

THE FRUIT COMPANY LIMITED

CONSTITUTION

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Constitution

1 NAME AND OBJECTS OF COMPANY

1.1 Name of Company

The name of the Company is The Fruit Company Limited.

1.2 Objects of Company

The primary objects of the Company are:

- (a) The disposal or distribution of its shareholders' commodities or goods;
- (b) The storage, marketing, packing or processing of its shareholders' commodities; and
- (c) The rendering of services to its shareholders.

2 LIABILITY OF SHAREHOLDERS

The liability of the shareholders is limited.

3 PRELIMINARY

3.1 Replaceable Rules

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

3.2 Definitions

In these rules, unless it is inconsistent with the subject or context in which it is used:

Act means the *Corporations Act 2001*;

ASIC means the Australian Securities and Investments Commission;

Board means the Directors for the time being of the Company;

business day means a day on which banks (as that term is defined in the *Banking Act 1959*) are open for business in Caloundra;

call includes any instalment of a call and any amount due on allotment of any share;

Chairman includes an acting Chairman under rule 11.5;

Class means any Class of shares in the Company on issue from time to time;

Committee means a committee to which powers have been delegated by the Board pursuant to rule 19.6;

Company means The Fruit Company Limited ACN 101 197 513;

Constitution means this constitution as amended or varied from time to time;

Director means a person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes the Managing Director and any alternate or independent director duly appointed as a Director;

Ineligible Shareholder means a shareholder who, at any time, fails to satisfy the conditions set out under rules 4.1 or 4.5 (unless such non-satisfaction has been expressly authorised by the Board under rule 4.8);

Managing Director means any Director appointed by the Board in accordance with rule 17.1 from time to time;

Office means the registered office from time to time of the Company;

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

preference shares means any Class of shares in the Company which entitle the holders to preferential rights over other shareholders in relation to voting or the distribution of income, dividends or capital of the Company;

Register means the register of shareholders of the Company and includes a branch register of shareholders established pursuant to rule 21;

Registered address means the address of a shareholder specified in the Register or any other address of which the shareholder notifies the Company as a place at which the shareholder will accept service of notices;

Retiring Director means a Director who is required to retire under rule 16.1 and a Director who ceases to hold office under rule 16.2;

rules means the rules of this Constitution as altered or added to from time to time;

Seal means the common seal, if any, from time to time of the Company;

Secretary means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

securities includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity;

security holder means a holder of securities of the Company in accordance with the Act;

shareholder means a member in accordance with the Act;

shareholders present means shareholders present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney;

shares means all shares in the Company issued pursuant to its constitution from time to time and which are recorded in the Register;

shareholding account means an entry made in the Register in respect of a shareholder for the purpose of providing a separate identification of some or all of the shares registered from time to time in the name of the shareholder; and

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

3.3 Interpretation

- (a) Words and phrases which are given a special meaning by the Act have the same meaning in these rules, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) Reference to a statute, ordinance, code, rule or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments or replacements of it.
- (e) Headings are inserted in this constitution for convenience only, and do not affect the interpretation of this constitution.
- (f) Unless otherwise defined in rule 3.2 or unless the context otherwise requires:
 - i any word or expression defined in or for the purposes of the Act has the same meaning when used in this constitution; and
 - ii the rules of interpretation specified in or otherwise applicable to the Act apply in the interpretation of this constitution.

4 SHARES

4.1 Shareholders

- (a) Unless resolved otherwise by the Board, each shareholder must be a supplier of horticultural and/or agricultural products and/or services to, or in connection with, the Company.
- (b) No shareholder or any related entity (as defined under the Act) of the shareholder may own more than 20% of the issued share capital of the Company.

4.2 Classes of shares

Shares in the capital of the Company may be issued in:

- (a) Class A;
- (b) Class B;

- (c) Class C

or in any other Class the Board considers appropriate. Any Class of shares issued by the Board from time to time may be subject to such rights or restrictions as the Board considers appropriate.

4.3 Class A Rights and Restrictions

Class A shares will provide the following rights and be subject to the following restrictions:

- (a) each holder of Class A Shares will have the right to receive notice of any meetings of the members of the Company;
- (b) each holder of Class A Shares will have the right to attend any meetings of the members of the Company; and
- (c) each holder of Class A Shares will have the right to one vote on any resolution or question to be decided at a meeting of the members (regardless of whether such resolution is decided by a show of hands, poll or some other voting method).

4.4 Class B Rights and Restrictions

Class B shares will provide the following rights and be subject to the following restrictions:

- (a) each holder of Class B Shares will have the right to receive notice of any meetings of the members of the Company;
- (b) each holder of Class B Shares will have the right to attend any meetings of the members of the Company; and
- (c) a holder of Class B Shares will not have the right to vote on any resolution or question to be decided at a meeting of the members, unless the particular Class B Shareholder also holds Class A Shares in accordance with rule 4.5.

4.5 Class A Shareholding Requirements

Each shareholder must hold exactly 100 Class A shares in the Company and, unless resolved otherwise by the Board, a shareholder may not hold more than 100 Class A shares or fewer than 100 Class A Shares in the Company at any one time.

4.6 Holding fewer than 100 Class A shares

If for any reason a shareholder holds fewer than 100 Class A shares in the Company ("non-complying shareholder") the non-complying shareholder must:

- (a) arrange for a sufficient number of any Class B, Class C or other shares in the Company held by the non-complying shareholder to be converted to Class A shares pursuant to rules 9A.1 and 9A.2 so that, immediately following the conversion, the non-complying shareholder holds exactly 100 Class A shares;
- (b) sell all its shares in the Company to any shareholder who holds 100 Class A shares (subject to rules 4.10 and 9A);

- (c) purchase from the Company or another shareholder the number of Class A shares the non-complying shareholder requires to reach exactly 100 Class A shares in total; or
- (d) subject to the Act, agree to an offer by the Company to purchase all the shares in the Company held by the non-complying shareholder by way of a selective buy-back or other capital reduction.

4.7 Holding more than 100 Class A shares

If for any reason a shareholder holds more than 100 Class A shares in the Company (“non-complying shareholder”) the non-complying shareholder must:

- (a) arrange for a sufficient number of its Class A shares to be converted to Class B shares, Class C shares or any other type of non-Class A shares pursuant to rules 9A.1 and 9A.2 so that, immediately following the conversion, the non-complying shareholder holds exactly 100 Class A shares; or
- (b) subject to the Act, agree to an offer by the Company to purchase a sufficient number of the Class A shares held by the non-complying shareholder by way of a selective buy-back so that immediately following the buy-back the non-complying shareholder holds exactly 100 Class A shares.

4.8 Exemption by Board

The Board may, by a resolution passed in accordance with rule 19, exempt any specific shareholder or any group of shareholders from the requirements imposed under rules 4.1(a), 4.5, 4.6 and 4.7.

