
 - (iv) a Non-regional Supplier Director or the existing Supplier Director for that Region (as the case may be) will retire at that general meeting for any reason (whether or not that existing Supplier Director is eligible for re-election).

2.6.2 **[deleted]**

2.6.3 The Company in general meeting cannot validly elect a person as a Supplier Director (other than a Non-regional Supplier Director) except as a Supplier Director in the Region in which the factory, specified by the Board, is located to which the person is a Supplier.

2.7 **[deleted]**

2.8 Notice of candidates

The Company must notify members of every candidate for election as a Director in the notice convening the relevant general meeting.

2.9 Postal ballots

The Board may, subject to the ballot being completed before the date (if any) on which an election of Supplier Directors would otherwise be required to take place:

- (a) resolve that an election of Supplier Directors will take place by postal ballot; and
- (b) subject to rule 2.6, decide the form, manner of voting, timing and conduct of that postal ballot.

2.10 **One third of Supplier Directors retire annually**

At each annual general meeting after the annual general meeting of the Company in the year 2002:

- (a) one third (or if that is not a whole number, the lower whole number nearest to one third) of the Supplier Directors who are not appointed, and required to retire under rule 2.4; and
- (b) any Supplier Director who would, if that Director remained in office until the next annual general meeting, have held that office for more than three years,

must retire from office. A Supplier Director who retires under this rule is eligible for re-election.

2.11 **Selection of Supplier Directors to retire**

Subject to rule 2.5, the Supplier Directors who retire under rule 2.10 are those who have held office longest since last being elected or appointed. If 2 or more Supplier Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

2.12 **Time of retirement**

A Director's retirement under rule 2.4, 2.5, 2.10 or 2.13 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

2.13 **Cessation of Director's appointment**

The office of a Director automatically becomes vacant if:

- (a) the person who holds office:
 - (i) resigns by written notice to the Company;
 - (ii) becomes an insolvent under administration;
 - (iii) becomes of unsound mind or mentally incapable of performing the functions of that office;
 - (iv) fails to attend (either personally or by an Alternate) 3 consecutive Board meetings without leave of absence from the Board;
 - (v) being an Executive Director, ceases to be a full time permanent employee of the Company or a subsidiary or to act full time in an executive capacity for the Company or a subsidiary under a contract for services, and the Board does not resolve, before that occurs, that the Director should continue in office until the end of the term of appointment as a Special Qualifications Director;
 - (vi) being a Supplier Director, ceases to be a Supplier;

-
- (vii) being an Independent Director:
 - (A) is not confirmed as the holder of the office at the next annual general meeting following appointment; or
 - (B) has held the office for the full period for which the appointment was made;
 - (viii) being a Special Qualifications Director:
 - (A) is not confirmed as the holder of the office at the next annual general meeting following appointment; or
 - (B) has held the office for the full period for which the appointment was made;
 - (ix) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;
 - (x) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
 - (xi) is removed from office under rule 2.14; or
- (b) in the case of a Fonterra Director, upon the termination or expiry of the MSAA.

2.14 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may remove a Director from office by ordinary resolution. This rule is supplemental to section 203D.

2.15 **Too few Directors**

If the number of Directors is reduced below the number required by rule 2.1, the continuing Directors may act as the Board only if there continues to be at least 3 Supplier Directors and, if one is required to be appointed under rule 2.3B, a Fonterra Director. However, the Board must take all reasonable steps to ensure that such number of additional Directors are promptly appointed under this rule 2 or elected under rule 2.5 to satisfy the requirement of rule 2.1.

If there ceases to be at least 3 Supplier Directors and (if one is required to be appointed) a Fonterra Director, the continuing Directors may act as a Board only:

- (a) to appoint Directors up to those numbers required by rule 2.1;
- (b) to conduct a postal ballot under rule 2.9 for the election of one or more Supplier Directors;
- (c) to convene a meeting of members; and

(d) in emergencies.

2.16 [deleted]

3. ALTERNATE DIRECTORS

3.1 Appointment of Alternates

Replaces section
201K

A Director may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

3.2 Notice of Board meetings

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

3.3 Obligations and entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (c) is entitled to:
 - (i) reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors: and
 - (ii) a daily fee set by the Board from time to time for the period of the appointment.

3.4 Termination of appointment

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs which would cause the Alternate to cease to be a Director under rule 2.13 if the Alternate were a Director.

3.5 **Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

4. **POWERS OF THE BOARD**

4.1 **Board powers**

Except as otherwise required by the Corporations Act, any other applicable law or this constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

4.2 **[deleted]**

4.3 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 7.1, 8 or 31.16.

5. **EXECUTION OF NEGOTIABLE INSTRUMENTS**

The Board must decide the manner in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. This may include the use of facsimile signature if the Board thinks it appropriate. The Company may execute, accept or endorse negotiable instruments only in the manner for the time being decided by the Board.

