



**CALTEX**  

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**Caltex Australia**

**Constitution of  
Caltex Australia Limited  
ACN 004 201 307 ABN 40 004 201 307**

**(as adopted at the Company's Annual General Meeting  
on 24 April 2007)**

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**COMPANY LIMITED BY SHARES**  
**CONSTITUTION**  
**OF**  
**CALTEX AUSTRALIA LIMITED**

**PRELIMINARY**

**1. Definitions and interpretation**

1.1 In this Constitution:

'**Alternate Director**' means a person appointed as an alternate director under **clause 66**;

'**ASTC**' means ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532;

'**ASTC Settlement Rules**' means the operating rules of ASTC and, to the extent that they are applicable, the operating rules of the Exchange and the operating rules of Australian Clearing House Pty Limited ABN 48 001 314 503;

'**Auditor**' means the Company's auditor;

'**Business Day**' has the same meaning as in the Listing Rules;

'**Company**' means Caltex Australia Limited ACN 004 201 307;

'**Constitution**' means the constitution of the Company as amended from time to time;

'**Director**' means a person appointed or elected to the position of a director of the Company;

'**Directors**' means all or some of the Directors acting as a board;

'**dividend**' includes bonus;

'**Exchange**' means ASX Limited ACN 008 624 691;

'**Executive Director**' has the meaning given by **clause 73.1(c)**;

'**Listing Rules**' means the Listing Rules of the Exchange in force from time to time as they apply to the Company (including any waiver of those Listing Rules and any condition to be complied with in relation to a waiver);

'**Managing Director**' means a Director appointed as managing director under **clause 73.1(a)**;

'**Member**' means a person who is a member of the Company under the *Corporations Act*;

'**Non-Executive Director**' means a Director who is not an Executive Director;

'**Office**' means the Company's registered office;

'**proper ASTC transfer**' has the same meaning as in the Corporations Regulations 2001 (Cth);

'**Register**' means the register of Members of the Company;

'**Registered Address**' means the last known address of a Member as noted in the Register;

'**Representative**' means a person appointed by a Member to act as its representative under **clause 50.1**;

'**Restricted Securities**' has the same meaning as in the Listing Rules;

'**Seal**' means the Company's common seal;

'**Secretary**' means any person appointed by the Directors to perform any of the duties of a secretary of the Company and, if there are joint secretaries, any one or more of such joint secretaries;

'**Shares**' means shares in the share capital of the Company.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (d) a reference to the *Corporations Act* is a reference to the *Corporations Act* 2001 (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the *Corporations Act*, the Listing Rules or the ASTC Settlement Rules which deals with the same matter as the clause.

1.4 The provisions of the *Corporations Act* that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.

1.5 For the purposes of this Constitution, if the provisions of:

- (a) the *Corporations Act* and the Listing Rules;
- (b) the *Corporations Act* and this Constitution; or
- (c) the *Corporations Act* and the ASTC Settlement Rules,

conflict on the same matter, the provisions of the *Corporations Act* prevail.

## **SHARES**

### **2. Rights**

Subject to this Constitution and to the terms of issue of Shares, all Shares attract the following rights:

- (a) to receive notice of and to attend and vote at all general meetings of the Company;
- (b) to receive dividends; and
- (c) in a winding up, to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Share.

### **3. Issue of Shares**

3.1 Subject to the *Corporations Act*, the Listing Rules and this Constitution, the Directors may issue and allot, or dispose of, Shares to persons:

- (a) on terms determined by the Directors;
- (b) at the issue price that the Directors determine; and
- (c) at the time that the Directors determine.

3.2 The Directors' power under **clause 3.1** includes the power to:

- (a) grant options over unissued Shares;
- (b) issue and allot Shares:
  - (i) with any preferential, deferred or special rights, privileges or conditions;
  - (ii) with any restrictions in regard to dividend, voting, return of capital or otherwise; or
  - (iii) which are liable to be redeemed.

### **4. Commission and brokerage**

Any brokerage or commission which may be paid by the Company may be made in cash, by the issue and allotment of Shares, or the issue of debentures, or by a combination of any of those methods.

### **5. Trusts not recognised**

5.1 Except as required by law, the ASTC Settlement Rules or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not be bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.

5.2 This **clause 5** applies even if the Company has notice of the relevant trust, interest or right.

## **6. Joint holders**

6.1 If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with rights of survivorship.

6.2 Any one of the joint holders of a Share may give an effective receipt for any dividend or return of capital payable to the joint holders.

6.3 Except where persons are jointly entitled to a Share because of a transmission event, or where required by the Listing Rules or the ASTC Settlement Rules, the Company may limit to 3 the number of persons to be registered as joint holders of the Share.

## **7. Share certificates**

The Directors will not, unless they determine otherwise or the Listing Rules require, issue a certificate to a Member for any Shares registered in the Member's name.

## **8. Variation or cancellation of class rights class meeting**

8.1 The procedure for varying or cancelling rights attached to Shares in a class of Shares is as provided in the *Corporations Act* as this Constitution does not set out the procedure.

8.2 If rights attached to Shares are to be varied or cancelled as provided in the *Corporations Act*, the provisions of this Constitution relating to general meetings apply, with necessary changes, to a meeting of the class of members holding Shares in a class of Shares as if it was a general meeting except that:

(a) a quorum is two persons holding or representing by proxy, attorney or Representative at least one-third of the Shares of the class or, if there is one holder of Shares in the class, that person; and

(b) any holder of Shares of the class present in person or by proxy, attorney or Representative may demand a poll.

8.3 Nothing in this **clause 8** is to be taken as setting out a procedure for varying or cancelling rights.

## **CALLS**

### **9. General**

9.1 Subject to the *Corporations Act* and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.

9.2 A call is made when the resolution of the Directors authorising it is passed.

9.3 The Directors may revoke or postpone a call before its due date for payment.

9.4 The Directors may require a call to be paid by instalments.

9.5 The Company must comply with the *Corporations Act* and the Listing Rules in relation to the dispatch and content of notices to Members on whom a call is made.