4.9 Dividend rights

Without limiting the Board’s discretion in relation to any other rights or restrictions which it may apply from time to time in relation to any Class of shares, the dividend rights of any Class of shares, including Class A shares, Class B shares and Class C shares, are variable and at the discretion of the Board.

4.10 Sale of Class A shares

- (a) Subject to rule 9A, Class A shares may be sold or otherwise transferred only if:
 - i the shareholder selling such shares (“the Seller”) holds no other Class of shares in the Company, or will not hold any other Class of shares in the Company following the completion of the relevant transfer; and
 - ii the Class A shares are sold as one lot of 100 shares to a person (“the Purchaser”) who:
 - (I) holds 100 Class A shares; or
 - (II) holds no Class A shares
- (b) If Class A shares are sold to a Purchaser who already holds 100 Class A shares, then upon completion of the transfer the Purchaser and the Seller must immediately request that the transferred shares be converted to Class B shares pursuant to rules 9A.1 and 9A.2.

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- (c) If Class A shares are sold to a Purchaser who holds no Class A shares, then the relevant shares may be transferred as Class A shares.

4.11 Sale of non-Class A shares

- (a) If a shareholder sells or otherwise transfers non-Class A shares to a Purchaser who holds no Class A shares then:
- i a minimum of 100 non-Class A shares must be transferred; and
 - ii immediately upon the completion of the transfer, the Seller and the Purchaser must immediately request that exactly 100 of the transferred shares be converted to Class A shares pursuant to rules 9A.1 and 9A.2.
- (b) If a shareholder sells or otherwise transfers non-Class A shares to a person who already holds 100 Class A shares then, upon transfer, the transferred shares will continue to belong to the same Class of shares to which they belonged prior to the transfer.

4.12 Issue of shares

The Company may only issue non-Class A shares to a person who holds 100 Class A shares.

4.13 Issue of shares and options

Without prejudice to any special rights conferred on the shareholders of any particular Class, any share in the capital of the Company may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Board may from time to time determine. Except as provided by contract or these rules to the contrary, all unissued shares are under the control of the Board which may grant options to any person to subscribe for such shares, issue option certificates in respect of the shares, allot or otherwise dispose of the shares on the terms and conditions and for the consideration the Board thinks fit. The Company is to maintain a register of options in accordance with the Act.

4.14 Surrender of shares

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

4.15 Joint holders

Where two or more persons are registered as the holders of any shares, they are deemed to hold the shares as joint tenants with benefits of survivorship subject to the following provisions:

- (a) **number of holders** - the Company is not bound to register more than 3 persons as the holders of the shares (except in the case of trustees, executors or administrators of a deceased shareholder);

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- (b) **liability for payments** - the joint holders of the shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the shares;
 - (c) **death of joint holder** - on the death of any joint holder, the survivor or survivors are the only persons recognised by the Company as having any title to the shares. The Board may in any event require conclusive evidence of death;
 - (d) **power to give receipt** - any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders;
 - (e) **notices and certificates** - only the person whose name stands first in the Register as one of the joint holders of the shares is entitled, if the Company is required by the Act to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is deemed notice to all the joint holders;
 - (f) **votes of joint holders** - any one of the joint holders may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders are present at any meeting personally or by duly authorised representative, proxy or attorney, the joint holder who is present and whose name stands first in the Register in respect of the shares is entitled alone to vote in respect of the shares.

4.16 Non-recognition of equitable interests, etc

Except as otherwise provided in these rules, the Company is entitled to treat the registered holder of any share as the absolute owner of the share and is not, except as ordered by a Court or as required by statute, bound to recognise (even when having notice thereof) any equitable or other claim to or interest in the share or the part of any other person.

4.17 Issue of preference shares

- (a) The Board may issue preference shares including preference shares which are, or at the option of the Company are, liable to be redeemed.
- (b) Each preference share confers on the holder a right to receive a preferential dividend at the rate and on the basis decided by the Board under the terms of issue.
- (c) In addition to the preferential dividend, each preference share may participate with the shares in other Classes in profits if and to the extent the Board decides under the terms of issue.
- (d) The preferential dividend may be cumulative if and to the extent the Board decides under the terms of issue.
- (e) Each preference share confers on its holder:
 - i the right, in priority to the payment of any dividend on any other Class of shares, to the preferential dividend; and

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- ii the right in a winding up and on redemption to payment in cash in priority to any other Class of shares of:
 - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
 - (B) any amount paid on the share.
 - (f) A preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out above.
 - (g) To the extent the Board decides under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.
 - (h) The rights conferred upon the holders of any preference shares, unless otherwise expressly provided by the terms of issue of the particular preference shares, will be deemed not to be varied by the creation or issue of further shares ranking equally with the first issued Preference Shares.

4.18 Issue of bonus shares

Subject to the Act, the Board may in its absolute discretion issue bonus shares from time to time on such terms as the Board determines, provided such shares are issued as non-Class A shares.

4.19 Public sale of shares

The quotation of shares in the Company for sale or purchase at any stock exchange or in any other public manner whatever is absolutely prohibited.

5 CERTIFICATES

5.1 Availability of certificates

Notwithstanding rule 4.5(e), it is a condition of issue of any that the Company need not have ready for delivery any certificate relating to those shares unless the person who is registered as the current holder of the shares makes a request in writing for the Company to complete and deliver the share certificates in which case the Company must do so within one calendar month of receipt by the Company of such a request. Where the Company is required to issue certificates for shares, every shareholder is entitled, without charge, to one certificate for all of the shares in any particular Class registered in that shareholder's name.

5.2 Forwarding of certificates

The Company may send any certificate to a shareholder by prepaid post addressed to the shareholder at that shareholder's address (as identified in the Register) or as is otherwise directed by the shareholder and every certificate so sent will be at the risk of the shareholder entitled thereto.

5.3 How certificates are issued

If the Board wishes to issue certificates for shares, or where the Company is required by the Act to issue certificates for shares, share certificates may be issued under the Seal or by authority of the Board (whether or not in accordance with rule 22.3) in any form

prescribed by the Board permitted under the Act and are to be signed in any manner determined by the Board.

5.4 Old or defaced certificates

If a certificate is worn out or defaced, upon production of that certificate to the Company, the Board may order it to be cancelled and may issue a new certificate.

5.5 Indemnity to Company

If a certificate is lost, stolen or destroyed, upon the giving of such indemnity (if any) and such evidence that the certificate has been lost, stolen or destroyed which the Board may require and upon the payment of any fee the Board may from time to time determine, a new certificate may be issued instead of the lost, stolen or destroyed certificate. A certificate issued to replace a certificate which has been lost, stolen or destroyed may be endorsed as having been issued in replacement of a lost, stolen or destroyed certificate.

6 CALLS

6.1 Power to make calls

Subject to the terms upon which any shares may have been issued, the Board may make calls from time to time upon the shareholders in respect of all moneys unpaid on their shares. Each shareholder is liable to pay the amount of each call (on receiving 14 days notice) in the manner, at the time and at the place specified by the Board.

