

# **Constitution**

**BT Funds Management Limited**

**ACN 002 916 458**



# Constitution

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# Constitution of BT Funds Management Limited (ACN 002 916 458)

## Preliminary

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The name of the Company is BT Funds Management Limited.

The Company is a public company limited by shares.

The regulations in Table A in the legislation under which the Company was formed and the replaceable rules in the Corporations Act do not apply to the Company.

## Interpretation

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### 1. Interpretation

In this Constitution unless the context requires otherwise:

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

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

**Chairman** means the Chairman of the Board or any other person occupying the position of chairman under Rule 44, unless otherwise specified.

**Chairman of the Board** means the Director elected to the office of chairman under Rule 75.

**Committee** means a Committee to which powers have been delegated by the Board under Rule 77.1.

**Company** means BT Funds Management Limited.

**Constitution** means this Constitution as amended from time to time.

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

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

**Managing Director** means any Director appointed as Managing Director under Rule 71.1.

**Office** means the registered office of the Company.

**Parent Company** means the holder of all of the issued shares in 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.

**Register** means the register of shareholders of the Company.

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

**Representative** means, in relation to a shareholder that is a body corporate, a person authorised in accordance with the Corporations Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.

**Rules** means these Rules, as amended.

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

**securities** includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity and debentures, debenture stock, notes and other obligations of the Company.

**shareholders present** means the shareholder or shareholders present in person or by duly appointed Representative, proxy or attorney:

- (a) at the venue or venues for a general meeting of the Company; or
- (b) at a general meeting using technology or electronic participation facilities under Rule 40.6.

**Ultimate Holding Company** means the ultimate holding company (as defined in the Corporations Act) of the Company.

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

## **2. Words and Phrases**

2.1 In this Constitution, unless the contrary intention appears:

- (a) a word or phrase which is given a meaning by the Corporations Act has the same meaning in this Constitution;
- (b) words in the singular include the plural and vice versa;
- (c) words used to refer to persons generally or to refer to a natural person include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (d) a reference to a person includes that person's successors and legal personal representatives;
- (e) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) a reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Corporations Act or any other method approved by the Board; and
- (g) specifying anything in this Constitution after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included.

## **3. Legislation**

A reference to a statute or regulation, or a provision of any of them, includes all statutes, regulations or provisions amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

## **4. Headings**

The headings do not affect the construction of this Constitution.

# **Shares**

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## **5. Issue of shares with special rights**

Without affecting any special rights conferred on the holders of any shares, any share in the capital of the Company may be issued with preferred, deferred or

other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Board may determine.

## **6. Board's power to issue shares**

- 6.1 Except as provided by contract or this Constitution to the contrary, the Board may issue, allot or grant options for, or otherwise dispose of, shares in the Company. The Board may decide the persons to whom shares are issued or options are granted; the terms on which shares are issued or options are granted; and the rights and restrictions attached to those shares or options.
- 6.2 An issue of shares of the same class as an existing class of shares is not to be considered to constitute a variation of the rights of the holders of shares in the existing class. Any Director or any person who is an associate of a Director may participate in any issue by the Company of securities.

## **7. Variation of class rights**

- 7.1 Unless otherwise provided by the terms of issue, a class of shares may, unless their terms of issue state otherwise, be varied:
- (a) with the written consent of the holders of 75% of the shares of the class; or
  - (b) by a special resolution passed at a separate meeting of the holders of shares of the class.
- 7.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings.
- 7.3 The rights conferred on the holders of any class of shares are to be taken as not having been varied by the creation or issue of further shares ranking equally with them, unless the terms of issue provide otherwise.

## **8. Surrender of shares**

In its discretion, the Board may accept a surrender of shares by way of compromise of a claim or 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.

## **9. Joint holders**

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

(a) **Number of holders**

the Company is not bound to register more than three persons as the holders of the shares (except in the case of personal representatives of a deceased shareholder);

(b) **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 one of the joint holders, the survivor is the only person recognised by the Company as having any title to the shares but the Board may require evidence of death and the estate of the deceased joint holder is not released from any liability in respect of the shares;

(d) **Power to give receipt**

any one of the joint holders may give a receipt for any dividend, bonus, return of capital or other distribution or payment in respect of the share 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 determines to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is considered to be notice to all the joint holders; and

(f) **Votes of joint holders**

any one of the joint holders may vote at any meeting of the Company either personally or by Representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders are present personally or by Representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Register counts.

## 10. **Non-recognition of equitable or other interests**

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

## Certificates

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### 11. Certificates

The Board may determine to issue certificates for shares or other securities of the Company, to cancel any certificates on issue, to replace lost, destroyed or defaced certificates on issue on the basis and in the form it thinks fit from time to time.