- 9.6 A Member to whom notice of a call is given in accordance with this **clause 9** must pay to the Company the amount called in accordance with the notice.
- 9.7 Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.
- 9.8 Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

## **10. Instalments and amounts which become payable**

If:

- (a) the Directors require a call to be paid by instalments; or
- (b) an amount becomes payable by the terms of issue of Shares on allotment, or at a time or in circumstances specified in the terms of issue,

then:

- (c) the amount is payable as if it were a call made by the Directors and as if they had given notice of it; and
- (d) the consequences of late payment or non-payment of the amount are the same as the consequences of late payment or non-payment of a call.

## **11. Interest and expenses**

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment,

but the Directors may waive payment of the interest and expenses in whole or in part.

## **12. Recovery of amounts due**

On the hearing of any action for the recovery of money due for any call, proof that:

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

will be conclusive evidence of the debt.

### 13. Differentiation

The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

### 14. Payment of calls in advance

14.1 The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called.

14.2 The Company may:

- (a) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
- (b) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.

14.3 Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage, other than the payment of interest under this **clause 14**, to which the Member would not have been entitled if it had paid the amount when it became due.

## LIEN AND FORFEITURE

### 15. Lien

15.1 To the extent permitted by the Listing Rules, the Company has a first and paramount lien on every partly paid Share and dividends payable in respect of the Share for all money:

- (a) due and unpaid to the Company at a fixed time, in respect of the Share;
- (b) presently payable by a holder or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
- (c) which the Company is required by law to pay (and has paid) in respect of the Share.

15.2 The lien extends to reasonable interest and expenses incurred because the amount is not paid.

15.3 If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares or dividends or other moneys accruing due to the Member who holds the Shares:

- (a) the Member or, if the Member is deceased, the Member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
- (b) subject to the *Corporations Act* and the Listing Rules, the Company:

- (i) has a lien on the Shares and dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
- (ii) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise; and
- (iii) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in **clause 15.3(b)(i)**.

15.4 The Company may do all things which the Directors think necessary or appropriate to do under the ASTC Settlement Rules and the Listing Rules to enforce or protect the Company's lien.

15.5 Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.

15.6 The Directors may declare a Share to be wholly or partly exempt from a lien.

## 16. Lien sale

If:

- (a) the Company has a lien on a Share for money presently payable;
- (b) the Company has given the Member or the Member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) that Member fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may, if the Listing Rules permit, sell the Share in any manner determined by them.

## 17. Forfeiture notice

17.1 The Directors may, at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of the non-payment.

17.2 The notice under **clause 17.1** must:

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and

- (b) state that, if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

## **18. Forfeiture**

- 18.1 If a Member does not comply with a notice served under **clause 17**, then any or all of the Shares in respect of which the notice was given may be forfeited pursuant to a resolution of the Directors.
- 18.2 Shares may be forfeited under the terms on which the Shares are on issue, by a resolution of the Directors.
- 18.3 Unpaid dividends in respect of forfeited Shares will also be forfeited.
- 18.4 On forfeiture, Shares become the property of the Company and forfeited Shares must be:
  - (a) sold, disposed of or cancelled (subject to the Listing Rules) on terms determined by the Directors; or
  - (b) offered by public auction in accordance with any requirements of the Listing Rules.
- 18.5 The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.
- 18.6 Promptly after a Share has been forfeited:
  - (a) notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture; and
  - (b) the forfeiture and its date must be noted in the Register.
- 18.7 Omission or neglect to give notice of or to note the forfeiture as specified in **clause 18.6** will not invalidate a forfeiture.

## **19. Liability of former Member**

- 19.1 The interest of a person who held Shares which are forfeited is extinguished but, subject to the Listing Rules, the former Member remains liable to pay:
  - (a) all money (including interest and expenses) that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares; and
  - (b) interest from the date of forfeiture until payment at a rate determined by the Directors (not exceeding 20% per annum).
- 19.2 A former Member's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the person in respect of the Shares. The liability may only be released or waived in accordance with the Listing Rules.

## **20. Disposal of forfeited Shares**

- 20.1 The Company may:

- (a) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share; and
- (b) effect a transfer of the Share in favour of a person to whom the Share is sold or disposed of.

20.2 The purchaser of the Share:

- (a) is not bound to check the regularity of the sale or the application of the purchase price;
- (b) obtains title to the Share despite any irregularity in the sale; and
- (c) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.

20.3 A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or reissued or regularly sold without forfeiture to enforce a lien is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.

20.4 Subject to the terms on which a Share is on issue, the net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:

- (a) in payment of the costs of the sale;
- (b) in payment of all amounts (if any) secured by the lien or all money (if any) that was payable in respect of the forfeited Share; and
- (c) where the Share was forfeited under **clause 18.1**, in payment of any surplus to the former Member whose Share was sold.

## TRANSFER OF SHARES

### 21. General

21.1 Subject to this Constitution, a Member may transfer Shares held by that Member.

21.2 Subject to **clause 21.3**, Shares may be transferred by:

- (a) a proper ASTC transfer;
- (b) a written transfer instrument in any usual or common form; or
- (c) any other form approved by the Directors.

21.3 A written transfer instrument must be:

- (a) executed by the transferor or (where the *Corporations Act* permits) stamped by the transferor's broker;
- (b) unless the Directors decide otherwise in the case of a fully paid Share, executed by the transferee or (where the *Corporations Act* permits) stamped by the transferee's broker; and

- (c) in the case of a transfer of party paid Shares, endorsed or accompanied by an instrument executed by the transferee or by the transferee's broker to the effect that the transferee agrees to accept the Shares subject to the terms and conditions on which the transferor held them, to become a Member and to be bound by the Constitution.

Subject to the *Corporations Act*, the written transfer instrument may comprise two documents.