6. **CHAIRMAN**

6.1 **Appointment and power of the Chairman**

The Board may appoint a Director nominated by the Supplier Directors to be the Chairman either for a specified term (but not for life) or without specifying a term.

6.2 **Termination of appointment of Chairman**

A Chairman is subject to the same rules regarding resignation, removal and retirement from office as a Director as the other Directors. An appointment to the office of Chairman terminates if:

- (a) the Chairman ceases for any reason to be a Director; or
- (b) a majority of the Supplier Directors remove the Chairman from that office,

whether or not the appointment was expressed to be for a specified term.

6.3 **Deputy chairman**

The Board may appoint a Director to be deputy chairman of the Company. If the Chairman is not a Supplier Director the Board may only appoint a Supplier Director as deputy chairman.

7. **MANAGING DIRECTOR**

7.1 **Appointment and power of Managing Director**

7.1.1 The Board may appoint one or more Directors to be a Managing Director either for a specified term (but not for life) or without specifying a term.

7.1.2 The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke that delegation at any time.

7.1.3 This rule does not limit rule 8.

7.2 **Retirement and removal of Managing Director**

A Managing Director is not:

- (a) required to retire; or
- (b) taken into account in determining the number of Directors to retire,

by rotation under rule 2.10 but (subject to any contract between the Company and that Managing Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

7.3 **Termination of appointment of Managing Director**

An appointment to the office of Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, subject to any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

8. DELEGATION OF BOARD POWERS

8.1 Delegation to committee or attorney

The Board may delegate any of its powers:

- (a) to a committee (which may consist entirely of, or include, people who are not Directors);
- (b) to an attorney; or
- (c) to a Director, an employee of the Company, or any other person,

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 198D.

8.2 Terms of delegation

8.2.1 A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate if permitted by law) and subject to any restrictions the Board decides.

8.2.2 Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

8.3 Protection of third parties

A document that evidences a delegation of power under rule 8.1 may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

8.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by rule 12.

9. DIRECTORS' DUTIES AND INTERESTS

9.1 Compliance with Corporations Act

Each Director must comply with sections 180 to 183, 205C and 205F.

9.2 Interest does not disqualify Director

A Director is not disqualified by reason only of being a Director from:

-
- (a) holding any office or place of profit or employment other than that of the Company's auditor (if any), or being a member or creditor of any corporation (including the Company) or partnership other than the auditor (if any); or
 - (b) entering into any agreement with the Company.

9.3 **Disclosure of interests**

9.3.1 Subject to rule 9.3.2, a Director who:

- (a) is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company; or
- (f) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with that Director's duties or interests as a Director; or
- (g) has any material interest in a matter relating to the affairs of the Company,

must declare the fact and the nature and extent of the interest and its relation to the affairs of the Company, or nature, character and extent of the conflict, as soon as practical and no later than the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director (whichever is later).

9.3.2 Rule 9.3.1 does not apply if the Corporations Act expressly excuses the Director from declaring an interest.

9.4 **Participation by interested Director**

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in the quorum for a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Company may proceed with any transaction to which the interest relates and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction despite the Director's interest in the transaction; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

9.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 9.3; or

-
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement in breach of section 195.

9.6 **Secrecy obligation**

9.6.1 Every Director and Secretary must keep the affairs and business dealings of the Company and the state of its accounts confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

9.6.2 The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

10. **DIRECTORS' REMUNERATION**

10.1 **Remuneration of Directors**

10.1.1 The Directors (other than the Executive Directors and Alternates) are entitled to be paid, out of the funds of the Company, an amount of Remuneration which:

- (a) does not in any year exceed in aggregate:
 - (i) until an amount is fixed by ordinary resolution, \$30,000; or
 - (ii) the amount last fixed by ordinary resolution;
- (b) is allocated among them:
 - (i) on the basis that each Director participates on an equal basis having regard to the proportion of the relevant year for which that Director held office; or
 - (ii) as otherwise decided by the Board.

10.1.2 If any of the Directors is an Executive Director, subject to any contract between the Executive Director and the Company, the Board may fix the remuneration of that Executive Director. That remuneration may consist of salary, bonuses, participation in profits or any other elements.

10.2 **Additional Remuneration for extra services**

If a Director (other than an Executive Director), at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual address), the Company may pay that Director a fixed sum or reward that Director in another manner decided by the Board for doing so. Remuneration under this rule may be either in addition to or in substitution for

any remuneration to which that Director is entitled under rule 10.1.

10.3 Expenses of Directors

10.3.1 Subject to rule 10.3.2, the Company must pay a Director (in addition to any Remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

10.3.2 The Company may pay a Director a reasonable allowance to cover a particular class of expense. If it does so, the Director has no right to be reimbursed for expenses of that class under rule 10.3.1.