## Calls

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### 12. Power to make calls

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

### 13. Obligation for calls

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

### 14. When a call is made

A call is taken to have been made at the time when the resolution of the Board authorising the call was passed. The call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the call is due. The non-receipt of a notice of any call by, or the accidental omission to give notice of any call to, any shareholder, does not invalidate the call.

### 15. 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 the Board determines. The Board may waive the whole or part of any interest paid or payable under this Rule.

### 16. Instalments

- 16.1 If, by the terms of an issue of shares, any amount is payable in respect of any shares by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and all provisions of this Constitution

with respect to the payment of calls and of interest or to the forfeiture of shares for non-payment of calls or with respect to liens or charges apply to the instalment and to the shares in respect of which it is payable.

## **Forfeiture and Lien**

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### **17. Notice requiring payment of sums payable**

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

### **18. Time and place for payment**

The notice referred to in Rule 17 is to name a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made and that, if payment is not made by the time and at the place specified, the shares in respect of which the sum is payable are liable to be forfeited.

### **19. Forfeiture on non-compliance with notice**

If there is non-compliance with the requirements of any notice given under Rule 17, any shares in respect of which notice has been given may be forfeited by a resolution of the Board passed at any time after the day specified in the notice for payment. The forfeiture is to include all dividends, interest and other money payable by the Company in respect of the forfeited shares and not actually paid before the forfeiture.

### **20. Notice of forfeiture**

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

### **21. Disposal of forfeited shares**

Any forfeited share is considered to be the property of the Company and the Board may sell or otherwise dispose of or deal with the share in any manner it thinks fit

and with or without any money paid on the share by any former holder being credited as paid up.

## **22. Annulment of forfeiture**

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

## **23. Liability despite forfeiture**

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

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

## **25. Sale of shares to enforce lien**

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

## **26. Title to shares forfeited or sold to enforce lien**

- 26.1 In a sale or a re-issue of forfeited shares or in the sale of shares to enforce a lien or charge, an entry in the Board's minute book that the shares have been forfeited, sold or re-allotted in accordance with this Constitution is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture,

sale or re-issue of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-issue.

- 26.2 In a re-issue, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- 26.3 In a sale, the Company may appoint a person to execute a transfer in favour of the person to whom the shares are sold.
- 26.4 On the issue of the receipt or the execution of the transfer the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares prior to the re-issue or purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration and the person's title to the shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-issue.
- 26.5 The net proceeds of any sale or re-issue are to be applied first in payment of all costs in relation to the enforcement of the lien or charge or the forfeiture and of the sale or re-issue, next in satisfaction of the amount in respect of which the lien or charge exists as is then payable to the Company (including interest) or the amount in respect of the forfeited shares then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-issue or to the person's executors, administrators or assigns on the production of any evidence as to title required by the Board.

## Payments by the Company

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### 27. Payments by the Company

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

- (a) the death of the holder;
- (b) the non-payment of any income tax or other tax by the holder;

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

the Company in each case:

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

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

## Transfer and transmission of securities

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### **28. Instrument of transfer required**

- 28.1 No transfer of any securities may be registered unless a proper instrument of transfer, in writing in the usual or common form or in any form the Board may prescribe or in a particular case accept, signed by both the transferee and transferor and duly stamped (if necessary) is delivered to the Company in accordance with Rule 34 (but the Board may dispense with the execution of the instrument by the transferee if the Board thinks fit).
- 28.2 Any transfer is subject to this Constitution and to the rights or restrictions attached to any securities or class of securities.

### **29. Company must register transfer**

Subject to the powers vested in the Board under Rules 30 and 31, where the Company receives an instrument of transfer complying with Rule 28, the Company must register the transferee named in the instrument as the holder of the securities to which it relates.

### **30. Board may refuse to register**

The Board in its discretion may refuse to register any transfer of shares and may decline to give its reasons and grounds for doing so.

### **31. Board may suspend registration of transfers**

The Board may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

### **32. When transfer effective**

The transferor is deemed to remain the holder of the securities transferred until the name of the transferee is entered in the Register.

### **33. Closing Register**

The Register may be closed at any time the Board thinks fit.

### **34. Instrument of transfer and certificate (if any)**

- 34.1 Every transfer must be left for registration at the Office or any other place the Board determines. Unless the Board otherwise determines either generally or in a particular case, the transfer is to be accompanied by the certificate for the securities to be transferred. In addition, the transfer is to be accompanied by any

other evidence which the Board may require to prove the title of the transferor, the transferor's right to transfer the securities, due execution of the transfer or due compliance with the provisions of any law relating to stamp duty.

34.2 Subject to Rule 34.1, on each application to register the transfer of any securities or to register any person as the holder in respect of any securities transmitted to that person by operation of law or otherwise, the certificate (if any) specifying the securities in respect of which registration is required must be delivered to the Company for cancellation and on registration the certificate is taken to have been cancelled.