21.4 Except as required by the ASTC Settlement Rules:

- (a) a transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares; and
- (b) a transfer of Shares does not pass the right to any dividends on the Shares until such registration.

## **22. Transfer procedure**

22.1 For a transfer of Shares that is not a ASTC-regulated transfer:

- (a) the written transfer instrument must be left at the Office or another place acceptable to the Company;
- (b) the instrument must be accompanied by a certificate for the Shares dealt with in the transfer where a certificate has been issued, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
- (c) the Directors may, if the Listing Rules permit, require other evidence of the transferor's right to transfer the Shares.

22.2 For a transfer of Shares that is a ASTC-regulated transfer, a Share transfer must be effected in accordance with the Listing Rules and the ASTC Settlement Rules.

## **23. Right to refuse registration**

23.1 The Directors may in their absolute discretion refuse to register any transfer of Shares or other securities where the Shares or other securities are not quoted by the Exchange. Where the Shares or other securities are quoted by the Exchange, the Directors may in their absolute discretion refuse to register any transfer in any of the circumstances permitted by the Listing Rules.

23.2 The Directors must:

- (a) refuse to register any transfer of Shares or other securities which are Restricted Securities during the escrow period except as permitted by the Listing Rules or the Exchange; and
- (b) refuse to register any transfer where the Company is, or the Directors are, required to do so by the Listing Rules.

- 23.3 If a person has lodged a transfer which the Directors have refused to register, the Company must, within 5 Business Days after the date of lodgement, give to the lodging person written notice of the refusal and the reasons for it.
- 23.4 Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or the Exchange. The Company will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

## **TRANSMISSION OF SHARES**

### **24. Title on death**

- 24.1 The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 24.2 If a deceased Member was a joint holder of Shares, the other joint holder is, or the other joint holders are, the only person or persons whom the Company will recognise as having any title to the deceased Member's Shares.
- 24.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- 24.4 The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

### **25. Entitlement to transmission**

- 25.1 A person who becomes entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member may, subject to **clause 23** and to producing to the Company evidence of its entitlement which is satisfactory to the Directors, elect to:
- (a) be registered as the holder of the Share; or
  - (b) transfer the Share to some other person nominated by it.
- 25.2 If the person who has become entitled to a Share:
- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him or her; or
  - (b) elects to transfer the Share, then the person must effect a transfer of the Share.
- 25.3 An election to be registered as a holder of a Share under **clause 25.1(a)** or a transfer of a Share from a Member or deceased Member under this **clause 25** is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member himself or herself.
- 25.4 A person who:
- (a) has become entitled to a Share by operation of law; and
  - (b) has produced evidence of its entitlement which is satisfactory to the Directors,
- is entitled to the dividends and other rights of the registered holder of the Share.

- 25.5 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.

## **NON-MARKETABLE PARCELS**

### **26. Non-Marketable Parcels**

- 26.1 This **clause 26** enables the Directors to sell Shares which constitute less than a marketable parcel by following certain procedures.
- 26.2 The Directors may send to a Member who holds on the date of the notice less than a marketable parcel of Shares in a class of shares of the Company a notice which:
- (a) advises the Member of the Company's intention to sell the Shares and explains the effect of the notice under this **clause 26**; and
  - (b) advises the Member that he or she may choose to retain the Shares. A form of election for that purpose must be sent with the notice.
- 26.3 If, before 5 pm Sydney time on a date specified in the notice which is no earlier than 6 weeks after the notice is sent:
- (a) the Company has not received a notice from the Member choosing to retain the Shares; and
  - (b) the Member has not increased his or her shareholding to a marketable parcel,
- the Member is taken to have irrevocably appointed the Company as his or her agent to do anything in **clause 26.4**.
- 26.4 If **clause 26.3** applies, the Company may:
- (a) sell the Shares constituting less than a marketable parcel as soon as practicable at a price which the Directors consider is the best price reasonably available for the Shares when they are sold; and
  - (b) pay the proceeds of sale to the Member upon the Company receiving any certificate or evidence of title to the Shares as the Directors accept.
- 26.5 The costs and expenses of any sale of shares under this **clause 26** (including brokerage and stamp duty) are payable by the purchaser or by the Company.
- 26.6 A notice under **clause 26.2** may be given to a Member only once in a 12 month period and may not be given during the offer period of a takeover bid for the Company.
- 26.7 If a takeover bid is announced after a notice is given but before an agreement is entered into for the sale of Shares, this clause ceases to operate for those Shares. However, despite **clause 26.6**, a new notice under **clause 26.2** may be given after the offer period of the takeover bid closes.
- 26.8 The Directors may, before a sale is effected under this **clause 26**, revoke a notice given or suspend or terminate the operation of this clause either generally or in specific cases.

## POWERS OF ATTORNEY

### 27. Powers of attorney

- 27.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which is relevant to the Company or the Member's shareholding in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 27.2 The Company may require the Member to lodge a certified copy of the instrument for retention by the Company, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- 27.3 Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:
- (a) continue in force; and
  - (b) may be acted on,
- unless express notice in writing of its revocation or of the death of the Member who granted it is lodged with the Company.
- 27.4 Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with **clause 48.2** of this Constitution.

## GENERAL MEETINGS

### 28. Convening

- 28.1 A Director may call a meeting of Members.
- 28.2 The Directors must convene annual general meetings in accordance with the *Corporations Act*, to be held by the Company at times to be determined by the Directors.
- 28.3 Members may also request or call and arrange to hold general meetings in accordance with the procedures set out in the *Corporations Act*.

### 29. Notice

- 29.1 Notice of a general meeting must be given in accordance with the *Corporations Act* to the persons referred to in **clause 94.1**.
- 29.2 General meetings may be called on less than 28 days notice in accordance with the procedures set out in the *Corporations Act*.
- 29.3 A notice convening a general meeting must:
- (a) specify the place, date and time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) state the general nature of the business to be transacted at the meeting;
  - (c) specify a place and facsimile number and may specify an electronic address for the purposes of proxy appointments;

- (d) subject to the ASTC Settlement Rules, specify particulars of any determination made under regulation 7.11.37 of the Corporation Regulations; and
- (e) comply with any other requirements of the *Corporations Act*.

