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13 July 2009

Company Announcements Office  
Australian Stock Exchange Limited  
20 Bridge Street  
Sydney, NSW, 2000

Dear Sirs,

**RE: Release of Amended Constitution**

At the 2008 Annual General Meeting of the Company, shareholders approved the following amendment to the Constitution.

“That Article 11.4 (a) (ii) of the Company’s Constitution be amended to remove the requirement that one-third of the directors retire at each Annual General Meeting.”

Pursuant to ASX Listing Rule 15.1.1, attached is the amended Constitution of Advanced Magnesium Limited as per the resolution of shareholders.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Talbot", is written over a light green rectangular background.

John Talbot  
Company Secretary  
Advanced Magnesium Limited

**CORPORATIONS LAW**

**A COMPANY LIMITED BY SHARES**

**CONSTITUTION**

**-of-**

**ADVANCED MAGNESIUM LIMITED**

**ABN 51 010 441 666**

**REGISTERED OFFICE**

**ADVANCED MAGNESIUM LIMITED**

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# Contents

1	INTERPRETATION.....	1
	1.1 Definitions .....	1
	1.2 Interpretation Generally .....	2
	1.3 Replaceable Rules Displaced .....	3
2	SHARE CAPITAL.....	3
	2.1 Issue of Shares .....	3
	2.2 Preference Shares.....	3
	2.3 Modification of Class Rights .....	4
	2.4 Commission and Interest .....	4
	2.5 Recognition of Interest.....	4
	2.6 Certificates .....	5
	2.7 Joint Holders.....	6
3	CALLS ON SHARES .....	6
	3.1 Power to Make Calls.....	6
	3.2 Notice of Call.....	6
	3.3 Interest on Calls .....	6
	3.4 Deemed Call .....	6
	3.5 Differentiation between Calls .....	7
	3.6 Payment in Advance of Calls.....	7
4	LIEN ON SHARES .....	7
	4.1 Lien.....	7
	4.2 Other Lien.....	7
	4.3 Lien Over Dividends.....	7
	4.4 Enforcement of Lien .....	7
	4.5 Exemption.....	8
5	FORFEITURE AND SURRENDER OF SHARES .....	8
	5.1 Notice Regarding Forfeiture .....	8
	5.2 Forfeiture .....	9
	5.3 Surrender of Shares.....	9
	5.4 Evidence of Ownership.....	9
	5.5 Deemed Forfeiture .....	9
	5.6 Cancellation of Forfeited Shares.....	10
6	TRANSFER OF SHARES .....	10
	6.1 Transfers .....	10
	6.2 Approval Required for Partial Takeover Scheme .....	11
6A	SALE OF NON-MARKETABLE PARCELS .....	14
	6A.1 Definitions .....	14
	6A.2 Power to sell non-marketable parcels .....	15
	6A.3 Notice.....	15
	6A.4 Procedure .....	15
	6A.5 Sale Consideration .....	16
	6A.6 Certificates .....	16
7	TRANSMISSION OF SHARES .....	16
	7.1 Death or Bankruptcy .....	16
	7.2 Estates.....	17
	7.3 Effect of Death, Bankruptcy or Infirmary.....	17
8	CAPITAL ALTERATIONS .....	17
	8.1 Alteration of Capital .....	17
	8.2 Rights of New Shares .....	17
	8.3 Reduction of Capital .....	17

9	GENERAL MEETINGS .....	17
	9.1 Convening and Notice of General Meetings.....	17
	9.2 Proceedings at General Meetings.....	18
10	VOTES OF MEMBERS .....	21
	10.1 Right to Vote .....	21
	10.2 Proxies and Attorneys.....	22
11	DIRECTORS .....	24
	11.1 Appointment of Directors .....	24
	11.2 Remuneration and Expenses .....	25
	11.3 Vacation of Office and Conflict of Interest .....	26
	11.4 Rotation of Directors .....	27
	11.5 Powers of Directors .....	27
	11.6 Proceedings of Directors.....	28
	11.7 Managing Director.....	31
	11.8 Alternate Directors.....	31
	11.9 Associate Directors .....	32
	11.10 Local Management .....	32
	11.11 Appointment of Attorney.....	33
	11.12 Minutes .....	33
12	SECRETARY .....	33
	12.1 Appointment by Directors .....	33
	12.2 Terms of Office.....	34
13	SEAL.....	34
	13.1 Types of Seals.....	34
	13.2 Use of Seal.....	34
	13.3 Cheques and Negotiable Instruments.....	34
14	RESERVES.....	35
	14.1 Establishment and Application of Reserves.....	35
15	DIVIDENDS.....	35
	15.1 Declaration of Dividend.....	35
	15.2 Interim and Preferential Dividends.....	35
	15.3 Payment of Dividends.....	35
	15.4 Dividend Entitlement.....	36
	15.5 Dividends In Specie.....	36
	15.6 Dividend Plans.....	37
16	CAPITALISATION OF PROFITS .....	37
17	ACCOUNTS AND AUDIT .....	37
	17.1 Requirements as to Accounts and Audits .....	37
	17.2 Auditor.....	38
	17.3 Inspection of Company Records.....	38
18	NOTICES.....	38
	18.1 Mode of Service.....	38
	18.2 Deemed Receipt of Notice .....	38
	18.3 Proof of Service .....	39
	18.4 Notice of General Meeting of the Company.....	39
	18.5 Previous Notice.....	39
	18.6 Notice on Transmission .....	39
	18.7 Failure of Member to give Address .....	39
	18.8 Day of Service .....	40
19	WINDING UP.....	40
	19.1 Powers of Liquidator .....	40

	19.2	Distribution of Assets .....	40
	19.3	Special Rights .....	41
20		INDEMNITY .....	41
	20.1	Officers .....	41
	20.2	Former Officers .....	41
	20.3	Officer of Another Company Upon Request .....	41
	20.4	Indemnity for Proceedings.....	41
	20.5	Liability as Between Officers .....	42
	20.6	No Abrogation of Indemnity.....	42
21		LISTING RULES .....	42

**CORPORATIONS LAW**  
**A COMPANY LIMITED BY SHARES**  
**CONSTITUTION**  
**-of-**  
**ADVANCED MAGNESIUM LIMITED**  
**ABN 51 010 441 666**

**PART A**

**1 NAME**

The name of the Company is Advanced Magnesium Limited.