34.3 Each transfer which is registered may be retained by the Company for any period determined by the Board after which the Company may destroy it.

## **35. Transmission on death**

35.1 The personal representative of a deceased shareholder (who is 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. Subject to compliance by the transferee with this Constitution, the Board may register any transfer signed by a shareholder prior to the shareholder's death despite the Company having notice of the shareholder's death.

35.2 Rule 35.1 does not release the estate of a deceased shareholder from any liability on a security, whether that security was held by the deceased solely or jointly with other persons.

## **36. Transmission by operation of law**

A person (a **transmittee**) who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a holder in respect of the securities or may (subject to the provisions in this Constitution relating to transfers) transfer the securities. The Board has the same right to refuse to register the transmittee as would apply under Rule 30 if the transmittee was the transferee named in a transfer presented for registration.

## **Alteration of capital**

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### **37. Power to alter share capital**

The Company in general meeting may reduce or alter its share capital in any manner provided by the Corporations Act. The Board may do anything which is required to give effect to any resolution authorising reduction or alteration of the

share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or sale of fractions of shares and distribution of net proceeds as it thinks fit.

## **38. Conversion or reclassification of securities**

Subject to Rule 37, the Company may by resolution convert or reclassify securities from one class to another.

## **General Meetings**

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### **39. Annual general meetings**

Annual general meetings of the Company shall be held in accordance with the Corporations Act.

### **40. General meetings**

40.1 The Board may, whenever it thinks fit, call and arrange to hold a general meeting, including using technology in accordance with Rule 40.6.

40.2 A general meeting may be convened only as provided by this Rule 40 or as otherwise required by the Corporations Act.

40.3 Wherever the term 'Chairman' is used in Rules 40 to 60 (inclusive) of this Constitution, it is to be read as a reference to the chairman of the general meeting, unless the context indicates otherwise.

40.4 Subject to Rule 40.5, the Board may postpone, cancel or change the venue for a general meeting.

40.5 A general meeting called in accordance with a shareholders' requisition under the Corporations Act and any other meeting that is not called by a resolution of the Board may not be postponed beyond the date by which the Corporations Act requires it to be held and may not be cancelled without the consent of the persons who called or requisitioned the meeting.

40.6 The Board may determine to hold a general meeting of shareholders using or with the assistance of any technology that gives the shareholders as a whole a reasonable opportunity to participate, which may include but is not limited to electronic participation facilities (with or without shareholders being able to attend a physical meeting) or linking separate meeting places together by technology.

40.7 If a general meeting is to be held in accordance with Rule 40.6, the Board may prescribe regulations, rules and procedures in relation to the manner in which the meeting is to be conducted.

- 40.8 If, before or during the meeting, any technical difficulty occurs which may materially impact the participation of shareholders who are not present in the main physical location of the meeting, the Chairman may:
- (a) adjourn the meeting until the difficulty is remedied; or
  - (b) continue to hold the meeting in the main place (and any other place which is linked under Rule 40.6) and transact business, and no shareholder may object to the meeting being held or continuing.
- 40.9 In no circumstances shall the inability of one or more shareholders to access, or to continue to access, an electronic participation facility or facilities affect the validity of a meeting or any business conducted at a meeting, provided that sufficient shareholders are able to participate in the meeting as are required to constitute a quorum.

## **41. Notice of general meeting**

- 41.1 A notice of a general meeting must specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.
- 41.2 Subject to this Constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Corporations Act.
- 41.3 A person may waive notice of any general meeting by written notice to the Company.
- 41.4 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.
- 41.5 A person's attendance at a general meeting waives any objection that person may have to:
- (a) a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

## **42. Quorum**

One shareholder present in person, or by proxy, attorney or representative constitutes a quorum for a general meeting. No business may be transacted at

any meeting, except the election of a Chairman and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.

## **43. Adjournment in absence of quorum**

If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of meeting, the meeting is dissolved, unless the Board adjourns the meeting to a date time and place determined by it. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## **44. Chairman**

44.1 If the Board has elected a Chairman of the Board, that person (if present within 15 minutes after the specified time for holding the meeting and willing to act) is entitled to chair every general meeting.

44.2 If at any general meeting:

- (a) there is no Chairman of the Board;
- (b) the Chairman of the Board is not present within 15 minutes after the specified time for holding the meeting; or
- (c) the Chairman of the Board is present but is unwilling to chair the meeting, the Directors present may choose another Director to chair the meeting and if no Director is present or if each of the Directors present is unwilling to chair the meeting, a shareholder chosen by the shareholders present and entitled to vote may chair the meeting.