6.2 Obligation for calls

The Company may make arrangements on the issue of shares for a difference among the holders of those shares in the amount of calls to be paid and the time of payment of the calls.

6.3 When a call is made

A call is deemed to have been made at the time when the resolution of the Board authorising the call was passed. The call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the call is due.

6.4 Interest on the late payment of calls

If any sum payable in respect of a call is not paid on or before the date for payment, the shareholder from whom the sum is due is to pay interest on the unpaid amount from the due date to the date of payment at the rate (not exceeding the rate of interest charged by the Commonwealth Bank of Australia on overdraft facilities in excess of \$100,000) the Board from time to time determines. The Board may waive the whole or part of any interest paid or payable under this rule.

6.5 Instalments

If, by the terms of an issue of shares, any amount is payable by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and all provisions of these rules with respect to the payment of calls (and of interest or to the forfeiture of shares for non-payment of calls or with respect to liens or charges) apply to the instalment and to the shares in respect of which it is payable.

6.6 Payment in advance of calls

If the Board thinks fit it may receive from any shareholder all or any part of the moneys unpaid on all or any of the shares held by that shareholder beyond the sums actually called up and then due and payable either as a loan repayable or as a payment in advance of calls. The Company may pay interest on the moneys advanced at the rate (not exceeding the rate of interest charged by the Commonwealth Bank of Australia on overdraft facilities in excess of \$100,000) and on the terms agreed by the Board and the shareholder paying the sum in advance.

6.7 Non-receipt of notice of call

Notice of any call is to be in writing including such information as the Act may require, but the non-receipt of a notice of any call by, or the accidental omission to give notice of any call to, any shareholder does not invalidate the call.

7 FORFEITURE AND LIEN

7.1 Failure to pay money

If any shareholder fails to pay any sum payable on or in respect of any shares, either for allotment money, calls or instalments, on or before the day for payment, the Board may, at any time after the day specified for payment whilst any part of the sum remains unpaid, serve a notice on the shareholder requiring that shareholder to pay the sum together with interest accrued and all expenses incurred by the Company by reason of the non-payment.

7.2 Time and place for payment

The notice referred to in rule 7.1 must:

- (a) name a day on or before which the sum, interest and expenses (if any) are to be paid (not earlier than 14 days after the date of the notice) and the place where payment is to be made; and
- (b) state that, in the event of non-payment at or before the time and at the place specified, the shares in respect of which the sum is payable will be liable to be forfeited.

7.3 Forfeiture on non-compliance with notice

If there is non-compliance with the requirements of any notice given pursuant to rule 7.1, any shares in respect of which notice has been given may, at any time after the day specified in the notice for payment whilst any part of allotment moneys, calls, instalments, interest and expenses (if any) remains unpaid, be forfeited by a resolution of the Board to that effect. The forfeiture is to include all dividends, interest and other moneys payable by the Company in respect of the forfeited shares and not actually paid before the forfeiture.

7.4 Notice of forfeiture

When any share is forfeited, notice of the resolution of the Board is to be given to the shareholder in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture is to be made in the Register. Failure to give notice or make the entry as required by this rule does not invalidate the forfeiture.

7.5 Disposal of forfeited shares

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

7.6 Annulment of forfeiture

The Board may, at any time before any forfeited share is sold or otherwise disposed of, annul the forfeiture of the share upon any condition it thinks fit.

7.7 Liability despite forfeiture

- (a) Any shareholder whose shares have been forfeited is, despite the forfeiture, liable to pay and is obliged forthwith to pay to the Company all sums of money, interest and expenses owing upon or in respect of the forfeited shares at the time of forfeiture, together with expenses and interest from that time until payment at a rate the Board from time to time determines, provided that the rate of interest will not exceed the rate charged by the Commonwealth Bank of Australia on overdraft facilities in excess of \$100,000 at the time of the forfeiture.
- (b) The Board may enforce the payment or waive the whole or part of any sum paid or payable under this rule as it thinks fit.

7.8 Company's lien or charge

The Company has a first and paramount lien or charge for unpaid calls, instalments, interest due in relation to any calls or instalments and any amounts the Company is called upon by law to pay in respect of the shares of a shareholder upon shares registered in the name of the shareholder in respect of which the calls, instalments and interest are due and unpaid (whether presently payable or not) or in respect of which the amounts are paid and upon the proceeds of sale of the shares. The lien or charge extends to all dividends and bonuses from time to time declared in respect of the shares provided that, if the Company registers a transfer of any shares upon which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien or charge of the Company in respect of that claim.

7.9 Sale of shares to enforce lien

The Company may do all such things as may be necessary or appropriate for it to do to effect a transfer or to protect any lien, charge or other right to which it may be entitled under any law or these rules.

7.10 Title of shares forfeited or sold to enforce lien

The following provisions apply in connection with a sale or re-allotment of shares that have been forfeited or sold to enforce a lien or charge:

- (a) In a sale or a re-allotment of forfeited shares or in the sale of shares to enforce a lien or charge, an entry in the Board's minute book that the shares have been forfeited, sold or re-allotted in accordance with these rules is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture, sale or re-allotment of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-allotment.
- (b) In a re-allotment, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- (c) In a sale, the Company may appoint a person to execute or effect a transfer in favour of the person to whom the shares are sold.
- (d) Upon the issue of the receipt or the execution of the transfer the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares prior to the re-allotment or purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration, nor is the person's title to the shares affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-allotment.
- (e) The net proceeds of any sale or re-allotment are to be applied first in payment of all costs of or in relation to the enforcement of the lien or charge or the forfeiture (as the case may be) and of the sale or re-allotment, next in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-allotment or to the person's executors, administrators or assigns upon the production of any evidence as to title required by the Board.

8 PAYMENTS BY THE COMPANY

8.1 Payments by the Company

If any law of any place imposes or purports to impose any immediate or future or possible liability on the Company to make any payment or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any securities held either jointly or solely by any holder or in respect of any transfer of those securities or in respect of any interest, dividends, bonuses or other moneys due or payable or accruing due or which may become due or payable to the holder by the Company on or in respect of any securities or for or on account or in respect of any holder of securities, whether in consequence of:

- (a) the death of the holder;

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

the Company in each case:

- (f) must be and is fully indemnified from all liability by the holder or the holder's trustee, executor or administrator and by any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate;
- (g) has a lien or charge upon the securities for all moneys paid by the Company in respect of the securities under or in consequence of any law;
- (h) has a lien upon all dividends, bonuses and other moneys payable in respect of the securities registered in the Register as held either jointly or solely by the holder for all moneys paid or payable by the Company in respect of the securities under or in consequence of any law, together with interest at a rate not exceeding the rate of interest charged by the Commonwealth Bank of Australia on overdraft facilities in excess of \$100,000 the Board may determine from time to time from the date of payment to the date of repayment, and may deduct or set off against any dividend, bonus or other moneys payable any moneys paid or payable by the Company together with interest;
- (i) may recover as a debt due from the holder or the holder's trustee, executor or administrator or any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate, any moneys paid by the Company under or in consequence of any law which exceed any dividend, bonus or other money then due or payable by the Company to the holder together with interest at a rate the Board may determine from time to time (not exceeding the rate of interest charged by the Commonwealth Bank of Australia on overdraft facilities in excess of \$100,000) from the date of payment to the date of repayment; and
- (j) may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any securities by the holder or the holder's trustee, executor or administrator until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend, bonus or other money then due or payable by the Company to the holder, until the excess is paid to the Company.