**2 LIMITED LIABILITY**

The liability of members of the Company is limited by shares.

**PART B**

**1 INTERPRETATION**

**1.1 Definitions**

In this Constitution unless the contrary intention appears-

"**ASX**" means Australian Stock Exchange Limited.

"**Business Day**" has the meaning ascribed to that term in the Listing Rules.

"**Company**" means **ADVANCED MAGNESIUM LIMITED**.

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

"**Director**" includes an alternate Director but not an associate Director.

"**Home Branch**" has the meaning ascribed to that term in the Listing Rules.

"**Listed Company**" means a company which has been admitted to the Official List of ASX.

"**Listing Rules**" means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**"Market Transfer"** means:

- (a) a transfer of shares where the transfer is pursuant to or connected with a transaction entered into on the stock market operated by ASX and includes a Proper SCH Transfer; or
- (b) an allotment of shares as a result of the exercise of any rights, options or convertible notes where such rights, options or notes are traded on a market operated by ASX.

**"member"** means a person entered in the register as a member for the time being of the Company.

**"Proper SCH Transfer"** has the meaning ascribed to that term in the Corporations Law.

**"register"** means the register of members of the Company kept pursuant to the Corporations Law.

**"representative"** means a representative appointed by a member pursuant to section 250D of the Corporations Law.

**"Restricted Securities"** has the meaning ascribed to that term in the Listing Rules.

**"SCH Business Rules"** has the meaning ascribed to that term in the Corporations Law.

**"seal"** means the common seal of the Company and includes any official seal of the Company.

**"Secretary"** means any person appointed to perform all or any of the duties of a secretary of the Company.

## 1.2 Interpretation Generally

- (a) Section 110B of the Corporations Law applies in relation to this Constitution as if they were an instrument made by an authority under a power conferred by the Corporations Law as in force on the date on which this Constitution became binding on the Company.
- (b) An expression used in a particular Part or Division of the Corporations Law that is given by that Part or Division, a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division, the same meaning as in that Part or Division, unless the contrary intention appears.
- (c) A reference to a provision of the Corporations Law includes:
  - (i) a reference to that provision as amended; and
  - (ii) a reference to a corresponding provision contained in any substituted or re-enacted legislation superseding or replacing, in whole or in part, the Corporations Law subject however to the corresponding provision in the substituted or re-enacted legislation being in identical or substantially identical terms to the provision in the Corporations Law.

- (d) A reference to a body or entity (whether corporate or unincorporate) includes, in the event that such body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to such other body or entity as the Directors consider most nearly fulfils the objects of the first mentioned body or entity.
- (e) Unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing any gender include all genders;
  - (iii) the term "person" or words importing persons include bodies corporate;
  - (iv) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
  - (v) if a word or phrase is defined, cognate words and phrases have corresponding definition.
- (f) Headings are for ease of reference only and do not affect the construction of this Constitution.

### **1.3 Replaceable Rules Displaced**

The replaceable rules contained in the Corporations Law are displaced and shall not apply to the Company except to the extent that they are expressly contained in this Constitution.

## **2 SHARE CAPITAL**

### **2.1 Issue of Shares**

Subject to this Constitution, the Listing Rules, the Corporations Law and any special rights conferred on the holders of any existing shares or class of shares in the Company:

- (a) shares and other securities in the Company may be issued or otherwise disposed of by the Directors in such manner as they think fit and any such security may be issued with such preferred, deferred or other special rights or such restrictions as to dividends, voting, return of capital, payment of calls or otherwise, to such persons and on such terms and conditions as the Directors determine; and
- (b) the Directors may grant to any person options to take up unissued shares in the Company, in such manner and on such terms and conditions as they think fit.

### **2.2 Preference Shares**

- (a) Subject to the Corporations Law, the Company may issue preference shares which are, or at the option of the Company are to be, liable to be redeemed, in such manner and on such terms and conditions as the Directors determine.
- (b) Holders of preference shares shall have the right to vote at any meeting convened for the purpose of reducing the capital, winding up or sanctioning the sale of the whole of the property, business and undertaking of the Company or, during the

winding up of the Company, where the proposal to be submitted to the meeting affects the rights attached to the preference shares, when a dividend (or part of a dividend) on the preference shares is in arrears or on a resolution to approve the terms of a buy-back agreement.

- (c) The rights conferred upon the holders of shares of any class with preferred or other rights shall be deemed to be varied by the issue of further shares or securities ranking equally with or in priority to the first mentioned shares, and the provisions of Clause 2.3 shall apply in relation to such deemed variation.

### **2.3 Modification of Class Rights**

- (a) Where by reason of the issue of preference shares or otherwise, the share capital of the Company is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied or abrogated in any way or the preference share capital repaid, with the approval by way of a special resolution passed at a separate meeting of the holders of the issued shares of that class or with the consent in writing of the holders of three-quarters of the issued shares of that class.
- (b) The provisions of the Corporations Law and this Constitution relating to special resolutions and general meetings shall be deemed to apply so far as they are capable of application (*mutatis mutandis*) to every resolution and meeting referred to in Clause 2.3.(a).

### **2.4 Commission and Interest**

- (a) The Company may make payments by way of brokerage or commission to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the Company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the Company.
- (b) The brokerage or commission may be satisfied by payment in cash, by allotment of fully or partly paid shares, by the allotment of options, by issue of debentures or a combination of all or any of such ways.

### **2.5 Recognition of Interest**

- (a) Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
- (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder of the share.
- (c) In the case of the death of a member, the legal personal representatives of the deceased, where he is a sole holder, shall be the only persons recognised by the Company as having any title to the shares held by him, and for this purpose the Directors may require reasonable evidence of death.