44.3 A Chairman of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chairman**). Where an instrument of proxy appoints the Chairman as proxy for part of the proceedings for which an Acting Chairman has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairman for the relevant part of the proceedings.

## **45. General conduct of general meeting**

45.1 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairman.

45.2 At any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chairman may:

- (a) limit the time that a person may speak on a motion or other item of business being considered at the meeting;
  - (b) 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 and entitled to vote;
  - (c) decide not to put to the meeting any resolution proposed in the notice convening the meeting (other than a resolution proposed by shareholders in accordance with section 249N of the Corporations Act or required by the Corporations Act to be put to the meeting); and
  - (d) adopt any procedures for the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- 45.3 The Chairman may require the adoption of any procedures which are 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.
- 45.4 Any determination by the Chairman in relation to matters of procedure or any other matter arising directly or indirectly from the business is fixed. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairman whose decision is final.

## **46. Adjournment**

- (a) During the course of the general meeting the Chairman may 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 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 under this Rule, the Chairman has the sole discretion to decide whether to seek the approval of the shareholders present and entitled to vote to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the shareholders present and entitled to vote in respect of the adjournment.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (c) Where a meeting is adjourned or postponed, notice need not be given to any person unless the meeting is adjourned or postponed for more than 30 days.
- (d) Whether or not a quorum is present, the Chairman may postpone the meeting before it has started if, at the time and place appointed for the meeting, he or she considers that:
  - (i) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out; or
  - (ii) the technology or electronic participation facility being utilised for a meeting under Rule 40.6 is not operating effectively.
- (e) Where a meeting is adjourned or postponed, the Board may postpone, cancel, change the venue of or change the technology to be used for, the adjourned or postponed meeting.

## **47. Decisions at general meetings**

- 47.1 Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the shareholders present and entitled to vote at the meeting. A decision made in this way is for all purposes a decision of the shareholders.
- 47.2 If the votes are equal on a proposed resolution, the Chairman has a casting vote, in addition to any deliberative vote.

## **48. Direct voting**

- 48.1 Despite anything to the contrary in this Constitution, the Board may decide that, at any general meeting or class meeting, a shareholder who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Company by post or electronic means approved by the Directors.
- 48.2 The Board may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## **49. Voting on show of hands**

Each question submitted to a general meeting is to be decided by a show of hands of the shareholders present and entitled to vote, unless a poll is demanded in accordance with Rule 50. In the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or

votes to which the Chairman may be entitled as a shareholder or as a proxy, attorney or duly appointed representative of a shareholder. Unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost is conclusive and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

## **50. When a poll may be demanded**

A poll may be demanded by a shareholder in accordance with the Corporations Act (and not otherwise) or by the Chairman before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared. No poll may be demanded on the election of a chairman of a general meeting or, unless the Chairman otherwise determines, the adjournment of the meeting. The demand for a poll may be withdrawn.

## **51. Taking a poll**

- 51.1 If a poll is demanded as provided in Rule 50, 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 the general meeting's resolution of the motion on which the poll was demanded.
- 51.2 A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

## **52. Special meetings**

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

## **53. Decisions without general meetings**

- 53.1 When the Company has more than one shareholder, the Company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
- (a) if all of the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
  - (b) otherwise in accordance with the Corporations Act.
- 53.2 If a share is held jointly, each of the joint shareholders must sign the document.

53.3 For the purposes of Rule 53.1:

- (a) the resolution is passed when the last person signs or consents to the document; and
- (b) separate copies of a document may be used for signing by shareholders if the wording of the resolution and statement is identical in each copy.

53.4 The passage of the resolution satisfies any requirement in the Corporations Act, or in this Constitution, that the resolution be passed at a general meeting.

## **54. Single shareholder and circulating resolutions**

54.1 Nothing in this Constitution limits the Company's power under the Corporations Act to pass a resolution as a circulating resolution or, while the Company has only one shareholder, by recording the resolution and signing the record.

54.2 Where the Company has one shareholder only, a document signed by that shareholder which records a decision of the shareholder:

- (a) constitutes a decision of the Company and is valid and effective as if it were a resolution duly passed at a meeting of shareholders; and
- (b) has effect as a minute of that decision.

## **Votes of shareholders**

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### **55. Voting rights**

55.1 Subject to restrictions on voting affecting any class of shares and subject to Rules 9(f) and 58:

- (a) on a show of hands:
  - (i) subject to paragraphs (ii) and (iii), each shareholder present has one vote;
  - (ii) where a shareholder has appointed more than one person as Representative, proxy or attorney for the shareholder, none of the Representatives, proxies or attorneys is entitled to vote;
  - (iii) where a person is entitled to vote because of paragraph (i) in more than one capacity, that person is entitled only to one vote; and
- (b) on a poll, each shareholder present:
  - (i) has one vote for each fully paid share held; and
  - (ii) for each other share held, has a vote in respect of the share which carries the same proportionate value as the proportion of the

amount paid up or agreed to be considered as paid up on the total issue price of that share at the time the poll is taken.