### **30. Business**

30.1 The business of an annual general meeting may include:

- (a) any of the matters set out in section 250R of the *Corporations Act*, even if not referred to in the notice of meeting;
- (b) any business which under this Constitution or the *Corporations Act* is required to be transacted at an annual general meeting; and
- (c) any other business which may lawfully be transacted at a general meeting.

30.2 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:

- (a) ask questions about or make comments on the management of the Company;
- (b) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Company.

30.3 (a) The Directors may by notice to the Exchange change the venue for, postpone or cancel any general meeting whenever they think fit, but a meeting which is not called by a Directors' resolution or a meeting convened following a requisition of Members in accordance with the *Corporations Act* may not be postponed or cancelled without the prior written consent of the person who called or requisitioned the meeting.

- (b) The Directors must give notice of the postponement or cancellation to all persons entitled to receive notice of a general meeting.

30.4 An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **31. Member**

In **clauses 32, 33 and 41**, 'Member' includes a Member present in person or by proxy, attorney or Representative.

### **32. Quorum**

32.1 No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.

32.2 A quorum of Members is Members with at least 10% of the votes that may be cast at a general meeting of the Company.

32.3 If a quorum is not present within 30 minutes after the time appointed for a meeting:

- (a) the meeting is automatically dissolved if it was requested or called by Members under **clause 28.3**; or
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

### **33. Chairperson**

33.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every meeting of Members.

33.2 If:

- (a) there is no chairperson or deputy chairperson; or
- (b) neither the chairperson nor the deputy chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the meeting,

the Directors present may elect a chairperson.

33.3 If no chairperson is elected in accordance with **clause 33.2**, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

33.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

### **34. General conduct**

The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

### **35. Adjournment**

35.1 The chairperson of a meeting at which a quorum is present:

- (a) in his or her discretion may adjourn a meeting; and
- (b) must adjourn a meeting if the meeting directs him or her to do so.

35.2 An adjourned meeting may take place at a different venue from the initial meeting.

- 35.3 The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.
- 35.4 If a general meeting has been adjourned for more than 30 days, notice of the adjourned meeting must be given to Members as if it were an original meeting, but otherwise it is not necessary to give notice of an adjourned meeting or the business of the adjourned meeting.
- 35.5 A poll cannot be demanded on any resolution concerning the adjournment of a meeting except by the chairperson.

### **36. Decisions**

- 36.1 Subject to the *Corporations Act* in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 36.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Act*.
- 36.3 A poll may be demanded at the times permitted by the *Corporations Act*.
- 36.4 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 36.5 The demand for a poll may be withdrawn.
- 36.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

### **37. Taking a poll**

- 37.1 Subject to **clause 37.5**, a poll will be taken when and in the manner that the chairperson directs. No notice need be given of any poll.
- 37.2 The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
- 37.3 The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
- 37.4 A poll cannot be demanded on any resolution concerning the election of the chairperson of a meeting.
- 37.5 A poll demanded by the chairperson on any resolution concerning the adjournment of a meeting must be taken immediately.
- 37.6 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

**38. Casting vote of chairperson**

The chairperson does not have a casting vote (in addition to the chairperson's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.

**39. Admission to general meetings**

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

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

The chairperson may delegate any of the powers conferred by this clause to any person as he or she thinks fit.

**40. Auditor's right to be heard**

The Auditor is entitled to:

- (a) attend any general meeting of the Company;
- (b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
  - (i) the Auditor retires at the meeting; or
  - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

**VOTES OF MEMBERS****41. Entitlement to vote**

- 41.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:

- (a) every Member may vote;
  - (b) subject to **clause 45.3** and the *Corporations Act*, on a show of hands every Member has one vote;
  - (c) on a poll every Member has:
    - (i) for each fully paid Share held by the Member, one vote; and
    - (ii) for each partly paid Share held by the Member, a fraction of a vote equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the Share.
- 41.2 During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities.
- 41.3 If a Member is mentally incapacitated or is a person whose estate or property has had a personal representative, trustee or other person appointed to administer it, the Member's personal representative, trustee or other person with the management of the Member's estate or property may exercise any rights of the Member in relation to a meeting of Members as if the personal representative, trustee or other person was a Member.
- 41.4 Without limiting the generality of **clause 14.3**, an amount paid on a Share in advance of a call is not to be taken as paid for the purposes of **paragraph 41.1(c)(ii)**.

## **42. Unpaid calls**

A Member is entitled to:

- (a) vote; or
- (b) be counted in a quorum,

only in respect of Shares on which all calls due and payable have been paid.

## **43. Joint holders**

- 43.1 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.
- 43.2 For the purposes of this **clause 43**, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

## **44. Objections and Listing Rules**

- 44.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- 44.2 An objection must be referred to the chairperson of the meeting, whose decision made in good faith is final.
- 44.3 Subject to **clause 44.4**, a vote which the chairperson does not disallow pursuant to an objection is valid for all purposes.

44.4 A vote which the Listing Rules require the Company to disregard is not valid.

**45. Votes by proxy**

45.1 Subject to **clause 46.1**, a Member who is entitled to vote at a meeting of the Company may appoint not more than two proxies to attend and vote at the meeting on that Member's behalf.

45.2 If a Member appoints one proxy, that proxy may, subject to the *Corporations Act*, vote on a show of hands.

45.3 If a Member appoints two proxies, neither proxy may vote on a show of hands.

45.4 A proxy may demand or join in demanding a poll.

**46. Document appointing proxy**

46.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the *Corporations Act*.