## 2.6 Certificates

- (a) Subject to Clause 2.6(g), a member is entitled free of charge to receive one certificate for the shares of one class registered in his name under the seal or duplicate seal of the Company in accordance with the Corporations Law, but in respect of a share held jointly by several persons, the Company is not bound to issue more than one certificate.
- (b) Shares shall be allotted and, subject to Clause 2.6(g), share certificates relating to them (including replacement certificates issued pursuant to Clauses 2.6(c) and 2.6(d)) shall be issued and delivered in accordance with:
  - (i) the Corporations Law; and
  - (ii) the Listing Rules whilst ever the Company is a Listed Company.
- (c) Where a share certificate is stolen, lost or destroyed, upon application to the Company by the owner of the shares in accordance with section 1089 of the Corporations Law, the Directors shall, subject to that section, Clause 2.6(g) and the Listing Rules, issue a replacement certificate in lieu of the original. Such replacement certificate shall be clearly endorsed "Issued in replacement of certificate numbered: (number)".
- (d) Where a share certificate is worn out or defaced, upon its production to the Company, the Directors may order it to be cancelled and issue a replacement certificate in lieu thereof.
- (e) A fee may be charged for the issue of a replacement certificate in the amount determined by the Directors, provided that such fee does not exceed \$10.00.
- (f) Delivery of a certificate for a share to one of the several joint holders is sufficient delivery to all such holders.
- (g) Notwithstanding anything to the contrary in this Constitution, the Company shall not be required to issue a certificate for shares held by a member (whether upon the issue or transfer of the shares) and furthermore may cancel a certificate for shares held by a member without issuing a certificate in its place, in circumstances where the non issue of a certificate for shares is permitted by the Corporations Law and the Listing Rules.
- (h) Where the Company has determined not to issue share certificates or to cancel existing share certificates, a member shall have the right to receive such statements of the holdings of the member as are required to be distributed to a member under the Corporations Law or the Listing Rules.

## **2.7 Joint Holders**

- (a) Where 2 or more persons are registered as the holders of a share, they shall be deemed to hold it as joint tenants with rights of survivorship, subject to the provisions of this Constitution as to joint shareholdings and the following provisions:
- (i) they and their respective legal personal representatives shall be deemed to be jointly and severally liable to pay all calls, interest or other amounts payable in respect of the share;
  - (ii) subject to Clause 2.7(a)(i), on the death of any one of them., the survivor or survivors shall be the only person or persons whom the Company shall recognise as having any title to the share, and for this purpose the Directors may require reasonable evidence of death; and
  - (iii) any one of them may give effectual receipts for any dividend, interest or other amounts payable in respect of the share.

## **3 CALLS ON SHARES**

### **3.1 Power to Make Calls**

The Directors may, subject to any conditions of allotment, from time to time make such calls as they think fit upon the members in respect of any moneys unpaid on the shares held by them. A call shall be deemed to have been made when the resolution of the Directors authorising such call was passed and may be payable by instalments. Subject to the Listing Rules, a call may be revoked or postponed by the Directors as they think fit.

### **3.2 Notice of Call**

- (a) Notice of a call shall be sent to members upon whom a call is made in accordance with the Listing Rules.
- (b) The accidental omission to give notice of any call to or the non-receipt of any such notice by any of the members shall not invalidate the call.

### **3.3 Interest on Calls**

If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Directors may determine, but the Directors may in their discretion waive payment of such interest wholly or in part.

### **3.4 Deemed Call**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date shall for the purposes of this Constitution, be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in the case of non-payment, all the relevant provisions of this Constitution as to payment of interest, expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **3.5 Differentiation between Calls**

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.

### **3.6 Payment in Advance of Calls**

The Directors may accept from any member all or any part of the amount unpaid on a share although no part of that amount has been called up. The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate as is determined by the Directors. No money received in advance of a call shall be received subject to repayment or shall be claimable by any member. The Directors may repay the whole or any part of money paid in advance of a call upon giving the member at least one month's notice.

## **4 LIEN ON SHARES**

### **4.1 Lien**

The Company shall have a first and paramount lien and charge upon all the shares (other than fully paid shares) registered in the name of each member (whether solely or jointly with others) for all unpaid calls or instalments due but unpaid in respect of such shares.

### **4.2 Other Lien**

- (a) The Company shall also have a first and paramount lien upon all the shares (other than fully paid shares) registered in the name of each member (whether solely or jointly with others) for all moneys which the Company may be called upon by law to pay (and has paid) in respect of those shares together with interest thereon.
- (b) Any moneys so paid by the Company in respect of the shares may be recovered from such member or his legal personal representatives as a debt due by such member or his estate to the Company.
- (c) The Company shall be entitled to charge and recover interest at current bank overdraft rates on any moneys so paid by the Company until the moneys have been paid in full by such member or his legal personal representatives to the Company.

### **4.3 Lien Over Dividends**

The Company's lien on a share shall extend to all dividends from time to time payable in respect of such share.

### **4.4 Enforcement of Lien**

- (a) The Directors may sell shares on which the Company has a lien for the purpose of enforcing the lien, without consent of the holder of the shares or any other person.
- (b) Shares on which the Company has a lien cannot be sold unless:
  - (i) a sum in respect of which the lien exists is presently payable; and

- (ii) the Company has, at least 14 days before the date of sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of death or bankruptcy of the registered holder notice in writing, setting out and demanding payment of that part of the amount in respect of which the lien exists as is presently payable.
- (c) The Company shall apply the net proceeds of any sale of shares under **clause 4.4(a)** in or towards satisfaction of that part of the amount in respect of which the lien exists as is presently payable, together with any interest on that amount and expenses incurred in connection with the enforcement of the lien and the sale of the shares.
- (d) The Company shall pay any balance of the net proceeds of sale to the person entitled to the shares at the date of sale.
- (e) Upon any sale of shares under this **clause 4.4**, the Directors may authorise a person to transfer the shares sold to the purchaser of those shares comprised in the transfer.
- (f) The purchaser is not bound to see to the application of the purchase money.
- (g) The title to the purchaser of the shares is not affected by any irregularity or invalidity in connection with the sale of shares under this **clause 4.4**.
- (h) The Company may do all such things as may be necessary or appropriate for it to do under the SCH Business Rules to protect any lien, charge or other right to which it may be entitled under any law or this Constitution.