- 55.2 A joint holder may vote at a meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant shares, the vote of the holder named first in the register who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.

## 56. Voting rights of personal representatives, etc

Where a person satisfies the Board at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the holding of a general meeting (unless the person has previously satisfied the Board as to the person's right to vote) that the person is a personal representative as referred to in Rule 35 or a transmittee as referred to in Rule 36, the person may vote at the general meeting in the same manner as if the person were the registered holder of the securities referred to in Rules 35 or 36, as the case requires.

## 57. Proxies

- 57.1 A shareholder who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the shareholder in accordance with the Corporations Act but not otherwise. A proxy appointed to attend and vote in accordance with the Corporations Act may exercise the rights of the shareholder on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- 57.2 A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Board may prescribe or accept.
- 57.3 Any appointment of proxy under Rule 57.2 which is incomplete may be completed by the Secretary on the authority of the Board and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- 57.4 Voting instructions given by a shareholder to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy or, in the case of new instructions or variations to earlier instructions, if received at the Office before the meeting or adjourned meeting by a notice in writing signed by the shareholder.
- 57.5 For the purposes of Rule 57.4 where a notice of meeting provides for electronic lodgement of proxies a proxy lodged at the electronic address specified in the

notice is taken to have been received at the office and validated by the shareholder if there is compliance with the requirements set out in the notice.

## **58. Validity, revocation**

- 58.1 The validity of any resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing shareholder.
- 58.2 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid despite the previous death or mental incapacity of the appointing shareholder, revocation of the instrument of proxy or power of attorney or transfer of the shares in respect of which the vote is given, provided no notice in writing of the death, mental incapacity, revocation or transfer has been received at the Office before the relevant meeting or adjourned meeting.
- 58.3 A proxy is not revoked by the appointing shareholder attending and taking part in the meeting, unless the appointing shareholder actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **59. Board may 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 may include the names of any of the Directors or of any other persons willing to act as proxies. Where the form does not contain the name of a proxy the form is not for that reason invalid and is taken to be given in favour of the Chairman. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed and, where a form so provides, the proxy is not entitled to vote on the resolutions except as directed in the form.

## **60. 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 together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the shareholder granting the power of attorney.

## Directors

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### **61. Number of Directors**

The number of Directors (not including alternate Directors) must be not less than three nor more than ten unless otherwise determined by general meeting, or such other minimum or maximum number as may be required from time to time by any law, regulation or standard applicable to the Company. Each Director is to be a natural person.

### **62. Power to appoint Directors**

- 62.1 The holder or holders of a majority of the issued shares in the capital of the Company conferring the right to vote at all general meetings of the Company may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors or remove a Director from office.
- 62.2 Subject to Rule 61, the Ultimate Holding Company may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors or remove a Director from office.
- 62.3 The Directors may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors.
- 62.4 Any appointment or removal under Rule 62.1 must be in writing signed by or on behalf of the holder or holders of a majority of the issued shares in the capital of the Company conferring the right to vote at all general meetings of the Company. Any such appointment or removal will take effect immediately on delivery of the instrument of appointment or removal to the Office of the Company.
- 62.5 Despite anything else in this Rule 62, a person is not eligible to be appointed, or elected, as a Director unless they are also eligible to hold that office under any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company.

### **63. Remuneration of Directors**

- 63.1 Each Director is entitled to be remunerated for their services as directors of the Company as determined by the Parent Company or Ultimate Holding Company.

### **64. Directors may contract with Company**

- 64.1 A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, subscriber, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the

Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit derived from any contract or arrangement by reason only of the office as director or the fiduciary relationship it entails.

64.2 Except where a Director is constrained by the Corporations Act, a Director may be present at a meeting of the Board while a matter in which the Director has an interest is being considered and may vote in respect of that matter. No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a Director fails to comply with a relevant constraint in the Corporations Act.

64.3 Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or otherwise connected with the contract or arrangement, whether by signing, sealing or otherwise.

## **65. Director may hold other office**

65.1 A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.

65.2 A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or shareholder of, or holder of any other office or position under the corporation or organisation.

## **66. 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 may vote in favour of the exercise of those voting rights, despite the fact that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

## **67. Directors may lend to the Company**

Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company and underwrite or guarantee the subscription of shares or

securities of the Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

## **68. Director may act in best interest of Parent Company**

68.1 Subject to Rule 68.2, at any time when the Company is a wholly owned subsidiary, each Director may, but is not obliged to, act in good faith in the best interests of the Parent Company or the Ultimate Holding Company if the Company:

- is not insolvent at the time the Director acts; and
- will not become insolvent because of the Director's act.