46.2 For the purposes of **clause 46.1**, an appointment received at an electronic address specified in the notice of meeting for the receipt of proxy appointments will be taken to be signed by the Member if:

- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
- (b) the appointment has been verified or authorised by the Member in another manner approved by the Directors.

46.3 A proxy need not be a Member.

46.4 The Company may send a proxy appointment form to Members in a form which has been approved by the Directors.

46.5 If an appointment of a proxy does not specify the way the proxy is to vote on a particular resolution, the proxy may vote or abstain as he or she chooses. If the appointment does specify the way the proxy is to vote on a particular resolution, the proxy must vote or abstain in accordance with the *Corporations Act*.

46.6 A proxy's appointment is valid at an adjourned meeting.

46.7 A proxy appointment form which is sent to Members shall not be taken to hold a person out as being willing to act as a proxy merely because it contains the name of the office held by the proposed proxy.

46.8 A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.

46.9 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

- (a) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and

- (b) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution.

#### **47. Proxy in blank**

If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary.

#### **48. Lodgment of proxy**

48.1 Subject to **clause 48.3**, the appointment of a proxy must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the proxy relates) before the meeting (or the resumption of an adjourned meeting) at which the proxy is to attend and vote.

48.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company before the time determined under section 250B of the *Corporations Act* or any later time specified in the notice of meeting.

48.3 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was signed when they are received at:

- (a) the Office;
- (b) a facsimile number at the Office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

#### **49. Validity**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) is mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless any written notification of the death, mental incapacitation, revocation or transfer was received by the Company before the relevant meeting or adjourned meeting.

#### **50. Representatives of corporations**

50.1 Any Member which is a body corporate may appoint an individual as its representative as provided by the *Corporations Act*.

- 50.2 The appointment of a Representative may set out restrictions on the Representative's powers.
- 50.3 The appointment of a Representative, a certified copy of the appointment or a certificate of the body corporate evidencing the appointment are each prima facie evidence of a Representative having been appointed.
- 50.4 The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **51. Number of Directors**

- 51.1 Subject to the *Corporations Act*, the Company may by resolution passed at a general meeting increase or reduce the minimum or maximum number of Directors.
- 51.2 Until the Company resolves otherwise in accordance with **clause 51.1**, there will be:
- (a) a minimum of three Directors; and
  - (b) a maximum of 12 Directors.
- 51.3 The number of Directors will be such number, within the minimum and maximum number of Directors, as the Directors may determine provided that the Directors must not reduce the number of Directors below the number in office at the time of such determination.
- 51.4 The Directors and the Secretary in office as at the date this Constitution is adopted by the Company continue in office subject to this Constitution.

### **52. Qualification**

Neither a Director nor an Alternate Director has to hold any Shares, but a Director (and an Alternate Director when acting as a Director) is entitled to notice of and to attend and speak at all general meetings and at every meeting of the holders of Shares or any class of Shares.

### **53. Power to remove and appoint**

- 53.1 The Company may, subject to the *Corporations Act*, by resolution passed in general meeting:
- (a) remove any Director before the end of the Director's term of office; and
  - (b) appoint another person in the Director's place.
- 53.2 A person appointed under **clause 53.1(b)** will hold office for the remainder of the term for which the Director replaced would have held office if the Director had not been removed.

### **54. Additional and casual Directors**

- 54.1 Subject to **clause 51**, only the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

- 54.2 A Director appointed under **clause 54.1** who is not a Managing Director:
- (a) holds office only until the end of the next annual general meeting of the Company following his or her appointment; and
  - (b) is eligible for election at that annual general meeting.

## **55. Filling vacated office**

- 55.1 The Company may, at a general meeting at which a Director retires, by ordinary resolution fill the vacated office by electing a person to that office.
- 55.2 If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be considered to have been re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
  - (b) a resolution for the re-election of the Director is put and lost.

## **56. Retirement of Directors**

- 56.1 Subject to the Listing Rules and **clauses 54.2** and **73.6**, no Director may hold office without re-election for a continuous period in excess of 3 years or past the third annual general meeting following the Director's last election (whichever is the longer).
- 56.2 If no Director would otherwise be submitted for election or re-election (by reason of **clauses 54.2** or **56.1**) at an annual general meeting, but the Listing Rules require that an election of directors be held, the Director to retire at the annual general meeting will be the Director who has been longest in office since their last election but, as between such Directors who were last elected on the same day, the one to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 56.3 A retiring Director under **clause 56.1** or **56.2** shall be eligible for re-election without the need to give any prior notice of an intention to submit for re-election.
- 56.4 A retiring Director remains in office until the end of the meeting at which he retires.

## **57. Nomination of Director**

- 57.1 A person, other than a Director retiring under **clause 56** who seeks re-election or under **clause 54.2** who seeks election, is not eligible for election as a Director at a general meeting unless:
- (a) the person is proposed as a candidate by a Member (who may be the candidate); and
  - (b) the proposing Member leaves a notice at the Office which nominates the candidate for the office of Director and includes the signed consent of the candidate.
- 57.2 A notice given in accordance with **clause 57.1** must be left at the Office not less than 45 Business Days before the relevant general meeting.

## **58. Vacation of office**

- 58.1 The office of a Director immediately becomes vacant if the Director:
- (a) ceases to be a Director by virtue of the *Corporations Act*;
  - (b) is prohibited by the *Corporations Act* from holding office or continuing as a Director;
  - (c) is prohibited from holding or is removed from the office of Director by an order made under the *Corporations Act*;
  - (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
  - (e) cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
  - (f) resigns from his or her office of Director by notice in writing to the Company;
  - (g) is removed by a resolution of the Company; or
  - (h) not being engaged abroad on the business of the Company, is absent from Directors' meetings for three consecutive months without leave of absence from the Directors.
- 58.2 A Director who holds any executive office in the Company (including the office of Managing Director) ceases to be a Director when he or she ceases to hold the executive office, unless the Directors have resolved otherwise.
- 58.3 A person ceasing to be a Director by virtue of the provisions of **clause 58.2** will not thereby be rendered ineligible for appointment or election as a Director under any clause other than **clause 73**.