10.4 Directors' retirement benefits

Subject to Division 2 of Part 2D.2, the Company may:

- (a) agree with a Director or person about to become a Director that, when or after the person dies or otherwise ceases to be a Director, the Company will pay a pension, lump sum benefit, or both to:
 - (i) that person; or
 - (ii) after that person's death, any of the surviving spouse, dependants or legal personal representatives of that person; or
 - (iii) pay a pension, lump sum benefit, or both to a person mentioned in this rule whether or not the Company has agreed to do so.

11. OFFICERS' INDEMNITY AND INSURANCE

11.1 Indemnity

Subject to and so far as permitted by the Corporations Act and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor (if any) against a Liability incurred as officer or auditor to a person other than the Company or a related body corporate (including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation) unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (which may be an advance, loan, ex gratia or other payment) in respect of legal costs incurred by an officer or employee or

auditor (if any) in defending an action that relates to a Liability incurred as an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, "**Liability**" means a liability of any kind (actual, contingent, fixed or unascertained) and includes costs, damages and expenses.

11.2 **Insurance**

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

11.3 **Former officers**

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

11.4 **Deeds**

Subject to the Corporations Act and any other applicable law, without limiting a person's rights under this rule 11, the Company may enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 11 on any terms and conditions that the Board thinks fit.

12. **BOARD MEETINGS**

12.1 **Convening Board meetings**

A Chairman may at any time, and the Secretary must on request from a Director, convene a Board meeting.

12.2 **Notice of Board meeting**

The convener of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Director who is in Australia; and
 - (ii) each Alternate in respect of whom the Appointer has given notice under rule 3.2 requiring notice of Board meetings to be given to that Alternate or whose Appointer is not given notice due to being outside Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non receipt of notice by, a Director does not result in a Board meeting being invalid.

12.3 Technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and can be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

12.4 Chairing Board meetings

12.4.1 The Chairman may chair a meeting of the Board.

12.4.2 If there is no Chairman or the Chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act:

- (a) if the Board has appointed a deputy chairman under rule 6.3, that person may chair the meeting; and
- (b) if there is no deputy chairman or the deputy chairman is not present or is unwilling to act, the Supplier Directors present must elect a Supplier Director who is present to chair the meeting.

12.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is 3 Directors including at least 3 Supplier Directors, and a quorum must be present for the whole meeting except during any part for which section 195 requires all the Supplier Directors to absent themselves. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held by another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

12.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution:

- (a) the chairman of the meeting has a second or casting vote unless the chairman of the meeting is not entitled to vote; and
- (b) if the chairman does not have a second or casting vote under rule 12.6(a), the matter is decided in the negative.

12.7 Procedural rules

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

12.8 **Written resolutions**

12.8.1 If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

12.8.2 For the purpose of rule 12.8.1:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors are treated as one document;
- (b) a facsimile, electronic message, telegram or telex containing the text of the document expressed to have been signed by Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company; and
- (c) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document.

12.9 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13. **MEETINGS OF MEMBERS**

13.1 **[deleted]**

13.2 **Convening meetings of members**

The Board:

- (a) may at any time; and
- (b) must when required by section 249D or by order made under section 249C, convene a meeting of members.

13.3 **Notice of meeting**

13.3.1 Subject to rule 13.6 and section 249H(2), at least 21 days' written notice of a meeting of members must be given individually to each member (whether or not the member is entitled to vote at the meeting), each Director, and the auditor (if any).

13.3.2 The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

13.4 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a meeting of members,

by written notice given individually to each person entitled to be given notice of the meeting.

13.5 Fresh notice

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

13.6 Notice to joint holders of shares

If a share is held jointly, the Company need only give notice of a meeting of members (or of its cancellation or postponement or change of location) to the joint holder who is named first in the Register.

13.7 Technology

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

13.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

13.9 Class meetings

Subject to rule 28.2(b), rules 13 to 17 inclusive apply to a separate meeting of a class of members as far as they are capable of application and modified as necessary.

14. PROCEEDINGS AT MEETINGS OF MEMBERS

14.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is treated as present at a meeting at which the proxy, attorney or representative is present.

14.2 **Quorum**

The quorum for a meeting of members is 2 Voting Members. Each individual present may only be counted once towards a quorum. If a member has appointed more than one proxy or representative, only one of them may be counted toward a quorum.

14.3 **Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved unless it is the annual general meeting (in which case the members present constitute a quorum).

14.4 **Chairing meeting of members**

14.4.1 The Chairman may chair a meeting of members.

14.4.2 If there is no Chairman or the Chairman is not present at the time for which a meeting of members is called or is not willing to chair that meeting, the deputy chairman appointed under rule 6.3 (if any) may chair the meeting.

14.4.3 If neither the chairman or deputy chairman is present or neither of them is willing to chair the meeting, the Voting Members present must:

- (a) elect a Director who is present to chair the meeting; or
- (b) if none of the Directors are present or none of them is willing to chair the meeting, elect a member who is present to chair the meeting.

14.5 **Attendance at meeting of members**

14.5.1 Every member has the right to attend all meetings of members whether or not entitled to vote.

14.5.2 Every Director has the right to attend and speak at all meetings of members of the Company whether or not a member.