68.2 The permission in Rule 68.1 is subject to any other Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company.

## **Alternate Directors**

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### **69. Director may appoint alternate Director**

Subject to this Constitution, each Director may appoint any person (who, if there are other Directors, is approved by a majority of the other Directors) to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the Office or to a meeting of the Board. The appointment takes effect on (if there are other Directors) approval by a majority of the other Directors or where the approval has been granted at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended from office on receipt at the Office of notice in writing from the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;

- (d) the alternate Director is not, unless otherwise determined under Rule 63, entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the alternate Director by the Company is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed, or at any time by the appointer even though the period of the appointment of the alternate director has not expired;
- (f) the alternate Director is not to be taken into account in determining the minimum or maximum number of Directors under this Constitution; and
- (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults.

## Termination of office of Director

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### 70. Termination of office by Director

The office of a Director is terminated on the Director:

- (a) being absent from meetings of the Board during a period of six consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) resigning office by notice in writing to the Company;
- (c) being removed from office under the Corporations Act;
- (d) becoming of unsound mind or becoming a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (e) being disqualified from holding office as a Director on the grounds of not being 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company; or
- (f) being prohibited from being a Director by reason of the operation of the Corporations Act.

## Managing Director

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### **71. Appointment of a Managing Director**

- 71.1 The Board may appoint one or more of its Directors to be Managing Director (who may bear that title or any other title determined by the Board) for a period ending on the happening of events (if any) stipulated by the Board (and, in any event, upon the Managing Director ceasing to hold office as a Director), and at a remuneration which may be by way of salary or commission on or participation in profits or by any or all of these methods and otherwise on terms determined by the Board.
- 71.2 The Board may confer on and withdraw from a Managing Director any of the powers exercisable under this Constitution by the Board as it thinks fit and on any conditions it thinks expedient but the conferring of powers by the Board on a Managing Director does not exclude the exercise of those powers by the Board.
- 71.3 A Managing Director's appointment automatically terminates if the Managing Director ceases to be a Director for any reason.

## Proceedings of Directors

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### **72. Procedures relating to Board meetings**

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

### **73. Meetings by telephone or other means of communication**

- 73.1 The Board may meet either in person or by telephone or by videoconference or by using any other technology. A meeting conducted by telephone or by other technology or means of communication is considered to be held at the place where the chairman of the meeting is or at such other place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with such changes

as are necessary, to meetings of the Board by telephone or other electronic means.

73.2 If, before or during the meeting, any technical difficulty occurs as a result of which one or more Directors cease to participate, the chairman of the meeting may adjourn the meeting until the difficulty is remedied or may, where a quorum of Directors remains present, continue with the meeting.

73.3 A Director taking part in a meeting by telephone or other electronic means is to be taken to be present at the meeting and all Directors participating in the meeting will (unless there is a specific statement otherwise) be taken to have consented to the holding of the meeting by the relevant electronic means.

## **74. Votes at meetings**

Questions arising at any meeting of the Board are decided (where there is more than one Director) by a majority of votes. In the case of an equality of votes, the chairman of the meeting appointed under Rule 75 has (except when only two Directors are present or except when only two Directors are competent to vote on the question then at issue) a second or casting vote.

## **75. Chairman of the Board**

The Board may elect a Chairman of the Board and determine the period for which the Chairman of the Board is to hold office. If no Chairman of the Board is elected or if at any meeting the Chairman of the Board is not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting. The appointment of the Chairman of the Board must satisfy the requirements of any laws, regulations and standards that apply to the Company.

## **76. Powers of meetings**

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

## **77. Delegations by the Board**

77.1 The Board may delegate any of its powers to one Director, a Committee consisting of any one or more Directors or any other person or persons as the Board thinks fit. A Director, Committee or person to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.

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

77.3 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any directions given by the Board under Rule 77.1.

## **78. Validity of acts**

78.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified or not entitled to vote, 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.

78.2 If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

## **79. Resolution in writing**

79.1 Subject to Rule 79.4 if:

- (a) a majority of Directors (other than any Director who is on leave of absence approved by the Directors, any Director who disqualifies themselves from considering the resolution in question and any Director who is prohibited by the Corporations Act from voting on the resolution in question) sign or consent to a written resolution; and
- (b) the Directors who sign or consent to the resolution would have constituted a quorum at a meeting of the Board,  
then that resolution is taken as having been passed by a meeting of the Board and is effective when signed or consented to by the last Director.