## **REMUNERATION OF DIRECTORS**

### **59. Remuneration of Non-Executive Directors**

- 59.1 Subject to the Listing Rules, the Directors as a whole (other than Executive Directors) may be paid or provided remuneration for their services the total amount or value of which must not exceed the aggregate maximum sum from time to time determined by the Company in general meeting.
- 59.2 The notice convening a general meeting at which it is proposed that Members approve an increase of the aggregate maximum sum must state the amount of the increase and the aggregate maximum sum, and any other matters required by the Listing Rules.
- 59.3 Subject to the Listing Rules, the remuneration referred to in **clause 59.1** will be divided among the Non-Executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally.
- 59.4 Non-Executive Directors may not be paid a commission on, or a percentage of, profits or operating revenue.

- 59.5 If a Non-Executive Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, the Company may pay or provide the Director remuneration determined by the Directors which may be either in addition to or instead of the Director's remuneration under **clause 59.1**. No remuneration may be paid or provided under this **clause 59.5** if the effect would be to exceed the aggregate maximum sum of Directors' remuneration determined by the Company in general meeting.
- 59.6 Non-Executive Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.
- 59.7 The Company may also pay a premium for a contract insuring a person who is or has been a Non Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act*.

## **60. Remuneration of Executive Directors**

- 60.1 The remuneration of an Executive Director may from time to time be fixed by the Directors. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but may not be by commission on, or a percentage of, operating revenue.
- 60.2 The Company may pay a premium for a contract insuring a person who is or has been an Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the *Corporations Act*.

## **61. Retirement Benefits**

Subject to the *Corporations Act*, the Company may give a person a benefit in connection with a Director's retirement from a board or managerial office in the Company.

## **POWERS AND DUTIES OF DIRECTORS**

### **62. Directors to manage company**

- 62.1 The business of the Company is managed by or under the direction of the Directors who may exercise all powers of the Company that this Constitution, the *Corporations Act* or the Listing Rules do not require to be exercised by the Company in general meeting.
- 62.2 Without limiting the generality of **clause 62.1**, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company or all or any of its uncalled capital;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## PROCEEDINGS OF DIRECTORS

### 63. Directors' meetings

- 63.1 The chairperson, the deputy chairperson or any two Directors may at any time, and the Secretary must on the request of the chairperson, the deputy chairperson or any two Directors, call a meeting of the Directors.
- 63.2 An accidental omission to send a notice of a meeting of Directors to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- 63.3 (a) Subject to the *Corporations Act*, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (c) A Director who participates in a meeting held in accordance with this **clause 63.3** is taken to be present and entitled to vote at the meeting.
- (d) A Director can only withdraw his or her consent to the means of communication between Directors proposed for a Directors' meeting if the Director does so at least 48 hours before the meeting.
- 63.4 **Clause 63.3** applies to meetings of Directors' committees as if all committee members were Directors.
- 63.5 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 63.6 A quorum for meetings of Directors may be fixed by the Directors and, unless so fixed, is three directors present. The quorum must be present at all times during the meeting but, for this purpose, a temporary absence of a Director through either disconnection of technology or leaving the room shall be disregarded.
- 63.7 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, one or more of the Directors may call a general meeting of Members to deal with the matter.
- 63.8 Notice of a meeting of Directors may be given in person or by post, telephone, facsimile or other electronic or technological means.
- 63.9 A Director or alternate Director may waive notice of a meeting of Directors by giving notice to that effect in person or by post, telephone, facsimile or other electronic or technological means.

### 64. Decisions

- 64.1 Questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to the *Corporations Act*, each Director has one vote.
- 64.2 The chairperson of a meeting, in the case of an equality of votes, does not have a second or casting vote in addition to his or her deliberative vote.

- 64.3 (a) An Alternate Director has one vote for each Director for whom he or she is an alternate.
- (b) If the Alternate Director is a Director, he or she also has a vote as a Director.

**65. Directors' interests**

- 65.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 65.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 65.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 65.4 A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:
- (a) enter into any contract or arrangement with the Company;
  - (b) be appointed to hold any office or place of profit under the Company, other than the office of auditor; and
  - (c) act in a professional capacity, other than as auditor, for the Company,
- and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.
- 65.5 Subject to section 195 of the *Corporations Act*, a Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- (a) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (b) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed; and
  - (c) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 65.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

**66. Alternate Directors**

- 66.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate.
- 66.2 An Alternate Director is entitled to notice of Directors' meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 66.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 66.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled in that capacity to any remuneration from the Company.
- 66.5 (a) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 66.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.
- 66.7 An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that his or her appointor has such an interest.

**67. Remaining Directors**

- 67.1 The Directors may act even if there are vacancies on the board.
- 67.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Director or Directors may act only to:
- (a) appoint a Director; or
- (b) convene a general meeting.

**68. Chairperson**

- 68.1 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.
- 68.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 68.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

**69. Delegation**

- 69.1 (a) The Directors may delegate any of their powers as permitted by the *Corporations Act*.

(b) The Directors may at any time revoke any delegation of power.

69.2 At least one member of each committee of directors must be a Director.

69.3 A committee may be authorised by the Directors to sub delegate all or any of the powers for the time being vested in it.

69.4 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

## **70. Written resolutions**

70.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

70.2 For the purposes of **clause 70.1**, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

70.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.

70.4 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## **71. Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **72. Minutes**

72.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with **clause 70**; and
- (d) appointments of officers, but only if the Directors resolve that a minute of the appointment should be made.