14.6 **Members rights suspended while call unpaid**

If a call on a share is due and unpaid, the member who holds that share has no right to be present, speak or vote at, or be counted in the quorum for, a meeting of members.

14.7 **Adjournment**

Subject to rule 13.5, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

14.8 **Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

15. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

15.1 **Appointment of proxies**

15.1.1 A member may appoint not more than 2 proxies to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed and acknowledged by the member in a manner, satisfactory to the Board.

15.1.2 If a member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of those votes.

15.2 **Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of the Company. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

15.3 **Deposit of proxy forms and powers of attorney**

A proxy or attorney has no right to act for a member at a meeting unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

15.4 **Corporate Representatives**

A member that is a body corporate may appoint an individual to act as its representative at a meeting of members as permitted by section 250D.

15.5 **Appointments generally**

15.5.1 A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment.

15.5.2 A proxy, attorney or representative may, but need not, be a member.

15.6 **Suspension of proxy of attorney's power if member present**

15.6.1 A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

15.6.2 A proxy has no power to act for a member at a meeting at which the member is present by attorney.

15.7 **Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 15.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier.

15.8 **More than two current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than 2 proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

15.9 **Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

-
- (a) dies or becomes mentally incapacitated;
 - (b) becomes bankrupt or an insolvent under administration or is wound up;
 - (c) revokes the appointment or the authority under which the appointment was made by a third party; or
 - (d) transfers the share to which the appointment relates,

unless the Company received written notice of the matter before the start of the relevant meeting.

16. ENTITLEMENT TO VOTE

16.1 Number of votes

Subject to section 250BB(1) and 250BC, rules 14.6, 15, 16.3, 16.4 and 16.5 and the terms on which shares are issued:

- (a) on a show of hands:
 - (i) if a member has appointed 2 proxies, neither of those proxies may vote; and
 - (ii) subject to rule 16.1(a)(i), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has 1 vote;
- (b) on a poll every member present:
 - (i) has 1 vote for every fully paid share held;
 - (ii) has 1 vote for every partly paid share held which was issued as a result of an offer made on a pro-rata basis to members; and
 - (iii) subject to rule 16.1(b)(ii), for each partly paid share held has a fraction of vote equal to the proportion which the amount paid bears to the total issue price of the share.

16.2 No casting vote of chairman

The chairman of a meeting of members does not have a casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

16.3 Votes of joint holders

16.3.1 If more than one of the joint holders of a share (including, for the purpose of this rule, joint legal personal representatives of a dead member or joint liquidators or controllers of a body corporate) are present at a meeting of members and tender a vote in respect of the share, the Company may only count the vote cast by the most senior joint holder who tenders a vote.

16.3.2 For the purpose of rule 16.3.1, seniority depends on the order in which the names of the joint holders are listed in the Register (or in the case of joint legal personal

representatives or joint liquidators or controllers not listed in the Register, the instrument from which their authority derives).

16.4 Votes of transmitters and guardians

16.4.1 Subject to rule 16.4.2, if the Board is satisfied at least 48 hours before the time fixed for a meeting, that a person:

- (a) is entitled to the transmission of a share under rule 35; or
- (b) has power to manage a member's property under a law relating to the management of property of the mentally incapable,

that person may vote as if registered as the holder of the share and the Company must not count the vote (if any) of the actual registered holder.

16.4.2 If section 1072C applies as a result of a member becoming bankrupt, the rights of the trustee of the bankrupt's estate under that section exclude any right to vote of the bankrupt member.

16.5 Voting restrictions

16.5.1 If:

- (a) the Corporations Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Company must not count any votes purportedly cast by those members.

16.5.2 If a proxy purports to vote in a way or in circumstances that contravene section 250BB, on a show of hands the vote is invalid and the Company must not count it and on a poll rule 17.3(c) applies.

16.6 Decision on right to vote

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman of the meeting, whose decision is final.

17. HOW VOTING TAKES PLACE

17.1 Voting method

A resolution put to a meeting of members must be decided on a show of hands unless a poll is demanded under rule 17.2 either before or on declaration of the result of a vote on a

show of hands. Unless a poll is demanded, the chairman of the meeting's declaration of a decision on a show of hands is final.

17.2 Demands for a poll

17.2.1 A poll may be demanded on any resolution except a resolution concerning the election of the chairman of a meeting by:

- (a) at least 5 members entitled to vote on the resolution; or
- (b) members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
- (c) the chairman of the meeting.

17.2.2 The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.3 Timing and manner of poll

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll is demanded.

17A. RESOLUTIONS WITHOUT MEETINGS

17A.1 Written resolutions

If the Company has only one member, the Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document and signed in the manner set out in section 249B.