79.2 A Director may consent to a resolution by:

- (a) signing the document containing the resolution (or a copy of that document, including by electronic means);
- (b) giving to the Company a written notice (including by electronic means) addressed to the Secretary or to the Chairman signifying assent to the resolution; or

- (c) telephoning the Secretary or the Chairman and signifying assent to the resolution.
- 79.3 Where a document is assented to in accordance with Rule 79.1, the document is to be taken as a minute of a meeting of the Board.
- 79.4 Where there is only one Director, nothing in this Constitution limits the powers of that Director under the Corporations Act to:
- (a) pass a resolution; or
  - (b) make a declaration,  
by recording it and signing the record.

## **Powers of the Board**

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### **80. General powers of the Board**

- 80.1 The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law directed or required to be exercised or done by the Company in general meeting.
- 80.2 The Board may:
- (a) appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Board), for such period and on such conditions as they decide;
  - (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (c) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.
- 80.3 A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Board decides.

### **81. Power to borrow and guarantee**

Without limiting the generality of Rule 80, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee the debts or obligations of

any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

## **82. Power to give security**

Without limiting the generality of Rule 80, 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.

## **83. Power to authorise debenture holders, etc to make calls**

Without limiting the generality of Rule 80, if any uncalled capital of the Company is included in or charged by any debenture, mortgage or other security, the Board may authorise the person in whose favour the debenture, mortgage or other security is executed or any other person in trust for the person to make calls on the shareholders in respect of that uncalled capital and to sue in the name of the Company or otherwise for the recovery of money becoming due in respect of calls made and to give valid receipts for that money, and the authority continues for the duration of the debenture, mortgage or other security, despite any change in the Directors, and is assignable if expressed to be.

## **84. Power to issue bond, debenture or other security**

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

## **85. Personal liability of officer**

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

## **86. Seal and document execution**

86.1 The Company may have a common seal and a duplicate common seal.

86.2 If the Company has a common seal, the seal may be used only as determined by the Board (or by a Committee authorised by the Board to authorise the use of the seal) and each document to which the seal is fixed must be signed by:

- (a) two Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors to countersign that document;
- (d) if the Company has a sole Director who is also a sole Secretary, that Director; or
- (e) if the Company has a sole Director and no Secretary, that Director.

86.3 If the Company has a sole Director and no Secretary, a document will be taken to be duly executed by the Company if it is signed by that Director.

## Secretary

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### 87. Appointment of Secretary

The Company must have a Secretary who is to be appointed by the Board.

### 88. Suspension and removal of Secretary

The Board may suspend or remove a Secretary from that office.

### 89. Powers, duties and authorities of Secretary

The Board may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Board.

## Inspection of Records

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### 90. Inspection by shareholders

90.1 Subject to the Corporations Act, the Board may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of shareholders, and a shareholder does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by a resolution of shareholders in a general meeting.

90.2 This Rule 90 does not limit any right the Directors or former Directors otherwise have under the Corporations Act to inspect Company records.

## Dividends

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### **91. Determination of dividend**

- 91.1 The Board may determine that a dividend is payable to the shareholders entitled. The dividend is (subject to the rights of, or any restrictions on, the holders of shares created or raised under any special arrangement as to dividend) payable on each share on the basis of the proportion which the amount paid is of the total amounts paid, agreed to be considered to be paid or payable on the share. The dividend may be determined at a rate per annum in respect of a specified period but no amount paid on a share in advance of calls is to be treated as paid on that share. Paying a dividend does not require confirmation at a general meeting.
- 91.2 The Board may rescind a decision to pay a dividend if it decides, before the payment date, that the Company's financial position no longer justifies the payment or that it is otherwise in the best interests of the Company that the dividend decision be rescinded.

### **92. Distribution otherwise than in cash**

When resolving to pay a dividend, the Board may determine that:

- (a) payment of the dividend be effected wholly or in part by the distribution of specific assets or documents of title and in particular by the issue or transfer of paid-up shares, debentures, debenture stock or grant of options of the Company or any other corporation. Where any difficulty arises in regard to the distribution, the Board may settle the difficulty as it thinks fit and in particular may issue fractional certificates, may fix the value for distribution of the specific assets, may determine that cash payments are to be made to any shareholders on the basis of the value fixed in order to adjust the rights of all parties and may vest the specific assets in trustees on trusts for the persons entitled to the dividend as the Board thinks fit; and
- (b) the dividend be payable to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source. The Board may determine this despite the fact that the dividend may form part of the assessable income for taxation purposes of some shareholders, and may not form part of the assessable income of others.