- 72.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

## **EXECUTIVE DIRECTORS**

### **73. Appointment**

- 73.1 (a) The Directors may appoint a Director to the office of Managing Director on such terms as they think fit.
- (b) The Directors may appoint a Director to any other full-time or substantially full-time executive position in the Company on such terms as they think fit.
- (c) A Director appointed under **clause 73.1(a)** or **(b)**, and a Director (however appointed) occupying for the time being a full-time or substantially full-time executive position in the Company or a subsidiary of the Company, is referred to in this Constitution as an Executive Director.
- 73.2 If the appointment of an Executive Director is for a fixed term, the term must not exceed five years.
- 73.3 The Directors may, subject to the terms of the Executive Director's employment contract, suspend, remove or dismiss him or her from executive office and appoint another Director in that place.
- 73.4 If a Managing Director ceases to be a Director, his or her executive office terminates automatically.
- 73.5 If an Executive Director is suspended from executive office, his or her duties and obligations as Director are suspended for the same period.
- 73.6 A Managing Director is not subject to retirement under **clause 56**. Any other Executive Directors are subject to retirement under **clause 56**.

### **74. Powers of Executive Directors**

- 74.1 The Directors may confer on an Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- 74.2 The Directors may authorise an Executive Director to sub delegate all or any of the powers vested in him or her.
- 74.3 Any power conferred pursuant to this clause may be concurrent with but not to the exclusion of the Directors' powers.
- 74.4 The Directors may at any time withdraw or vary any of the powers conferred on an Executive Director.

**SECRETARY****75. Secretary**

- 75.1 There must be at least one Secretary of the Company appointed by the Directors on conditions determined by them.
- 75.2 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

**SEALS****76. Common seal**

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) it must not be used except with the general or specific authority of the Directors or a Directors' committee authorised to permit use of the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
- (d) the Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

**77. Duplicate seal**

- 77.1 If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:
- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
  - (b) must only be used with the general or specific authority of the Directors or a Directors' committee.

**78. Share seal**

- 78.1 If the Company has a Seal, the Company may have a certificate seal which:
- (a) may be affixed to Share, option or other certificates;
  - (b) must be a facsimile of the Seal with the addition on its face of the words 'Share Seal'; and
  - (c) must only be used with the general or specific authority of the Directors or a Directors' committee.

## INSPECTION OF RECORDS

### 79. Times for inspection

- 79.1 Except as otherwise required by the *Corporations Act*, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 79.2 A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## DIVIDENDS AND RESERVES

### 80. Declaration of dividends

Subject to the *Corporations Act* and to the terms on which Shares are on issue and the rights and restrictions attaching to Shares, the Directors may from time to time:

- (a) declare dividends (whether final or interim) to be paid to the Members on such terms, including the amount and the time for and method of payment, as the Directors think fit; or
- (b) determine that a dividend is payable and fix the amount and the time for and method of payment.

### 81. Amend resolution to pay dividend

If the Directors determine that a dividend is payable under **clause 80(b)**, they may, if permitted by the Listing Rules, amend or revoke the resolution to pay the dividend before the record date notified to the Exchange for determining entitlements to that dividend.

### 82. No interest

Interest is not payable by the Company on a dividend.

### 83. Reserves

- 83.1 The Directors may set aside out of profits such amounts by way of reserves as they think appropriate before declaring a dividend or determining to pay a dividend.
- 83.2 The Directors may apply the reserves for any purpose for which profits may be properly applied.
- 83.3 Pending any application of the reserves, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.
- 83.4 The Directors may carry forward any undistributed profits without transferring them to a reserve.

**84. Dividend entitlement**

- 84.1 Subject to the terms on which Shares are on issue and the rights and restrictions attaching to Shares, dividends are to be paid:
- (a) in the case of fully paid Shares, to their holders in proportion to the number of Shares held by them respectively; and
  - (b) in the case of partly paid Shares of a class (as determined by reference to **clause 84.2**), to their holders in proportion to the number of Shares in that class held by them respectively.
- 84.2 For the purposes of **clause 84.1(b)**, the dividend to be paid to the holder of a partly paid Share will equal that proportion of the dividend to be paid to the holder of a fully paid Share which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the partly paid Share.
- 84.3 Unless otherwise determined by the Directors, Shares rank fully for dividends from their date of allotment.
- 84.4 Subject to the *Corporations Act* and the ASTC Settlement Rules, a transfer of Shares registered after the record date notified to the Exchange for determining entitlements to a dividend paid or payable in respect of the transferred Shares does not pass the right to that dividend.
- 84.5 Without limiting the generality of **clause 14.3**, an amount paid on a Share in advance of a call is not to be taken as paid for the purposes of **clause 84.2**.

**85. Restricted Securities**

During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any dividend in respect of those Restricted Securities.

**86. Deductions from dividends**

The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

**87. Distribution of assets**

- 87.1 The Directors may resolve that a dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.
- 87.2 If a difficulty arises in making a transfer or distribution of specific assets, the Directors may:
- (a) deal with the difficulty as they consider expedient;
  - (b) fix the value of all or any part of the specific assets for the purposes of the distribution;

- (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

87.3 If a transfer or distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the transfer or distribution of specific assets.

## **88. Payment**

88.1 Any dividend or other money payable in respect of Shares may be paid by any of the following means, in the Company's discretion, at the sole risk of the recipient:

- (a) by cheque sent through the post to the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
- (b) by electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or
- (c) by any other means determined by the Directors.

88.2 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

88.3 Any dividend or other money payable in respect to Shares may be paid or credited by the Company to, or at the direction of, the Member.

## **89. Election to reinvest dividend**

The Directors may:

- (a) establish a plan under which Members or any class of Members may elect to reinvest cash dividends paid by the Company by subscribing for Shares;
- (b) vary, suspend or terminate the arrangements established under **clause 89(a)**.

## **90. Election to accept Shares in lieu of dividend**

90.1 The Directors may resolve, in respect of any dividend which it is proposed to pay on any Shares, that holders of those Shares may elect to:

- (a) forego their right to share in the proposed dividend or part of the proposed dividend; and
- (b) instead receive an issue of Shares credited as fully paid.