17A.2 Signature of resolutions

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

18. **SECRETARY**

18.1 **Appointment, terms of office and removal**

The Board may appoint one or more individuals to be a Secretary of the Company either for a specified term or without specifying a term. A Secretary must comply with section 205C and otherwise holds office on the terms (including as to remuneration) that the Board decides. Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18.2 **Cessation of secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 18.1.

19. **MINUTES**

19.1 **Obligation to keep minutes**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8);
- (d) resolutions passed by Directors without a meeting; and
- (e) declarations made and notices given under rule 9,

to be kept in accordance with sections 191, 192 and 251A.

19.2 **Evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration it records unless the contrary is proved.

19.3 **Member's right to inspect**

The Company must allow members to inspect, and provide copies of, the minute books for meetings of members in accordance with section 251B.

20. **COMPANY SEALS**

20.1 **Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

20.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

20.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

21. **ACCOUNTS AND AUDIT**

21.1 **Financial records**

The Board must ensure that the Company keeps financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director to inspect those records at all reasonable times.

21.2 **Financial reports**

If required by Part 2M.3, the Board must ensure that the Company prepares a financial report and a Directors' report that comply with that part and must report to members in accordance with section 314 no later than the deadline set by section 315.

21.3 **Audit**

Unless section 301(2) applies, the Board must ensure that the Company's financial report (if any) for each financial year is audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

21.4 **Audited reports conclusive**

Audited financial reports laid before the Company in general meetings are conclusive except to the extent of errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21.5 **Inspection**

Subject to rule 19.3 and section 247A, a member who is not a Director does not have a right to inspect any document of the Company except as:

- (a) conferred by law;
- (b) authorised by the Board; or
- (c) granted by ordinary resolution.

22. **SHARES**

22.1 **Board discretion**

22.1.1 Subject to section 259C and rule 22.1.1, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of shares to any person on the terms, with the rights, and at the times that the Board decides.

22.1.2 The Board may not issue any further "Z" class shares without approval of the Company by ordinary resolution.

22.2 **Preference and redeemable preference shares**

The Company may issue preference shares (including preference shares that are liable to be redeemed). The rights attached to any class of preference shares are the rights approved by special resolution of the Company as applicable to those shares.

22.3 **[deleted]**

22.4 **[deleted]**

22.5 **[deleted]**

22.6 **Surrender of shares**

22.6.1 The Board may accept a surrender of shares:

- (a) to compromise a question as to whether those shares have been validly issued; or
- (b) if surrender is otherwise within the Company's powers.

22.6.2 The Company may sell or reissue surrendered shares in the same way as forfeited shares.

23. **[DELETED]**

24. **[DELETED]**

25. **[DELETED]**

26. **[DELETED]**

26A. **[DELETED]**

27. **Z CLASS SHARES**

27.1 **Ordinary share**

Each "Z" class share is an ordinary share.

27.2 **Rights while only issued shares**

If the only shares of the Company on issue are "Z" class shares, the holders of "Z" class shares are entitled to the surplus profits and assets of the Company on a winding up.

28. **CLASS RIGHTS**

28.1 **Further share issues do not vary rights**

The issue of further shares that rank equally with shares of a class already on issue is not taken to vary the rights of the holders of those shares unless otherwise expressly provided by the terms of issue.

28.2 **Variation of rights**

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may, (subject to sections 246B, 246C and 246D) be varied or cancelled only:

- (a) with the written consent of the holders of 75% of the shares of the affected class; or

-
- (b) by special resolution passed at a meeting of the holders of the issued shares of the class affected.

29. CERTIFICATES

29.1 Issue of share certificate

The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.

29.2 Multiple certificates and joint holders

If a member requests the Company to issue several certificates each for some of the shares registered in the member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only 1 certificate that relates to each share registered in the names of 2 or more joint holders and may deliver the certificate to any of those joint holders.

29.3 Lost and worn out certificates

If a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

29.4 Return of certificates

29.4.1 If the Company:

- (a) redeems a share of any class in accordance with the terms of issue of that share; or
- (b) gives notice of forfeiture of a share under rule 31 or notice that it has been sold under rule 32,

the holder of that share must return the certificate for it to the Company for cancellation, replacement or endorsement (as appropriate). The redemption, conversion or forfeiture of the share takes effect even if the shareholder does not return the certificate as required by this rule.

29.4.2 If a certificate that is returned to the Company as required by rule 29.4.1 relates to shares only some of which are redeemed, converted or forfeited, the Company must issue a replacement certificate for the balance of the shares within 30 days after receipt of the certificate from the holder.

30. REGISTER

30.1 Joint holders

If the Register names 2 or more joint holders of a share, the Company must treat the person named first in the Register in respect of that share as the sole owner of it for all purposes (including the giving of notice) except in relation to:

- (a) delivery of certificates (to which rule 29.2 applies);
- (b) signature of a notice nominating a person for election as a Director (to which rule 2.6 applies);
- (c) the right to vote (to which rule 16.3 applies);
- (d) the power to give directions as to payment of, or a receipt for, dividends (to which rules 33.7 and 33.8 apply);
- (e) liability for instalments or calls (which subject to section 1072E(8) is joint and several); and
- (f) transfer.