## **93. Capitalisation of profits**

- 93.1 The Board may resolve that the whole or any portion of any sum forming part of the undivided profits of the Company, standing to the credit of any reserve or other account, representing profits arising from an ascertained accretion to capital or a revaluation of the Company's assets, and which is available for distribution, be capitalised and distributed to shareholders in the same proportions in which the shareholders would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any shares or the terms of any plan for the issue of securities for the benefit of officers or employees and that all or any part of the sum be applied on their behalf either in paying up the amounts for the time being unpaid on any issued shares held by them, or in paying up in full unissued shares or other securities of the Company to be issued to them accordingly, or partly in one way and partly in the other.
- 93.2 The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with, including specifying that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made.
- 93.3 The Board may make all necessary appropriations and applications of the amount to be capitalised under Rule 93.1 and all necessary allotments and issues of fully paid shares or debentures.
- 93.4 Where required, the Board may appoint a person to sign a contract on behalf of the shareholders entitled on a capitalisation to any shares or other securities, which provides for the issue to them, credited as fully paid, of any further shares or other securities 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 or other securities by the application of their respective proportions of the sum resolved to be capitalised.

## **94. 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 determined before the books are closed.

## **95. Retention of dividends**

The Board may retain the dividends payable on securities referred to in Rules 35 and 36 until the personal representative or the transmittee (as the case requires) becomes registered as the holder of the securities or duly transfers them. The

Board may retain any dividends in respect of which (or in respect of the shares on which the dividend is payable) the Company has a lien or charge under Rule 24 and may apply any retained dividends towards satisfaction of the calls, instalments or sums owing in respect of which the lien or charge exists.

## **96. How dividends are payable; currency of payments**

- 96.1 Payment of any dividend may be made in any manner and by any means as determined by the Board. Without affecting any other method of payment which the Board may adopt, in each case at the risk of the shareholder, payment may be made to the shareholder entitled to the dividend or, in the case of joint holders, to the shareholder whose name stands first in the Register in respect of the joint holding.
- 96.2 Payments of dividends and other distributions by the Company may be made in Australian dollars or any other currency determined by the Board in its discretion. Payments in different currencies may be made to different shareholders as determined by the Board in its discretion. If a payment is made in a currency other than Australian dollars the Board may determine in its discretion the appropriate exchange rate and the time of calculation to calculate the amount payable in the relevant currency. The determinations of the Board are, in the absence of manifest error, final.

## **97. 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.

## **Notices**

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### **98. Service of notices**

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

## **99. Notices by shareholders or Directors to the Company**

Subject to this Constitution, a notice may be given by a shareholder, Director or alternate director to the Company by:

- (a) delivering it to the Company's registered office;
- (b) sending it by prepaid post to the Company's registered office; or
- (c) sending it by electronic means to the principal electronic address at the Company's registered office.

## **100. When notice taken to be served**

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

## **101. Shareholder not known at registered address**

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

## **102. Calculation of period of notice**

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

## **103. 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 the shares, was duly given to the person from whom the title to the shares is derived.

## **104. Service on deceased shareholders**

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

## **Winding up**

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### **105. Distribution in specie**

- 105.1 If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.
- 105.2 For the purpose of calculating the assets of the Company referred to in Rule 105.1, any amount unpaid on a share is to be treated as property of the Company.
- 105.3 The amount that would otherwise be distributed to the holder of a partly paid share under Rule 105.1 must be reduced by the amount unpaid on that share at the date of the distribution.
- 105.4 If the effect of the reduction under Rule 105.3 would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

### **106. Variation of rights of contributories**

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

## 107. Liability to calls

If any shares to be divided in accordance with Rule 105 involve a liability to calls or otherwise, any person entitled under the division to any of the shares may, by notice in writing within ten business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is to act accordingly, if practicable.

## Indemnity, Insurance and Access

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### 108. Indemnity of officers, insurance and access

108.1 The Company is to indemnify each officer of the Company to the full extent permitted by the law, out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.

108.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a subsidiary.

108.3 Where the Board considers it appropriate, the Company may:

- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
- (b) bind itself in any contract or deed with any officer of the Company to make the payments.

108.4 Where the Board considers it appropriate, the Company may:

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

108.5 In this Rule 108:

- (a) **officer** means:
  - (i) a Director, Secretary or executive officer; or

- (ii) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,  
and includes a former officer.
- (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation.
- (c) **to the relevant extent** means:
  - (i) to the extent the Company is not precluded by law from doing so;
  - (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
  - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (d) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

## General

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### 109. Prohibition and enforceability

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

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

### 110. Transitional provisions

This Constitution must be interpreted in such a way that:

- (a) every Director, Managing Director and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution;
- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution;
- (c) any seal adopted by the Company immediately before this Constitution is adopted is taken to be a seal which the Company has under a relevant authority given by this Constitution;
- (d) unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the Company in force before this Constitution is adopted, continue to have the same status, operation and effect after this Constitution is adopted; and
- (e) except where expressly stated to the contrary, the adoption of this Constitution does not alter the rights attaching to any class of shares which exist at the date this Constitution is adopted.