90.2 If the Directors resolve to allow the election provided for in **clause 90.1**, each holder of Shares conferring a right to share in the proposed dividend may, by notice in writing to the Company given in such form and within such period as the Directors may decide, elect to:

- (a) forego the dividend which otherwise would have been paid to the holder on such of the holder's Shares conferring a right to share in the proposed dividend as the holder specifies in the notice of election; and
  - (b) receive instead Shares to be issued to the holder credited as fully paid, on and subject to such terms and conditions as the Directors may determine.
- 90.3 Following the receipt of duly completed notices of election under **clause 90.2**, the Directors must:
- (a) appropriate from the Company's profits or any reserve established for this purpose an amount equal to the aggregate issue price of the Shares to be issued credited as fully paid to those holders of Shares who have given such notices of election; and
  - (b) apply the amount in paying up in full the number of Shares required to be so issued.
- 90.4 The Directors may not exercise the power conferred on them by this **clause 90** unless the Company has sufficient profits to give effect to any elections which could be made under the terms of this clause.
- 90.5 The Directors may rescind, vary or suspend a resolution of the Directors made pursuant to **clause 90.1** and the arrangements implemented pursuant to the resolution.
- 90.6 The powers given to the Directors by this **clause 90** are additional to the provisions for capitalisation of profits provided for by this Constitution. If the Directors exercise their power to capitalise profits under **clause 92**, then any Member who has elected to participate in arrangements established under this **clause 90** is deemed, for the purpose of determining the Member's entitlement to share in the capitalised sum, not to have so elected.

## **91. Unclaimed dividends**

All dividends unclaimed for one year after the time for payment has passed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed money.

## **92. Capitalisation of profits**

- 92.1 The Directors may resolve to capitalise profits.
- 92.2 If the capitalisation is to be accompanied by the issue of Shares or debentures, the Directors may apply the sum capitalised:
- (a) in the proportions in which the Members would be entitled if the sum was distributed by way of dividend; or
  - (b) in connection with an employee share scheme adopted by the Company, by applying the sum in paying up in part or full unissued Shares and issuing them in accordance with the rules of that scheme.
- 92.3 For the purposes of this **clause 92**, 'employee share scheme' has the same meaning as in section 9 of the *Corporations Act*.

- 92.4 To the extent necessary to adjust the rights of the Members among themselves where **clause 92.2(a)** applies or is intended to apply, the Directors may adopt a rounding policy or make cash payments in cases where Shares or debentures become issuable in fractions.

## NOTICES

### 93. Service of notices

- 93.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it on the person;
  - (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person; or
  - (c) (except in the case of a notice of meeting of Members which is required to be given individually to each Member entitled to vote at the meeting and to each Director), advertising in one or more newspapers published daily (except on weekends) throughout Australia as determined by the Directors, if in the opinion of the Directors extreme or unusual circumstances make it appropriate to do so.
- 93.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 93.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served on the next day.
- 93.4 A notice given by advertisement is taken to be served on the date on which the advertisement first appears in a newspaper.
- 93.5 A notice may be served by the Company on joint holders under **clause 93.1(a)** or **(b)** by giving the notice to the joint holder whose name appears first in the Register.
- 93.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause by advertisement or on the person from whom the person derives title.
- 93.7 A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- (a) in the case of a Member who does not have a Registered Address in Australia, by airmail post, by facsimile transmission, electronic notification or in another way that ensures that it will be received quickly, as appropriate; and
  - (b) in any other case by ordinary post.

- 93.8 A Member whose Registered Address is not in Australia may specify in writing an address in Australia as the Member's Registered Address within the meaning of this clause.
- 93.9 A certificate in writing signed by a Director, Secretary or other officer of the Company, or by any person that the Company has engaged to maintain the Register, that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 93.10 Subject to the *Corporations Act*, the signature to a written notice given by the Company may be written or printed.
- 93.11 All notices sent by post outside Australia must be sent by prepaid airmail post.

#### **94. Persons entitled to notice**

- 94.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Alternate Director;
  - (c) the Exchange; and
  - (d) the Auditor.
- 94.2 No other person is entitled to receive notice of a general meeting.

### **AUDIT AND FINANCIAL RECORDS**

#### **95. Company to keep financial records**

- 95.1 The Directors must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the requirements of the *Corporations Act* and the Listing Rules.
- 95.2 The Directors must cause the financial records and financial documents of the Company to be audited in accordance with the requirements of the *Corporations Act* and the Listing Rules.

### **WINDING UP**

#### **96. Winding up**

- 96.1 Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.
- 96.2 If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:
- (a) divide among the Members in kind all or any of the Company's assets; and
  - (b) for that purpose, determine how he or she will carry out the division between the different classes of Members,

but may not require a Member to accept any Shares or other securities in respect of which there is any liability.

- 96.3 The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

## **INDEMNITY**

### **97. Indemnity**

- 97.1 To the extent permitted by law and subject to the restrictions in sections 199A and 199B of the *Corporations Act*, the Company indemnifies every Officer against any liability (other than a liability for legal costs) incurred by that person as a director or secretary of the Company or a subsidiary of the Company.
- 97.2 To the extent permitted by law and subject to the restrictions in sections 199A and 199B of the *Corporations Act*, the Company indemnifies every Officer against reasonable legal costs incurred in defending an action for a liability or alleged liability incurred by that person as a director or secretary of the Company or a subsidiary of the Company.
- 97.3 Nothing in this clause limits the power of the Company to grant indemnities, whether by deed or otherwise, in terms different from the provisions of this clause, subject to any restriction imposed by law, or confer any rights on a person who, at the date of adoption of this Constitution, has ceased to be a director or secretary of the Company.
- 97.4 For the purpose of this **clause 97**, 'Officer' means:
- (a) a person who is or has been a director or secretary of the Company; and
  - (b) a person who is or has been appointed a director or secretary of a subsidiary of the Company at the request of the Directors.