8.2 Rights not prejudiced

Nothing in rule 8.1 prejudices or affects any right or remedy which any law confers on the Company, and, as between the Company and each holder, each holder's trustee, executor, administrator and estate, any right or remedy which the Act confers on the Company is enforceable by the Company.

9 TRANSFER AND TRANSMISSION OF SECURITIES

9.1 Instrument of transfer

Subject to these rules, a security holder may transfer all or any of the Security Holder's securities by any instrument in writing in any usual or common form or in any other form that the Directors approve.

9.2 Registration procedure

Where an instrument of transfer referred to in rule 9.1 is to be used by a security holder to transfer securities the following provisions apply:

- (a) it must be executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Act;
- (b) the instrument of transfer must be left for registration with the Company, or, if applicable, at the share registry of the Company, accompanied by the certificate for the securities to which it relates (if any) and such information as the Directors properly require to show the right of the transferor to make the transfer, and in that event, the Company must, subject to the powers vested in the Directors by these rules, register the transferee as a Security Holder;
- (c) the Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge except in the case the Company issues a certificate for securities where the issue of a certificate is to replace a lost or destroyed certificate; and
- (d) on registration of a transfer of securities, the Company must cancel the old certificate (if any).

9.3 Additional Requirements

If a proposed transfer of securities is subject to rules 4.10 or 4.11 then, in addition to the obligations imposed under rule 9.2, the Seller and Purchaser must:

- (a) provide the Company with all share Class conversion requests required under rules 4.10 and/or 4.11; and
- (b) provide any additional information regarding the proposed transfer of securities reasonably requested by the Board.

9.4 Entry in the Register

A transferor of securities remains the holder of the securities transferred until the transfer (if any) is registered and the name of the transferee is entered in the Register in respect of the securities. The right to any dividends declared on any shares subject to a transfer will be determined by reference to the record date for the purposes of that dividend and the date of registration of the transfer.

9.5 Closing Register

Subject to the Act, the Register may be closed at any time, for any length of time and for any reason the Board thinks fit.

9.6 Right to refuse registration

Notwithstanding any other provisions contained in these rules, the Company may, in the Board's absolute discretion and without assigning any reason therefor, refuse to register or may prevent or interfere with the registration of a transfer of securities in the Company. If the Board refuses to register a transfer of securities it must send a notice of the refusal to the transferee within 2 weeks after the date on which the Board declined to register the transfer.

9.7 Transmission by death

The trustee, executor or administrator of a deceased shareholder (who was not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in the name of the deceased shareholder provided that the Board may, subject to compliance by the transferee with these rules, register any transfer signed by a shareholder prior to the shareholder's death notwithstanding that the Company has notice of the shareholder's death.

9.8 Transmission by operation of Act

A person ('**transmittee**') who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a shareholder in respect of the securities or may (subject to the provisions in these rules relating to transfers) transfer the securities provided that the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

VARIATION OF RIGHTS

9A.1 Conversion Powers

- (a) The Board may, by a resolution passed pursuant to rule 19, convert shares of a particular Class into shares of another Class (regardless of whether such a conversion amounts to a variation of the rights attached to any Class of shares).
- (b) The powers granted under rule 9A.1 (a) may be exercised by the Board on its own initiative or at the request of any shareholder.

9A.2 Conversion Process

In order for the Company to convert shares of a particular Class into shares of another Class pursuant to this rule 9A the following procedure must be followed:

- (a) the Board must pass a resolution in accordance with rule 19 authorising the relevant conversion ("Conversion Resolution");
- (b) within 7 days of the Conversion Resolution being passed the Company must provide all shareholders affected by the conversion with written notice of the conversion; and

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- (c) following the passing of the Conversion Resolution the Company must ensure that:
 - i the details of the relevant conversion are recorded in the Register; and
 - ii ASIC is properly notified of the relevant conversion.

9A.3 Other Variations of Rights

- (a) Apart from a variation of rights pursuant to rules 9A.1 and 9A.2, the rights attached to any Class of shares (unless otherwise provided by the terms of issue of the shares of that Class) may, whether or not the Company is being wound up, be varied only with the consent in writing of members in each affected Class with at least 75% of the votes in the Class, or with the sanction of a special resolution passed at a separate meeting of the holders of each affected Class.
- (b) At any class meeting held pursuant to rule 9A.3 (a), the holders of Class B or other non-voting shares will be entitled to one vote for each share held.

10 GENERAL MEETINGS

10.1 General meetings

General meetings of the Company may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Act, the shareholders may not convene a meeting of the Company. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by shareholders in accordance with the Act) may be cancelled or postponed prior to the date on which it is to be held.

10.2 Notice of general meeting

- (a) Not less than 21 days notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of Directors be held. Notice of meetings will be given to the shareholders and to such persons as are entitled under these rules or the Act to receive notice. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- (b) If the meeting is to be held at two or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Act in relation to the use of such technology.

11 PROCEEDINGS AT GENERAL MEETINGS

11.1 Business of general meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Act to be laid before each annual general meeting, to elect Directors in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Act, no person may move at any meeting either:
 - i in regard to any special business of which notice has been given under rule 10.2, any resolution or any amendment of a resolution; or
 - ii any other resolution which does not constitute part of special business of which notice has been given under rule 10.2.
- (b) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the shareholders, as a whole, about the audit.

11.2 Quorum

The number of shareholders present and required to constitute a quorum for a general meeting will be two times the number of directors on the Board at the time of the general meeting, plus one. No business may be transacted at any meeting, except the election of a Chairman and the adjournment of the meeting, unless the requisite quorum is present at the commencement of the business.

11.3 Adjournment in absence of quorum

If, within 30 minutes after the time specified for a general meeting, a quorum is not present, the meeting, if convened upon a requisition or called by shareholders, is to be dissolved and in any other case it is to be adjourned to such day, and at such time and place, as the Directors determine or, if no such determination is made by the Directors it must be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

11.4 Persons entitled to attend a general meeting

The persons entitled to attend a general meeting are:

- (a) shareholders (including a shareholder's duly and validly appointed proxy or donee of a power of attorney);
- (b) the Directors and the Secretary;

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- (c) the Company's auditor; and
 - (d) any other person approved by the Chairman.

11.5 Chairman

If the Directors have elected one of their number as Chairman of Directors' meetings that Director must if willing preside as Chairman at every general meeting. Where a general meeting is held and a Chairman has not been so elected, or the Chairman is not present within 15 minutes after the time appointed for the holding of the general meeting or is unwilling to act, the Directors present must elect one of their number to be Chairman of the general meeting, but failing an election by the Directors, the Members present must elect one of their number to be Chairman of the general meeting.