#### **4.5 Exemption**

The Directors may at any time, exempt a share wholly or in part from the provisions of this Clause 4.

## **5 FORFEITURE AND SURRENDER OF SHARES**

### **5.1 Notice Regarding Forfeiture**

- (a) If any member fails to pay any call or instalment of a call or any money payable under the terms of allotment of a share on or before the day appointed for payment thereof, the Directors may at any time thereafter while any part of the call or instalment or other moneys remains unpaid, serve a notice on him requiring payment of the same together with any interest that may have accrued thereon and any expenses that may have been incurred by the Company by reason of such non-payment.
- (b) The notice shall name a further day (not being less than 14 days or 10 Business Days, whichever is the greater, from the date of the notice) on or before which such call or instalment or other money and all interest and expenses that have accrued by reason of such non-payment, are to be paid and the place where the payment is to be made. The notice shall also state that in the event of non-payment of all of such moneys on or before the time and at the place appointed, the shares in respect of which such payment is due will be liable to be forfeited.

## 5.2 Forfeiture

- (a) If the requirements of a notice served under this Clause 5 are not complied with, any share in respect of which the notice has been given, may at any time thereafter before payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited share and not actually paid before the forfeiture.
- (b) Any share so forfeited shall be deemed to be the property of the Company and may be re-allotted, sold or otherwise disposed of in such manner and on such terms and conditions as the Directors think fit. The Directors may at any time before any share so forfeited shall have been re-allotted, sold or otherwise disposed of, annul the forfeiture thereof upon such terms and conditions as they think fit.
- (c) Any member whose shares have been forfeited shall cease to be a member in respect of the forfeited shares but shall notwithstanding such forfeiture remain liable to pay to the Company all money (including accrued expenses) that, at the date of forfeiture, was payable by him to the Company in respect of such shares (including interest thereon from the date of forfeiture until payment of such monies in full, at such rate as the Directors determine, if the Directors think fit to enforce payment of interest), unless the holders of ordinary shares resolve otherwise. The liability of such member ceases if and when the Company receives payment in full of all the money (including accrued expenses and interest) so payable in respect of the shares.

## 5.3 Surrender of Shares

The Directors may accept the surrender of any fully paid share by way of compromise of any question as to the holder being properly registered in respect of that share. Any share so surrendered may be disposed of by the Directors in the same manner as a forfeited share.

## 5.4 Evidence of Ownership

- (a) In the event of the re-allotment, sale or disposal of a forfeited or surrendered share, a statutory declaration in writing declaring that the declarant making the statement is a director or secretary of the Company and that the share has been duly forfeited or surrendered in accordance with this Constitution, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.
- (b) Upon re-allotment, sale or disposal of a forfeited or surrendered share, the Directors may authorise a person to transfer the share in favour of the person to whom the share is re-allotted, sold or disposed of. The Directors may enter the name of the new allottee, transferee or purchaser in the register as the holder of the share re-allotted, sold or disposed of in accordance with this Clause 5. Such new allottee, transferee or purchaser shall not be bound to see to the application of any money paid as consideration. The title of the new allottee, transferee or purchaser to the share shall not be affected by any irregularity or invalidity in connection with the forfeiture, surrender, re-allotment, sale or disposal of the share.

## 5.5 Deemed Forfeiture

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

## 5.6 Cancellation of Forfeited Shares

Subject to the Listing Rules, the Company may by ordinary resolution cancel any shares forfeited under this **clause 5**.

## 6 TRANSFER OF SHARES

### 6.1 Transfers

#### (a) Participation in Computerised or Electronic Systems

- (i) The Directors may do anything they consider necessary or desirable and which is permitted under the Corporations Law and the Listing Rules to facilitate the participation by the Company in any computerised or electronic system established or recognised by the Corporations Law or the Listing Rules for the purposes of facilitating dealings in shares or securities.

#### (b) Form of Transfers

- (i) Subject to this Constitution, a member may transfer all or any of the member's shares by:
  - (A) any computerised or electronic system established or recognised by the Listing Rules or the Corporations Law for the purpose of facilitating dealings in shares, including a transfer that may be effected pursuant to the SCH Business Rules or other electronic transfer process; or
  - (B) an instrument in writing in any usual or common form or in any other form that the Directors approve.
- (ii) Except in the case of a Proper SCH Transfer, the transferor remains the holder of the shares and the member of the Company in respect of those shares until the name of the transferee is entered in the register.
- (iii) In the case of a Market Transfer the Company must comply with such obligations as may be imposed on it by the Listing Rules and the SCH Business Rules and any applicable legislation (including stamp duty legislation) in connection with any transfer of shares.
- (iv) Restricted Securities cannot be disposed of during the escrow period in relation to the securities except as permitted by the Listing Rules or ASX.

#### (c) Registration Procedure

Where an instrument of transfer referred to in Clause 6.1(b) is to be used by a member to transfer shares, the following provisions apply:

- (i) The instrument of transfer must be executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Corporations Law.

- (ii) The stamped instrument of transfer shall be left at the share registry of the Company for registration accompanied by the certificate for the shares to be transferred (if any) and such other evidence as the Directors may require to prove the title of the transferor and his right to transfer the shares.
- (iii) A fee shall not be charged on the registration of a transfer of shares or other securities.
- (iv) On registration of a transfer of shares, the Company must cancel the old certificate (if any).

(d) **Transfers and Certificates**

Shares shall be transferred and, subject to Clause 2.6(g), share certificates relating thereto shall be issued and delivered in accordance with:

- (i) the Corporations Law; and
- (ii) the Listing Rules whilst ever the Company is a Listed Company.