30.2 Non-beneficial holders

Subject to sections 169(6) and 1072E, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) may treat the registered holder of a share as the absolute owner of it; and
- (b) need not recognise any equitable or other claim to, or interest in, a share by any person except the registered holder.

31. PARTLY PAID SHARES

31.1 Fixed instalments

If a share is issued on terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every instalment to the Company when due. If the registered holder does not do so, rules 31.6 to 31.15 apply as if the registered holder had failed to pay a call.

31.2 Pre-payment of calls

The Board may:

- (a) accept pre-payment of some or all of the amount unpaid on a share above the sums actually called either as a loan repayable by the Company or as a payment in advance of calls;
- (b) agree:

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- (i) to payment by the Company of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being exceeds the aggregate amount of the calls then made on the shares in respect of which it was paid; or
 - (ii) that the amount paid in advance will be taken into account in calculating participation in profit.
- (c) unless otherwise agreed between the Company and the member, repay some or all of the amount at any time.

31.3 **Board may make calls**

Subject to the terms of issue of the share and to any special resolution passed under section 254N, the Board may:

- (a) make calls on a member for some or all of the money unpaid on a share held by that member by written notice that specifies a date at least 14 days after the date of the notice by which, and a place at which, the call must be paid;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call before the due date for payment.

31.4 **Different calls**

The Board may:

- (a) issue shares on terms as to the amount of calls to be paid and the time for payment of those calls that are different as between the holders of those shares; and
- (b) make different calls on different classes of shares.

31.5 **Member must pay calls**

Subject to section 1072E(8), a member subject to a call must pay the amount of the call to the payee named in the notice of call no later than the time specified in the notice. Joint holders of a share are jointly and severally liable for calls.

31.6 **Called Amount**

If an amount payable in respect of a share (as part of the issue price, a call, or otherwise) is not paid on or before the day specified for payment, the Board may require the member liable for the amount to pay:

- (a) interest on the amount at the Interest Rate from that day until payment is made; and
- (b) all costs and expenses incurred by the Company because payment was not made on that day.

31.7 **Proof of call**

If on the hearing of an action for recovery of a Called Amount, the Company proves that:

- (a) the minute books of the Company record the Board's resolution making a call;
- (b) notice of the call was given under rules 31.3 and 38.1; and
- (c) the person sued appears in the Register as the holder of the share in respect of which the call was made,

proof of those matters is conclusive proof of the debt.

31.8 **Forfeiture notice**

At any time until a Called Amount is paid, the Board may give the relevant member a notice that:

- (a) requires the member to pay the Called Amount;
- (b) states the Called Amount at the date of the notice;
- (c) specifies how to calculate the Called Amount when payment is made;
- (d) specifies a date at least 14 days after the date of the notice by which, and a place at which, payment must be made; and
- (e) states that if payment is not made at that place on or before that date, the share to which the call relates is liable to be forfeited.

31.9 **Forfeit**

If the requirements of a notice given under rule 31.8 are not satisfied, the Board may forfeit the share in respect of which that notice was given (and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by resolution passed before the Called Amount is paid.

31.10 **Disposal and re-issue of forfeited shares**

A share forfeited under rule 31.9 immediately becomes the property of the Company and the Board, on behalf of the Company, may:

- (a) re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) sell or otherwise dispose of the share, and execute and register a transfer of it, to the person and on the terms it decides.

31.11 **Notice of forfeit**

31.11.1 The Company must promptly:

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- (a) give notice of the forfeit of a share to the member who held the share immediately before the resolution for forfeiture was passed; and
 - (b) enter the forfeiture and its date in the Register.

31.11.2 A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this constitution signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

31.12 **Cancellation of forfeiture**

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under rule 31.10.

31.13 **Effect of forfeiture**

A person who held a share which has been forfeited under rule 31.9 ceases to be a member in respect of that share but remains liable to pay the Called Amount until it is paid in full. The Board may decide not to enforce payment of an amount due to the Company under this rule.

31.14 **Proceeds of disposal**

The Company must:

- (a) apply the net proceeds of any re-issue, sale or disposal of a forfeited share under rule 31.10 to satisfy the Called Amount (and for this purpose the Board may decide in what order the various components of the Called Amount are satisfied); and
- (b) pay any surplus to the person who held the share immediately before forfeiture.

31.15 **Title of new holder**

The title of the new holder of a forfeited share is not affected by any irregularity in the forfeiture or the re-issue, sale or disposal. The only remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for the Called Amount.

31.16 **Mortgage of uncalled capital**

If the Company grants a mortgage or charge over uncalled capital, the Board may delegate its power to make calls to:

- (a) the person in whose favour the mortgage or charge is granted; or
- (b) a trustee or agent for that person,

on the terms (including power to further delegate) and subject to any restrictions the Board decides. If the Board does so, a call made in accordance with the delegation is treated as made by the Board.