11.6 Acting Chairman

If during any general meeting the Chairman acting pursuant to rule 11.5 is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as Chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the acting Chairman is to withdraw and the Chairman is to resume acting as Chairman of the meeting.

11.7 Casting vote

In the case of an equality of votes, the Chairman of the general meeting has a second or casting vote.

11.8 General conduct of meeting

Except as provided by the Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the shareholders present. The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

11.9 Adjournment

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

which the adjournment took place.

11.10 Voting

Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the shareholders present and entitled to vote.

11.11 Declaration of vote on a show of hands; when poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
- i before a vote is taken;
 - ii before the voting results on a show of hands are declared; or
 - iii immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
- i the Chairman;
 - ii at least 5 shareholders present entitled to vote on the resolution; or
 - iii by a shareholder or shareholders present with at least 5% of the shares.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

11.12 Taking a poll

If a poll is demanded as provided in rule 11.11, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

11.13 Continuation of business

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

11.14 Special meetings

All the provisions of these rules as to general meetings apply to any special meeting of any Class of shareholders which may be held pursuant to the operation of these rules or the Act.

12 VOTES OF SHAREHOLDERS

12.1 Voting rights

Subject to rules 4.3 and 4.4, the restrictions on voting from time to time affecting any Class of shares and rules 4.5(f), 12.4, 12.8 and 12A:

- (a) subject to rule 12.1(b) and (c), on a show of hands, each shareholder present has one vote;
- (b) where a shareholder has appointed 2 persons as proxies for that shareholder, only one proxy may vote;
- (c) subject to rule 12.1(d), where a person is entitled to vote by virtue of rule 12.1(a) in more than one capacity, that person is entitled only to one vote on a show of hands;
- (d) if the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands; and
- (e) on a poll, each shareholder present, and subject to rule 12.1(b), each proxy has one vote.

12.2 Voting rights of personal representatives, etc

Any person entitled under rules 9.6 and 9.7 to transfer any shares may vote at a general meeting in the same manner as if the person were the registered holder of the shares provided that at least 48 hours before the time of holding the meeting at which the person proposes to vote the person has satisfied the Board of the person's right to transfer the shares, unless the Board has previously admitted the person's right to vote at the meeting in respect of the shares.

12.3 Appointment of proxies

- (a) Any shareholder entitled to vote at a general meeting may appoint a proxy.
- (b) A proxy may be any natural person.
- (c) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Directors may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (d) No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any shareholder may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all, or any stipulated, meetings of the Company until revocation.

12.4 Voting by corporation

Any corporation, being a shareholder and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy authorise any person, though not a shareholder of the Company, or any person occupying a particular office from time to time, to act as its representative, and such representative is, in accordance with their authority and until their authority is revoked by the corporation which they represent, entitled to exercise the same powers at meetings on behalf of the corporation which they represent as that corporation could exercise if it were a natural person who was a shareholder and exercise any other powers permitted to be exercised by a body corporate representative under the Act.

12.5 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney or transfer of the shares in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind, revocation or transfer has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

12.6 Form and execution of instrument of proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Act and the Board may authorise completion of the proxy by the insertion of the name of any member of the Board as the person in whose favour the proxy is given.

12.7 Board to issue forms of proxy

The Board may issue with any notice of general meeting of shareholders or any Class of shareholders forms of proxy for use by the shareholders. Each form is to make provision for the shareholder to write in the name of the person or persons to be appointed as proxy and may provide that, if the shareholder does not so write in one or more names, the proxy are to be one or more persons named on the form. The form may include the names of any of the Directors or of any other persons as suggested proxies. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

12.8 Attorneys of shareholders

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

12.9 Rights of shareholder indebted to Company in respect of other shares

Subject to any restrictions from time to time affecting the right of any shareholder or Class of shareholders to attend any meeting, a shareholder holding a share in respect of which for the time being no moneys are due and payable to the Company is entitled to be present at any general meeting and to vote and be reckoned in a quorum notwithstanding that moneys are then due and payable to the Company by the shareholder in respect of any other share held by the shareholder.

12A INELIGIBLE SHAREHOLDERS

12A.1 Notice of Ineligibility

- (a) If the Board determines that a shareholder is an Ineligible Shareholder the Board may, in the Board's absolute discretion and without any requirement to provide reasons, provide the Ineligible Shareholder with a written notice stipulating that the shareholder is an Ineligible Shareholder and that the restrictions in rule 12A.2 will apply to that shareholder immediately.
- (b) A failure by the Board to provide a written notice as contemplated herein, does not invalidate the effect of the Board's decision to apply the restrictions set out in rule 12A.2 to the shareholder.

12A.2 Restrictions on Ineligible Shareholders

An ineligible shareholder who receives a notice in accordance with rule 12A.1 will not be entitled to:

- (a) attend or vote at any general meeting of the Company or meeting of any Class of shares of the Company, or to exercise any other right conferred by membership in relation to any such meeting;
- (b) receive, or gain access to, any material, information, data or other matter which would otherwise be distributed or displayed by the Company to shareholders in any form whether printed or electronic, except to the extent that such material, information, data or other matter is required by law to be so distributed or displayed; and
- (c) hold the position of director or secretary of the Company,

unless or until the Ineligible Shareholder receives a notice from the Board pursuant to rule 12A.3.

12A.3 Withdrawal of Notice

- (a) The Board must withdraw the notice given in accordance with rule 12A.1 if an Ineligible Shareholder is eligible to be a shareholder of the Company. To avoid any doubt, any Ineligible Shareholder is, subject to the Act, eligible to be a shareholder of the Company if it satisfies the conditions set out in rules 4.1 or 4.5.
- (b) The Ineligible Shareholder will have the onus of proving to the Board that the Ineligible Shareholder is eligible to be a shareholder of the Company.

12A.4 Inconsistency

Where the provisions of this rule 12A are inconsistent with another provision of this Constitution, this rule 12A will prevail to the extent of the inconsistency.

13 DIRECTORS

13.1 Number and appointment of Directors

- (a) The names of the first Directors are those persons named as Directors in the application for registration of the Company.
- (b) The number of Directors (not including the Managing Director, any alternate Directors appointed under rule 14.1 or any independent Directors appointed under rule 18.1) is required to be 5.
- (c) All Directors are required to be natural persons and (except for the Managing Director and independent Directors) must be shareholders.

13.2 Power to appoint Directors

The Board has the power at any time to appoint any shareholder as a Director to fill a casual vacancy. Any Director appointed under this rule may hold office only until the next general meeting of the Company and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting.

13.3 Remuneration of Directors

- (a) Subject to rule 13.3(b), the Directors are to be paid out of the funds of the Company as remuneration for their services as Directors, such sum accruing from day to day as the Company in general meeting determines to be divided among them in such proportion and manner as they agree or in default of agreement, equally.
- (b) The Directors' remuneration for their services as Directors is by fixed sum and not a commission on or percentage of profits or operating revenue and may not be increased except at a general meeting where particulars of the proposed increase have been given to the shareholders in the notice convening the meeting.