(e) **Power to Refuse to Register**

- (i) The Directors may only refuse to register any transfer of shares where:
  - (A) the Listing Rules permit the Company to do so; or
  - (B) the Listing Rules require the Company to do so;

and shall refuse to acknowledge a disposal (including registering any transfer) of Restricted Securities during the escrow period in relation to such Restricted Securities except as permitted by Listing Rules or ASX.
- (ii) Where the Directors refuse to register a transfer, they shall send notice of the refusal and the reason for refusal to the lodging party in accordance with the Listing Rules.

(f) **Non-interference with Registration**

Notwithstanding any other provision contained in this Constitution, but subject to the Listing Rules, the Company may not prevent, delay or interfere with the generation of a Proper SCH Transfer or the registration of a paper-based transfer of shares in registrable form.

## 6.2 Approval Required for Partial Takeover Scheme

- (a) In this Clause the following words shall have these meanings:

**"Eligible Shareholders"** means those persons described in Clause 6.2(c).

**"Meeting"** means a meeting of the Eligible Shareholders convened and conducted by the Company.

**"Offeror"** means the person making the offer pursuant to the Takeover Scheme.

**"Postal Ballot"** means a postal ballot conducted by the Company in accordance with Clause 6.2(g).

**"Prescribed Resolution"** means a resolution to approve a Takeover Scheme in accordance with the provisions of this clause.

**"Relevant Day"** means the day that is 14 days before the end of the period during which the offers under the Takeover Scheme remain open.

**"Shares"** means shares included in the class of shares the subject of the Takeover Scheme.

**"Takeover Scheme"** means a takeover scheme in accordance with section 635(b) of the Corporations Law.

A reference to "a person associated with" another person has the meaning given to that expression by sections 10, 11, 12, 15 and 16 of the Corporations Law.

- (b) Subject to the Listing Rules and the SCH Business Rules, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the Takeover Scheme is prohibited unless and until the Prescribed Resolution is passed, notwithstanding any reservation of shares made pursuant to the Listing Rules. The Directors shall ensure that the Prescribed Resolution is voted on before the Relevant Day.
- (c) The persons entitled to vote on the Prescribed Resolution shall be those persons (other than the Offeror or a person associated with the Offeror) who, as at the end of the day on which the first offer under the Takeover Scheme was made, held Shares. On a Prescribed Resolution, Eligible Shareholders shall be entitled to one vote for each Share held.
- (d) The Prescribed Resolution shall be voted on in either of the following ways as determined by the Directors:
  - (i) at a Meeting; or
  - (ii) by means of a Postal Ballot.
- (e) The Prescribed Resolution shall be taken to have been passed if the proportion that the number of votes in favour of the Prescribed Resolution bears to the total number of votes on the Prescribed Resolution is greater than one-half and otherwise shall be taken to have been rejected.
- (f) If the Directors determine that the Prescribed Resolution shall be voted on at a Meeting, then the provisions of this Constitution that apply to a general meeting of the Company shall, with such modifications as the circumstances require, apply to the Meeting.
- (g) If the Directors determine that the Prescribed Resolution shall be voted on by means of Postal Ballot:
  - (i) The Directors shall despatch to the Eligible Shareholders:
    - (A) a notice proposing the Prescribed Resolution;

- (B) a ballot paper for the purpose of voting on the Prescribed Resolution;
  - (C) a statement setting out details of the Takeover Scheme; and
  - (D) a memorandum explaining the postal ballot procedure which is to govern voting in respect of the Prescribed Resolution.
- (ii) A vote recorded on a ballot paper shall not be counted, for the purposes of determining whether or not the Prescribed Resolution is passed, unless the ballot paper is:
- (A) correctly completed and signed under the hand of the Eligible Shareholder or of his attorney duly authorised in writing or if the Eligible Shareholder is a body corporate in a manner set out in sections 127(1) or (2) of the Corporations Law, or under the hand of its attorney so authorised; and
  - (B) received at the registered office of the Company on or before 5.00 pm on the date specified for its return in the notice proposing the Prescribed Resolution such date to be not less than 18 days before the end of the period during which offers under the Takeover Scheme remain open.
- (iii) On the Business Day following the date specified for the return of ballot papers in the notice proposing the Prescribed Resolution, the Directors shall count the ballot papers returned and determine whether the Prescribed Resolution has been passed or rejected and shall forthwith upon completion of counting disclose the results of the ballot and the Prescribed Resolution shall accordingly be deemed to have been voted on upon the date of such declaration.
- (h) Where a Prescribed Resolution is voted on before the Relevant Day the Company shall, on or before the Relevant Day:
- (i) give to the Offeror; and
  - (ii) serve on each notifiable securities exchange,
- a notice in writing stating that the Prescribed Resolution has been so voted on and that the resolution has been passed, or has been rejected, as the case requires.
- (i) Where, as at the end of the day prior to the Relevant Day no resolution to approve the Takeover Scheme has been voted on, a Prescribed Resolution shall be deemed to have been passed in accordance with this clause.
- (j) Where a Prescribed Resolution is voted on prior to the Relevant Day and is rejected:
- (i) Notwithstanding section 653 of the Corporations Law, all offers under the Takeover Scheme that have not, as at the end of the Relevant Day, been accepted or have been accepted and from whose acceptance binding contracts have not resulted, shall be deemed to be withdrawn at the end of the Relevant Day;

- (ii) The Offeror shall, forthwith after the end of the Relevant Day, return to each person who has accepted any of the offers any documents that were sent by the person to the Offeror with the acceptance of the offer;
  - (iii) The Offer or is entitled to rescind, and shall, forthwith after the end of the Relevant Day, rescind, each contract resulting from the acceptance of an offer made under the Takeover Scheme; and
  - (iv) A person who has accepted an offer made under the Takeover Scheme is entitled to rescind the contract (if any) resulting from that acceptance.
- (k) This Clause shall cease to have effect on the third anniversary or the date of adoption of this Clause unless it is sooner omitted by amendment to this Constitution or renewed in the manner provided by section 672 of the Corporations Law.