32. LIENS AND INDEMNITY IN FAVOUR OF COMPANY

32.1 Company liens

32.1.1 The Company has a first and paramount lien on each share for:

- (a) all money payable to the Company by a member who is a holder of that share (whether solely or jointly with others) whether or not payment is due; and
- (b) amounts for which the Company is indemnified under rule 32.3.

32.1.2 The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

32.2 Sale under lien

If an amount secured by the Company's lien on a share is due and payable, the Company may sell the share as if it had been forfeited under rule 31.9. Rules 31.10, 31.14 and 31.15 apply to the extent practical and modified as necessary, as if the Called Amount in respect of that share were the aggregate of the amount secured by the lien that is due and payable and the costs and expenses incurred by the Company because the amount was not paid when due.

32.3 Indemnity for payments Company is required to make

If the law of any jurisdiction imposes or purports to impose any immediate, future, or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a member or referable to a share held by that member (whether alone or jointly) or a dividend or other amount payable by the Company in respect of a share held by that member, the Company:

- (a) is fully indemnified by that member from that liability;
- (b) may recover as a debt due from the member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of re-payment by the member;
- (c) subject to rule 35.3, may refuse to register a transfer of any share by that member until the debt has been paid to the Company.

32.4 No prejudice to set off

Nothing in this constitution in any way prejudices or affects any right or remedy that the Company has (including any right of set-off) and, as between the Company and the member, the Company may enforce any such right or remedy (including by set-off against dividends or distributions payable to a member).

33. DIVIDENDS AND DISTRIBUTIONS

33.1 Accumulation of reserves

Before declaring any dividend, the Board may:

- (a) set aside out profits of the Company reserves to be applied, in the Board's discretion, for any purpose it decides and use any sum so set aside in the business of the Company or invest it in investments selected by the Board and vary and deal with those investments as it decides; or
- (b) carry forward any amount out of profits which the Board decides not to distribute without transferring that amount to a reserve; or
- (c) do both.

33.2 [deleted]

33.3 Payment of dividend

33.3.1 Subject to the Corporations Act, rules 33.4 and 33.9, and the terms of issue of shares, the Board may resolve to pay any dividend it thinks appropriate and fix the time for payment.

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

33.4 Dividend amount

33.4.1 Subject to this constitution and the terms of issue of shares, the Company may pay a dividend on one class of shares to the exclusion of another class.

33.4.2 Subject to rule 33.5, each share of the class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount for the time being paid on the share bears the total issue price of the share.

33.5 Pre-payments and payments during dividend period

For the purposes of rule 33.4:

- (a) an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share unless the Board has specifically agreed under rule 31.2 that the amount will be taken into account for that purpose;
- (b) if an amount was paid on a share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount which is the same as the proportion which the period from the date of payment to the end of the period to

which the dividend relates bears to the total period to which the dividend relates, counts as part of the amount for the time being paid on the share.

33.6 Manner of payment

The Board may resolve to pay a dividend (either generally or to specific members) in cash or satisfy it by transfer of specific assets (including securities of another corporation), the issue of shares or the grant of options. If the Company satisfies a dividend by transfer of assets, the Board may:

- (a) fix the value of any asset transferred;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; or
- (c) vest an asset in a trustee.

33.7 Method of payment

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:

- (a) the address of the member as shown in the Register (or in the case of a jointly held share, the address of the joint holder named first in the Register); or
- (b) to any other address the member (or in the case of a jointly held share, all the joint holders) direct in writing,

or by any other method of payment or distribution the Board decides.

33.8 Joint holders' receipt

Any one of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in respect of that share.

33.9 Retention of dividends

The Company may retain the dividend payable on a share:

- (a) of which a person seeks to be registered as the holder under rule 35.2 or 35.3, until that person is registered as the holder of that share or transfers it; and
- (b) on which the Company has a lien, to satisfy the liability secured by the lien.

33.10 No interest on dividends

No member may claim, and the Company must not pay, interest on a dividend (in either money or kind).

34. **TRANSFER OF SHARES**

34.1 **Written transfer**

34.1.1 A member may transfer a share by a written document which:

- (a) relates only to shares of one class, is executed by both the transferor and the transferee, and is permitted by law or in any other form approved by the Board;
- (b) is delivered to the registered office of the Company or the address of the Register last notified to members by the Company accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) is marked with payment of any stamp duty payable.

34.1.2 Property in and title to a document of transfer delivered under this rule (but not the shares to which it relates) passes to the Company on delivery.

34.1.3 The Company must not register a transfer that does not comply with rule 34.1.1.

34.2 **Refusal to register**

34.2.1 The Board:

- (a) subject to section 259C, must not register a transfer to a subsidiary of the Company; and
- (b) subject to this rule, may, without giving any reason, refuse to register a transfer of shares.

34.2.2 If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

34.3 **Transferor remains holder until transfer registered**

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register as the holder of that share.