13.4 Remuneration of Directors for extra services

Any Director who serves on any Committee, or who devotes special attention to the business of the Company, or who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, or who at the request of the Board engages in any journey on the business of the Company, may be paid extra remuneration as determined by the Board.

13.5 Travelling and other expenses

Every Director is, in addition to any other remuneration provided for in these rules, entitled to be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Directors in attending meetings of the Company or of the Board or of any Committees or while engaged on the business of the Company.

13.6 Retirement benefits

Any Director may be paid a retirement benefit, as determined by the Board, in accordance with the Act. The Board is authorised to make arrangements with any Director with respect to the payment of retirement benefits in accordance with this rule.

13.7 Directors may contract with Company

- (a) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company or any other person either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company or any other person by a Director or any contract or arrangement entered into by or on behalf of the Company or any other person in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.
- (b) No Director may as a Director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Act and if the Director does vote his vote may not be counted nor will the Director be counted in the quorum present at the meeting but either or both of these prohibitions may at any time be relaxed or suspended to any extent by ordinary resolution passed at a general meeting, if permitted by the Act.
- (c) A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to, or otherwise executing any document evidencing or otherwise connected with the contract or arrangement.

13.8 Director may hold other office

- (a) A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- (b) A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, or with any other corporation or

organisation, and the Director is not accountable for any benefits received as a director or shareholder of or holder of any other office or position under that corporation or organisation.

13.9 Exercise of voting power in other corporations

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

14 ALTERNATE DIRECTORS

14.1 Director may appoint alternate Director

- (a) Subject to these rules, each Director has power from time to time to appoint any person to act as an alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld or delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office.

14.2 Conditions of office of alternate Director

The following provisions apply to an alternate Director:

- (a) the alternate Director may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate Director was appointed to the Company;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all duties of a Director, in so far as the Director by whom the alternate Director was appointed had not exercised or performed them;
- (d) the alternate Director is not, unless the Board otherwise determines, (without prejudice to the right to reimbursement for expenses pursuant to rule 13.5) entitled

to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the alternate Director by the Company is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;

- (e) the office of the alternate Director is vacated upon vacation of office by the Director or written resignation being given to the Company by the Director, by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate Director was appointed.

15 VACATION OF OFFICE OF DIRECTOR

15.1 Vacation of office by Director

- (a) The office of a Director is vacated:
 - i upon the Director becoming insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;
 - ii upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
 - iii upon the Director being absent from three consecutive meetings of the Board without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
 - iv upon the Director resigning office by notice in writing to the Company;
 - v upon the Director being removed from office pursuant to the Act or this constitution; or
 - vi upon the Director being prohibited from being a Director by reason of the operation of law.
- (b) A Director who vacates office pursuant to rule 15.1(a) is not to be taken into account in determining the number of Directors who are to retire by rotation at any annual general meeting.

15.2 Directors who are employees of the Company

The office of a Director who has been appointed to the Board in accordance with either rule 17 or rule 18, and who is an employee of the Company and or any of its subsidiaries, becomes vacant upon the Director ceasing to be employed (so that they are no longer

employed by the Company or any subsidiary of the Company) but the person concerned is eligible for reappointment or re-election as a Director of the Company.

15.3 Removal of Directors

- (a) In addition to the removal of a Director pursuant to the Act, the Company may by resolution remove any Director before the expiration of his period of office, and may by resolution appoint another person in his stead.
- (b) The person so appointed is subject to retirement at the same time as if he had become a Director on the day on which the Director in whose place he is appointed was last elected a director.

16 ELECTION OF DIRECTORS

16.1 Retirement of Directors

Without prejudice to rules 13.2 and 15.1(b), at every annual general meeting, one half of the Directors (other than the Managing Director or any independent directors), or if this is an uneven number, that may be rounded up to the next whole number at one general meeting and rounded down to the next whole number at the next general meeting, must retire from office but will be eligible for re-election for a 2 year term of office. A Retiring Director retains office until the dissolution or adjournment of the meeting at which the Retiring Director retires.

16.2 Who must retire?

The Directors to retire pursuant to rule 16.1 are the Directors or Director longest in office since last being elected. As between Directors who were elected on the same day the Directors to retire are (in default of agreement between them) determined by lot. The length of time a Director has been in office is calculated from the Director's last election or appointment.

16.3 Nomination of Directors

No person (other than a Retiring Director) is eligible for election to the office of Director at any general meeting unless the person or some shareholder intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the shareholder to nominate the nominee. To be valid, the notice is required to be left at the Office not less than 30 business days nor more than 40 business days before the meeting unless the nominee has been recommended by the Board for election, in which case the notice is required to be left at the Office at least 5 business days before the meeting.

17 MANAGING DIRECTOR

17.1 Appointment of a Managing Director

The Board may from time to time appoint a Managing Director (who may bear that title or any other title determined by the Board) for a period ending on the happening of events (if any) stipulated by the Board, at a remuneration which may be by way of salary or commission on or participation in profits or by any or all of these methods (but not by a commission on or percentage of operating revenue) and otherwise on terms as determined by the Board from time to time. The Board may confer upon a Managing

Director any of the powers exercisable under these rules by the Board as it thinks fit and upon any conditions it thinks expedient but the conferring of powers by the Board upon a Managing Director does not exclude the exercise of those powers by the Board.

17.2 Managing Director not to be subject to retirement by rotation

A Managing Director is not subject to retirement as a Director by rotation while continuing to hold the office of Director and is not to be taken into account in determining the rotation or retirement of Directors or the number of Directors to retire, but is subject to the same provisions as to resignation and removal as the other Directors of the Company. A Managing Director ceases to be a Managing Director if the Managing Director ceases to hold office as a Director.

18 INDEPENDENT DIRECTORS

- 18.1** The Directors may appoint up to 3 persons with special skills to be independent Directors of the Company on the terms and conditions and for the period the Directors may decide and set the remuneration and allowances to be paid to the independent Directors for services as a Director.
- 18.2** Such persons are, subject to this section, Directors of the Company for the period of their appointment.
- 18.3** Other than as provided in this section, an independent Director is subject to all other rules relating to Directors.
- 18.4** On the termination of his or her appointment as independent Director by death, retirement, resignation or in any other way an independent Director ceases being a Director.
- 18.5** An independent Director is not entitled to vote at a meeting of Directors on a motion about the terms and conditions of his or her own appointment, conditions of service or termination of service but may be permitted by the Chairman to speak in relation to the matters.
- 18.6** Despite any other provisions of these rules, no vote may be taken at a meeting of the Board unless, at the time of taking the vote, the number of independent Directors present is less than the number of other Directors present.
- 18.7** An independent Director may be appointed as Chairman and/or may be appointed to chair any subcommittee of the Board which the Board in its discretion might appoint.
- 18.8** Despite the term of appointment which may be fixed under rule 18.1, the shareholders of the Company may, by special resolution at a general meeting of shareholders, terminate the appointment of an independent Director.
- 18.9** An independent Director is not required to be a shareholder of the Company.