## **6A SALE OF NON-MARKETABLE PARCELS**

### **6A.1 Definitions**

In this clause:

**Corporations Act** means the Corporations Act 2001(Cth).

**CS Facility** has the same meaning as "prescribed CS facility" in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Marketable Parcel** means the number of shares that in aggregate constitutes a marketable parcel of shares within the meaning of the Listing Rules.

**Minority Holder** means any member who from time to time holds a Non-Marketable Parcel.

**Non-Marketable Parcel** means a parcel of shares that is less than a Marketable Parcel.

**Notice** means the notice given to Minority Holders in accordance with clause 6A.3.

**Notice Date** means the date of the Notice sent by the Company under clause 6A.3.

**Operating Rules** means the operating rules for the time being of a CS Facility regulating the settlement, clearing and registration of uncertificated securities, except to the extent of any express written waiver by the CS Facility Operator.

**Sale Consideration** means the proceeds of sale or other disposal of shares under clause 6A.5.

**Takeover** means:

- (a) a takeover bid; or
- (b) a similar bid under a foreign regime.

**6A.2 Power to sell non-marketable parcels**

- (a) Subject to the Corporations Act, the Listing Rules, the Operating Rules and this Constitution, the Company may dispose of the Non-Marketable Parcels of Minority Holders in the manner set out in this clause 6A.
- (b) The Company may dispose of the Non-Marketable Parcels of Minority Holders under this clause 6A only once in any twelve month period.
- (c) This clause 6A ceases to have effect following the announcement of a Takeover, but begins to have effect again after the close of offers made under the Takeover.

**6A.3 Notice**

- (a) The Company must not sell a Non-Marketable Parcel of a Minority Holder unless it has, not less than 42 days prior to the sale, given a Notice in writing to the Minority Holder of its intention to dispose of the Non-Marketable Parcel.
- (b) Each Minority Holder of whom a Notice has been served, may by notice in writing addressed to the Secretary and delivered to the registered office of the Company within 42 days after the Notice Date, request the Company not to sell the Minority Holder's Non-Marketable Parcel, in which event the provisions of this clause 6A will not apply to that Minority Holder.

**6A.4 Procedure**

- (a) Each Minority Holder appoints the Company as the Minority Holder's agent to sell, within a reasonable period after the period ending 42 days after the Notice Date, the Minority Holder's Non-Marketable Parcel in the ordinary course of trading on the stock market conducted by ASX and acting in good faith and to receive the Sale Consideration on behalf of the Minority Holder.
- (b) Each Minority Holder appoints the Company and each of its Directors from time to time as the holder's attorney in the name and on behalf of the holder to effect all transfers and execute all deeds or other documents or instruments and do all things necessary to transfer the Non-Marketable Parcel from the holder to the transferee.
- (c) The transferee of shares sold under this clause 6A is not responsible for the regularity of proceedings or the application of the purchase money in respect of the sale of a Non-Marketable Parcel. After the transferee's name has been entered in the register in respect of such shares, the validity of the sale or other disposal may not be impeached by any person and the remedy of any person aggrieved by the sale or other disposal will be in damages only and against the Company exclusively.
- (d) The Company may issue the transferee such certificates for the shares as may be required in order to vest title in the transferee. The title of the transferee to shares sold under this clause 6A will not be affected by any irregularity in connection with the sale or disposal of the shares to the transferee.
- (e) If the relevant shares are certificated, the Company must cancel the certificates of all holders whose shares are sold under this clause 6A.

- (f) If all the shares of two or more holders to whom this clause 6A applies are sold to one purchaser the transfer may be effected by one transfer document.

#### **6A.5 Sale Consideration**

- (a) The Sale Consideration must be received by the Company and paid to the Minority Holder or as the Minority Holder may direct.
- (b) The Company must bear all costs as a result of the sale or disposal of shares under this clause 6A.
- (c) Payment by the Company of any consideration under this clause 6A is at the risk of the Minority Holder to whom it is sent.
- (d) The Sale Consideration so received by the Company must be paid into a bank account opened and maintained by the Company for that purpose only.
- (e) The Company must hold the Sale Consideration so received in trust for a Minority Holder whose shares are sold under this clause 6A pending distribution of the Sale Consideration. The Company must, as soon as practicable after the sale of the shares of a Minority Holder, and to the extent that it may reasonably do so, distribute the Sale Consideration received to such Minority Holder provided that the Company has received any certificates issued to the Minority Holder with respect to the shares or, in the case of loss or destruction of any such certificate, any additional documentation required by the Corporations Act.
- (f) Where the Sale Consideration is held in trust by the Company under this clause 6A and is unclaimed, the Company must pay the money in accordance with applicable legislative requirements.

#### **6A.6 Certificates**

A certificate in writing under the hand of any two Directors or of any one Director and Secretary that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any advertisement required to be published was published; and
- (c) any resolution of Directors required to be made was made,

is, for the purpose of this clause 6A, sufficient evidence of the facts stated as against all persons claiming to be entitled to such shares and to the right and title of the Company to dispose of such shares.

## **7 TRANSMISSION OF SHARES**

### **7.1 Death or Bankruptcy**

A person becoming entitled to a share in consequence of the death or bankruptcy of a member or a vesting order may, upon producing such evidence as is properly required by the Directors to establish such entitlement, be registered himself as the holder of the share.

## **7.2 Estates**

A person lawfully administering the estate of a member under the provisions of a law relating to mental health or the administration of the estates of patients or infirm persons may, upon producing such evidence as is properly required by the Directors in that regard, either be registered himself as the holder of the share or subject to the provisions of this Constitution as to transfers, transfer the share to some other person nominated by him.

## **7.3 Effect of Death, Bankruptcy or Infirmary**

Subject to Clauses 10.1(e), 15.3(e) and 18.6, a person entitled to be registered as the holder of a share or to transfer the share to some other person under Clauses 7.1 or 7.2, shall be entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would have been entitled to if the events mentioned in Clauses 7.1 or 7.2 had not occurred.

## **8 CAPITAL ALTERATIONS**

### **8.1 Alteration of Capital**

The Company in general meeting may alter its share capital in any manner permitted by the Corporations Law.