34.4 **Powers of attorney**

The Company may assume, as against a member, that a power of attorney granted by that member that is lodged with or produced or exhibited to the Company remains in force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the member.

35. TRANSMISSION OF SHARES

35.1 Death of joint holder

The Company must recognise only the surviving joint holders as being entitled to shares registered jointly in the names of a deceased member and others. The estate of the deceased joint holder is not released from any liability in respect of the shares.

35.2 Death of single holder

The Company must not recognise anyone except the legal personal representative of the deceased member as having any title to shares registered in the sole name of a deceased member. If the personal representative gives the Board the documents described in section 1071B(9) or 1071B(13) or other information that satisfies the Board of the representative's entitlement to be registered as holder of the shares:

- (a) subject to rules 34.2 and 35.4 the Company must register the personal representative as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the shares, the personal representative:
 - (i) may, subject to rule 34 transfer the shares to another person; and
 - (ii) has the same rights as the deceased member.

35.3 Insolvency or mental incapacity

Subject to the Bankruptcy Act 1966, if a person entitled to shares because of the insolvency or mental incapacity of a member gives the Board the information it reasonably requires to establish the person's entitlement to be registered as the holder of the shares:

- (a) subject to rules 34.2 and 35.4 the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the shares, that person:
 - (i) may, subject to rule 34, transfer the shares to another person; and
 - (ii) has the same rights as the insolvent or incapable member.

If section 1072C applies, this rule is supplemental to it.

35.4 Refusal to register

The Company has the same rights to refuse to register a personal representative or person entitled to shares on the insolvency or mental incapacity of a member as it would have if that person was a transferee named in a transfer signed by a living, solvent, competent member.

36. ALTERATIONS TO CAPITAL

36.1 Capitalisation of amounts available for distribution

The Company may capitalise profits, reserves or other amounts available for distribution to members. Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

36.2 Adjustment of capitalised amounts

The Board may settle any difficulty arising from a capitalisation as it thinks appropriate and necessary to adjust the rights of members among themselves, including:

- (a) fix the value of specific assets;
- (b) issue fractional certificates;
- (c) make cash payments to members on the basis of the value fixed for assets or in place of fractional entitlements so as to adjust the rights of members between themselves;
- (d) disregard fractional entitlements; and
- (e) vest cash or specific assets in a trustee.

36.3 Conversion of shares

Subject to Part 2H.1 and rules 22.2 and 28.2, the Company may convert:

- (a) shares into a larger or smaller number of shares;
- (b) an ordinary share into preference share; and
- (c) a preference share into an ordinary share,

by resolution passed at a meeting of members.

36.4 Adjustments on conversion

The Board may do anything it thinks appropriate and necessary to give effect to a resolution converting shares including, if a member becomes entitled to a fraction of a share as a result of the conversion:

- (a) issue fractional certificates;
- (b) make cash payments to members or disregard fractional entitlements so as to adjust the rights of members between themselves; and
- (c) vest fractional entitlements in a trustee.

36.5 **Reduction of capital**

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
- (c) in the ways permitted by sections 258E and 258F; or
- (d) in any other way for the time being permitted by the Corporations Act.

37. **WINDING UP**

37.1 **Members' entitlements**

Subject to the terms of issue of shares and this rule 37, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

37.2 **Distribution of assets**

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

- (a) divide the assets of the Company among the members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the members and different classes of members; and
- (c) vest assets of the Company in a trustee on any trust for the benefit of the members the liquidator thinks appropriate.

37.3 **Liabilities**

The liquidator cannot compel a member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

37.4 **Distribution not in accordance with legal rights**

If the liquidator decides on a division or vesting of assets of the Company under rule 37.2 which does not accord with the legal rights of the contributories, any contributory who would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507.

38. **NOTICES**

38.1 **Entitlement to notices**

Each Director and each member is entitled to receive all notices and financial reports by the Company.

38.2 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signing on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by air mail, if the address is outside Australia) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

38.3 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

38.4 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by electronic message:
 - (i) by 5.00pm (local time in the place of receipt) on a business day, on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a business day, or on a day that is not a business day, on the next business day; and
- (b) if it is sent by mail:
 - (i) within Victoria, on the business day after posting; or
 - (ii) to a place outside Victoria, on the second business day after posting.

38.4.1 A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

38.5 Business days

For the purposes of rule 38.4 a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

38.6 **Binding notice**

Notice to joint holders of shares must be given to the joint holder named first in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder of the share before the transfer or transmission of the share was entered in the Register.

38.7 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

38.8 **Notices to "lost" members**

38.8.1 If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that a member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 38.3,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

38.8.2 This rule ceases to apply if the member gives the Company notice of a new address.

39. **UNCLAIMED MONEY**

The Company must deal with unclaimed dividends and distributions and unclaimed proceeds of shares sold or re-issued under this constitution in accordance with the law relating to unclaimed money in Victoria.