19 PROCEEDINGS OF DIRECTORS

19.1 Convening of meetings

A Director may at any time, and the Secretary must, whenever requested to do so by one or more Directors, call a Director's meeting. At least 24 hour's notice of every Directors' meeting must be given to each Director.

19.2 Procedures relating to Directors' meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Meetings of the Board must be held at least quarterly.
- (b) Until otherwise determined by the Board, the quorum for a meeting of the Board is half the number of Directors (or, if half is not a whole number, the whole number next higher than half) **provided that** the number of those Directors present that were elected in accordance with rule 16.1 **exceeds** those Directors present that were appointed in accordance with either rules 17 or 18.
- (c) Notice is deemed to have been given to a Director and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the Director from time to time subject to the right of the Director to withdraw such consent within a reasonable period before a meeting.

19.3 Meetings by telephone or other means of communication

The Directors may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

19.4 Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes.

19.5 Powers of meetings

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

19.6 Delegation of powers to committees

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from

time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

19.7 Proceedings of committees

The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under rule 19.6.

19.8 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the number fixed pursuant to these rules, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

19.9 Resolution in writing

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) For the purposes of this rule the references to 'Directors' include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.

19.10 Nominee Directors

If at any time the Company is or becomes a wholly owned subsidiary of a corporation then the Directors appointed by that corporation to the Board of the Company are hereby authorised and permitted to take into account the interests of the appointor corporation when exercising their powers or performing their duties as Directors of the Company, acting together or individually.

20 POWERS OF THE BOARD

20.1 General powers of the Board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these

rules) may exercise all powers and do all things as are within the power of the Company and are not by these rules or by the Act directed or required to be exercised or done by the Company in general meeting.

20.2 Power to borrow and guarantee

Without limiting the generality of rule 20.1, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee or grant indemnities with respect to the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

20.3 Power to give security

Without limiting the generality of rule 20.1, the Board may charge any property or business of the Company or any of its uncalled capital and may issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, in each case, in the manner and on the terms it thinks fit.

20.4 Power to issue securities

Any bonds, debentures or other securities may be issued with or without the right of or obligation on the holder thereof to exchange the same in whole or in part for shares in the Company at a certain or uncertain time or with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise and generally with such rights and options and upon such conditions in all respects as the Board thinks fit.

20.5 Personal liability of officer

If the Board or any member thereof or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

21 BRANCH REGISTER

The Company may cause to be kept a branch register of shareholders in accordance with, and as permitted, by the Act.

22 THE SEAL

22.1 Execution of cheques, bills, etc

All cheques, bills of exchange and promissory notes are to be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Company by 2 Directors, or by one Director and the Secretary or some other officer authorised by the Board, or in such other manner as the Board from time to time determines.

22.2 Company Seal is optional

The Company may have a Seal.

22.3 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safe custody and it should only

be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

22.4 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) two Directors;
- (b) a Director and the Secretary, and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in rule 22.3 or this rule.

22.5 Other ways of executing documents

Notwithstanding the provisions of rules 22.3 and 22.4, any document including a deed, may also be executed by the Company in any other manner permitted by law.

23 MINUTES

23.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the Directors present at each meeting of the Board and of any Committees; and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees.

23.2 Signing of minutes

The minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

24 DIVIDENDS

24.1 Payment of dividend

- (a) The Board may from time to time determine that a dividend is payable to the shareholders and may fix the amount, time for payment and method of payment. The methods of payment may include the payment of cash, the issue of non-Class A shares, the grant of options and the transfer of assets.
- (b) A dividend may be paid at a rate per annum in respect of a specified period provided that (for the purposes of this rule) no amount paid on a share in advance of calls is to be treated as paid on that share.

24.2 Dividend Payable

In making a determination that a dividend is payable under rule 24.1, the Board may in its absolute discretion determine that:

- (a) dividends are payable to the holders of one or more Class or Classes of shares to the exclusion of the holders of any other Class or Classes of shares; and
- (b) if dividends are paid to the holders of more than one Class of shares, the dividends made on the shares of any such Class may be at a higher or lower rate than, or at the same rate as, the dividend paid on the shares of the other or others of such Classes, provided that the shares in each Class shall between themselves participate equally in any dividend paid in respect of that Class.

24.3 Payment of bonuses

- (a) The Board may from time to time determine that a bonus is payable to shareholders on those terms as the Board determine, in their absolute discretion; and
- (b) The amount of any bonus may be either paid in cash or by the issue of bonus shares.

24.4 Dividend plans

- (a) The Board may establish and maintain one or more dividend plans (including the establishment of rules) pursuant to which shareholders may elect with respect to some or all of their shares (subject to the rules of the relevant plan):
 - i to reinvest in whole or in part dividends paid or payable or which may become payable by the Company to the shareholder in cash by subscribing for shares in the capital of the Company;
 - ii to receive a dividend from the Company by way of the allotment of shares paid up from such account or reserve from which such shares may be issued under the Act;
 - iii that dividends from the Company not be paid and that instead a payment or distribution other than a dividend be made by the Company;
 - iv that cash dividends from the Company not be paid and that instead a cash dividend be received from a related corporation nominated by the Board;
 - v to participate in a dividend selection plan, including but not limited to a plan pursuant to which shareholders may elect to receive a dividend from the Company or any related corporation which is less in amount but franked to a greater extent than the ordinary cash dividend that would be payable by the Company or any related body corporate or to receive a dividend from the Company or any related body corporate which is greater in amount but franked to a lesser extent than the ordinary cash dividend that would be payable by the Company or any related body corporate.
- (b) Pursuant to a dividend plan established in accordance with rule 24.3(a) any shareholder may elect for a specified period or for a period to be determined by

specified notice (in either case determined by the Board and prescribed in the rules of the plan) that all or some of the ordinary shares held by that shareholder and designated by the shareholder in accordance with the rules of the plan ('designated shares') may participate in the dividend plan. During that period the designated shares are entitled to participate in the dividend plan subject to the rules of the dividend plan.

- (c) In the event of any inconsistency between any dividend plan established in accordance with rule 24.3(a) or rules of any dividend plan and these rules, these rules will prevail.
- (d) The Board is authorised to do all things which they consider to be desirable or necessary for the purpose of implementing every dividend plan established in accordance with rule 24.3(a).
- (e) The Board is authorised to vary the rules of any dividend plan established in accordance with rule 24.3(a) at their discretion and to suspend or terminate any dividend plan at their discretion. Any dividend plan may also be suspended, terminated or varied by resolution of a general meeting of the Company.

24.5 Interim dividends

The Board may from time to time pay to the shareholders on account of the next forthcoming dividend any interim dividend as in its judgment is justified by the financial position of the Company.