### **8.2 Rights of New Shares**

Unless otherwise provided by this Constitution of the terms of issue, new shares issued by the Company shall be deemed to be part of the original capital and shall rank equally with and carry the same rights as the existing shares and shall be subject to the provisions of this Constitution.

### **8.3 Reduction of Capital**

Subject to the Corporations Law and the Listing Rules, the Company may by special resolution reduce its share capital in any way.

## **9 GENERAL MEETINGS**

### **9.1 Convening and Notice of General Meetings**

- (a) The Company shall, in addition to any other meeting held by the Company, hold a general meeting, to be called the annual general meeting, in accordance with the provisions of the Corporations Law.
- (b) A general meeting shall be convened on such requisition as is provided for by section 249D of the Corporations Law.
- (c) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- (d) The Directors or a Director may convene a general meeting of the Company or a meeting of any class of members of the Company.

- (e) Unless the provisions of the Corporations Law allow a shorter period of notice, at least 28 days' notice shall be given in writing to the Company's auditor, each Director and to each member entitled to vote at general meetings or a meeting of a class of members of the Company, as the case may be.
- (f) A notice convening a meeting of the Company or of any class of members shall:
  - (i) set out the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (ii) set out the general nature of the meeting's business;
  - (iii) if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution; and
  - (iv) contain a statement setting out the following information:
    - (A) that the member has a right to appoint a proxy;
    - (B) that the proxy need not be a member of the Company;
    - (C) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
    - (D) a place and a fax number for the purpose of receipt of proxy appointments.

A notice of general meeting shall be accompanied by a form of proxy in a form substantially in accordance with this Constitution. The form of proxy shall be blank in respect of the person primarily to be appointed as proxy.

- (g) Except in the case of a meeting convened pursuant to section 249D of the Corporations Law, the Directors may, by notice in writing to the members, postpone any meeting convened by the Directors which has been convened to a date specified in such notice, or may cancel the holding of such a meeting.
- (h) The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any person entitled to be so notified, shall not invalidate the meeting or any resolution passed at that meeting.

## **9.2 Proceedings at General Meetings**

- (a) **Business and Quorum**
  - (i) The business of an annual general meeting is to receive and consider the profit and loss account, the balance sheet and the reports of the Directors and the auditor of the Company, to elect Directors in the place of those retiring, to declare dividends, to fix the fees of the Directors and to transact any other business which under this Constitution or by law ought to be transacted at an annual general meeting. All other business transacted at an annual general meeting and all business transacted at any other general meeting shall be deemed special. No special business

shall be transacted at any general meeting except as has been specified in the notice convening it.

- (ii) The number of members whose presence is necessary to constitute a quorum at any general meeting of the Company is 3 members present in person.
- (iii) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (iv) If a quorum is not present within 15 minutes after the time appointed for a meeting or such longer period as the Chairman of the meeting may allow, the meeting:
  - (A) if convened upon requisition of members or by members shall be dissolved;
  - (B) in any other case, shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors determine.
- (v) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those present shall constitute a quorum.
- (vi) The Chairman's ruling on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from such a ruling shall be accepted.

(b) **Chairman**

- (i) The Chairman of Directors shall preside at every general meeting of the Company but where he is not present within 15 minutes after the time appointed for a meeting or is unwilling to act or has signified that he will not be present or willing to act, the following shall preside as Chairman of the meeting, in the following order of entitlement - the Deputy Chairman; the only Director present; a Director chosen by a majority of the members present; a member present in person or by proxy, attorney or representative chosen by a majority of the members present in person or by proxy, attorney or representative.
- (ii) In the case of an equality of votes, the Chairman of the meeting has, both on a show of hands and at a poll, a casting vote in addition to his deliberative vote (if any).

(c) **Demand For a Poll**

- (i) Every question submitted to a meeting shall be decided by a show of hands by the members who are present in person or by proxy, attorney or representative unless, before the show of hands, or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:

- (A) the Chairman of the meeting;
- (B) not less than 5 members present in person or by proxy, attorney or representative and having the right to vote at the meeting; or
- (C) a member or members present in person or by proxy, attorney or representative representing not less than 5% of the total voting rights of all members having the right to vote on the resolution.

- (ii) Unless a poll is so demanded, a declaration by the Chairman of the meeting that the resolution has been carried or carried unanimously or without dissent or by a particular majority or lost and an entry to that effect in the minutes of the meeting shall be conclusive evidence of its contents and it shall not be necessary to prove the number or proportion of votes cast in favour of or against the resolution.
- (iii) Where a poll is duly demanded, it shall be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the Chairman of the meeting directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (iv) A poll shall not be demanded on the election of a Chairman of a meeting or on the question of adjournment of a meeting. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (v) The demand for a poll may be withdrawn.

(d) **Adjournment**

- (i) The Chairman of a meeting may with the consent of the meeting, adjourn the meeting from time to time and place to place but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (ii) Where a meeting is adjourned for more than 21 days, at least 3 Business Days' notice of the adjourned meeting shall be given as in the case of an original meeting.
- (iii) Except as provided in Clause 9.2(d)(ii), it is not necessary to give any notice of any adjournment of or the business to be transacted at an adjourned meeting.

(e) **Closure**

After the Chairman of a meeting declares the meeting to be over, no business or question shall be brought forward, discussed or decided.