24.6 Dividends out of profits

No dividend is payable except out of the profits of the Company, and no dividend or other moneys payable on or in respect of a share carries interest as against the Company. The declaration of the Board as to the amount of the profits of the Company is conclusive.

24.7 Reserves

The Board may, in priority to any dividend, set aside out of the profits of the Company any sums as it thinks proper as a reserve, which at the discretion of the Board may be applicable for any purpose to which the profits of the Company may be properly applied, and pending application may be employed in the business of the Company or be invested in any investments the Board may from time to time think fit. Any income derived from or accretions to such shares, securities or other investments may either be carried to the credit of the reserve fund or reserve funds represented by such shares, securities or other investments or be dealt with as profits arising from the business of the Company.

24.8 Distribution otherwise than in cash

When declaring a dividend the Board may:

- (a) direct payment of the dividend wholly or in part by the distribution of specific assets or documents of title and in particular of paid up shares, debentures or debenture stock of the Company or any other company; and
- (b) determine and announce that each shareholder entitled to participate in the dividend may elect that the payment of the dividend be satisfied in respect of all, or a number of shares less than all of the shares held by the shareholder by the allotment of paid up shares in accordance with the plan.

24.9 Power to capitalise profits

The Board may resolve that the whole or any portion of any sum forming part of the undivided profits of the Company or standing to the credit of any reserve or other account and which is available for distribution, be capitalised and distributed to shareholders in the same proportions in which they would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any shares or the terms of any plan for the issue of securities for the benefit of officers or employees. All or any part of the sum is to be applied on the behalf by shareholders either in paying up the amounts for the time being unpaid on any issued shares held by them, or in paying up in full unissued shares or other securities of the Company (of an aggregate amount equal to the amount capitalised) which are to be issued to them accordingly, or partly in one way or partly in the other.

24.10 Appropriation and application of amounts to be capitalised

The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with and, without limiting the generality of the foregoing, may specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made. The Board may make all necessary appropriations and applications of the amount to be capitalised pursuant to rule 24.9 and all necessary allotments and issues of fully paid shares or debentures. Where required, the Board may appoint a person to sign a contract on behalf of the shareholders entitled upon a capitalisation to any shares or debentures, which provides for the issue to them, credited as fully paid of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

24.11 Transfer of shares

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

24.12 Retention of dividends

The Board may retain the dividends payable on shares which any person is under rules 9.6 or 9.7 entitled to transfer until the person becomes registered as a shareholder in respect of the shares or duly transfers them.

The Board may also retain any dividends on or in respect of which (or on or in respect of the shares upon which any such dividend is payable) the Company has a lien or charge under rule 7.8 and may apply the same in or towards satisfaction of the calls, instalments or sums owing in respect of which the lien or charge exists.

24.13 How dividends are payable

Payment of any dividend may be made in any manner and by any means as determined by the Board.

Without prejudice to any other method of payment which the Board may adopt any dividend may be paid by cheque or warrant made payable to the shareholder entitled to the dividend or in the case of joint holders to the shareholder whose name stands first in the Register in respect of the joint holding. Payment of any dividend may be made by sending the cheque, warrant or other means of payment to the shareholder entitled to the dividend through the post to the shareholder's Registered address, and upon posting, every payment of any dividend, is at the risk of the shareholder.

24.14 Unclaimed dividends

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

25 NOTICES

25.1 Service of notices

A notice may be given by the Company to a shareholder, or in the case of joint holders to the shareholder whose name stands first in the Register, personally, by leaving it at the shareholder's Registered address or by sending it by prepaid post or facsimile transmission addressed to the shareholder's Registered address or by sending it to the electronic address (if any) nominated by the shareholder. All notices sent by prepaid post to persons whose Registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

25.2 When notice deemed to be served

Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a shareholder personally or left at the shareholder's Registered address is deemed to have been served when delivered. Any notice served on a shareholder by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee. Any notice served on a shareholder by electronic means is deemed to have been served when the electronic message is sent.

25.3 Shareholder not known at Registered address

Where a shareholder does not have a Registered address or where the Company has bona fide reason to believe that a shareholder is not known at the shareholders Registered address, all future notices are deemed to be given to the shareholder if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the shareholder informs the

Company of a registered place of address.

25.4 Signature to notice

The signature to any notice to be given by the Company may be written or printed.

25.5 Reckoning of period of notice

Where a given number of days notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

25.6 Notice to transferor binds transferee

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

25.7 Service on deceased shareholders

A notice delivered or sent by post to the Registered address of a shareholder pursuant to these rules is (notwithstanding that the shareholder is then dead and whether or not the Company has notice of the shareholder's death) deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by the shareholder, until some other person is registered in the shareholder's place as the holder or joint holder and the service is for all purposes deemed to be sufficient service of the notice or document on the shareholder's heirs, executors or administrators and all persons (if any) jointly interested with the shareholder in the shares.

25.8 Persons entitled to notice of general meeting

- (a) Notice of every general meeting is to be given to:
- i each member individually who is entitled to vote at general meetings of the Company;
 - ii each Director;
 - iii each person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
 - iv the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

26 WINDING UP

26.1 Distribution in kind

If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or in kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees upon any trusts for the benefit of all or any of the contributories as the liquidator

thinks fit.

26.2 Variation of rights of contributories

If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any Class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed pursuant to the Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.

26.3 Liability to calls

If any shares to be divided in accordance with rule 26.1 involve a liability to calls or otherwise, any person entitled under the division to any of the shares may by notice in writing within 10 business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is required, if practicable, to act accordingly.

27 INDEMNITY

27.1 Indemnity in favour of Directors, Secretaries and Executive Officers

Subject to the Act and rule 27.2, the Company will indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

27.2 Indemnity for legal costs

The Company will indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under rule 27.1;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 27.2(c) does not apply to costs incurred in responding to

actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or

- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Act in which the court denies the relief.

27.3 Indemnity for employees

Subject to the Act and rule 27.4, the Company may indemnify an employee, who is not a Director, Secretary or executive officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Company, other than

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

27.4 Indemnity for legal costs of employees

The Company may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under rule 27.3;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 27.4 does not apply to costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the officer under the Act in which the court denies the relief.

27.5 Proceedings

For the purposes of rules 27.2 and 27.4, 'proceedings' includes the outcomes of the proceedings and any appeal in relation to the proceedings.

27.6 Insurance for the benefit of Directors, Secretaries and executive officers

Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or

-
- (b) a Liability arising from negligence or other conduct.

27.7 Insurance for other officers

Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an employee and officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

27.8 When insurance may not be provided by the Company

The Company will not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or section 183 of the Act.

27.9 Definitions for the purposes of rule 27

In this rule 27, except to the extent the context otherwise requires:

Liability includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

executive officer means a person who is concerned, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company);

officer means:

- (a) a Director or Secretary of the Company;
- (b) a person:
 - i who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - ii who has the capacity to affect significantly the Company's financial standing; or
 - iii in accordance with whose instructions or wishes the members of the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).