## 10 VOTES OF MEMBERS

### 10.1 Right to Vote

- (a) An entitlement to receive notice of general meetings of the Company shall confer on members the right to attend thereat.
- (b) Subject to any rights or restrictions attached to or affecting any class of shares and, if the Company is a Listed Company, to the requirements of the Listing Rules, on a show of hands each person present as a member, proxy, attorney or representative has one vote and on a poll each member present in person or by proxy, attorney or representative has:
  - (i) one vote for each fully paid share held by him; and
  - (ii) in respect of each partly paid share held by him, a fraction of a vote equivalent to the proportion which the amount paid (excluding amounts credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call shall be ignored when calculating the proportion.
- (c) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, attorney or representative, shall be accepted to the exclusion of the votes of other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the register, but the other or others of the joint holders are entitled to be present at general meetings. Several legal personal representatives of a deceased member in whose sole name a share stands shall for the purposes of this Clause 10.1(c) be deemed joint holders of the share.
- (d) Where two proxies have been appointed by a member, the proxy first mentioned in the instrument appointing the proxy shall have the right to vote on a show of hands.
- (e) A person entitled under Clause 7 to transfer a share may vote at a meeting or adjourned meeting or on a poll in respect of that share as if he were the registered holder of it if:
  - (i) the Directors have previously admitted his right to vote at that meeting or adjourned meeting or on that poll in respect of the share; or
  - (ii) he satisfies the Directors of his right to a transfer of the share not less than 48 hours before the time appointed for the meeting, adjourned meeting or poll at or on which he proposes to vote in respect of the share.
- (f) Objection shall not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken shall be deemed valid for all purposes. In the case of a dispute as to the admission or rejection of a vote, the Chairman of the meeting shall decide the matter and his decision shall be final and conclusive.

- (g) A member is entitled to attend but not to vote at a general meeting if any calls which are due and payable in respect of shares held by the member in the Company have not been paid.
- (h) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement relating to the Restricted Securities, the holder of the Restricted Securities shall not be entitled to any voting rights in respect of the Restricted Securities.

**10.2 Proxies and Attorneys**

- (a) A member entitled to attend and vote at a meeting of the Company or of any class of members of the Company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote in his stead at the meeting and a proxy has the same right as the member to speak at the meeting. If the member is entitled to cast 2 or more votes at the meeting, he may appoint 2 proxies.
- (b) Where a member appoints 2 proxies, the appointment may specify the proportion or number of votes each proxy may exercise. If the appointment does not do so, each proxy may exercise half of the votes.
- (c) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a body corporate under its common or official seal or the hand of a director, manager or secretary or its attorney duly authorised in writing.
- (d) An instrument appointing a proxy shall be in or to the effect of the following form or in any other form acceptable to the Directors generally or in a particular case:

**ADVANCED MAGNESIUM LIMITED A.B.N. 51010 441 666**

**FORM OF PROXY**

**Part A: First or Sole Proxy**

I/We.....:

of .....

being a member or members of **ADVANCED MAGNESIUM LIMITED**, hereby appoint as my proxy to vote on my behalf at the \*annual general meeting/general meeting of the Company to be held on the        day of        and at any adjournment thereof ..... of ..... or failing him, the Chairman of the meeting.

**Part B: Second Proxy (if any)**

and ..... of .....

or failing him, the Chairman of the meeting.

My first proxy is appointed to represent .....% of my voting rights.

My second proxy is appointed to represent .....% of my voting rights.



- (ii) if it is a body corporate, appoint a representative (whether a member or not) to act on its behalf at all or any meetings of the Company or of any class of members.
- (g) Subject to the Corporations Law, in order to be effective, an instrument appointing a proxy and any power of attorney or other authority under which the instrument of proxy is executed (or a copy of the power or the authority notarially certified) together with such evidence of due stamping, execution and non-revocation of it as the Directors may require, must be deposited at or forwarded by facsimile transmission to the registered office of the Company or such other place, facsimile number or electronic address as is specified by the Company in the notice of meeting or instrument of proxy, not less than 48 hours before the time appointed for the meeting or adjourned meeting, or in the case of a poll, not less than 24 hours before the time appointed for the taking of a poll, at which the appointee proposes to attend and vote.
- (h) A vote cast by a proxy, attorney or representative is valid notwithstanding the previous revocation of his authority by the death or unsoundness of mind of his principal or otherwise and notwithstanding the transfer of the shares in respect of which the vote is cast, unless an intimation in writing of the revocation or transfer has been received by the Company at the registered office before commencement of the meeting or adjourned meeting or poll at which the instrument, authority or certificate is to be used or the power is to be exercised.

## **11 DIRECTORS**

### **11.1 Appointment of Directors**

- (a) Unless otherwise determined by the Company in general meeting, the number of Directors shall be not less than 3 nor more than 10.
- (b) Each Director shall be a natural person.
- (c) A Director (including an alternate Director) is not required to hold any shares in the capital of the Company.
- (d) A person (other than a retiring Director or a person appointed in accordance with Clause 11.1(f) is not eligible to be elected as a Director at a general meeting, unless a member intending to propose him, has at least 30 Business Days before the meeting left at the registered office of the Company, a notice in writing duly signed by nominee, giving his consent to the nomination and signifying his candidature for the office or signed by the member giving notice of intention to propose him.
- (e) Notice of each candidature shall at least 7 days prior to the meeting at which the election is to take place, be given to all members.
- (f) The Directors may at any time appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number determined in accordance with this Constitution.

- (g) Any Director appointed in accordance with Clause 11.1(f) shall (unless in the meantime he has been appointed a managing Director) hold office only until the next following annual general meeting and shall then be eligible for re-election.

## **11.2 Remuneration and Expenses**

- (a) Subject to Clause 11.2(b), the Directors shall be paid by way of fees for their services as Directors out of the funds of the Company:
  - (i) such rate per annum as the Company in general meeting determines; or
  - (ii) such aggregate sum not exceeding the maximum sum as the Company in general meeting determines, to be divided among them in such proportion and manner as they agree or in default of agreement, equally,

**PROVIDED** that this Clause 11.2(a) shall not have application to the determination of remuneration payable from time to time to managing Directors or other executive Directors.

- (b) The non-executive Directors' fees for their services as Directors determined in accordance with Clause 11.2(a) shall be by fixed sum and not a commission on or percentage of profits or operating revenue.
- (c) All Directors' fees shall accrue on a day to day basis and be apportionable accordingly.
- (d) The total amount of Directors' fees shall not be increased except with the prior approval of the Company in general meeting where particulars of the amount of the proposed increase and the new maximum sum that may be paid to the Directors as a whole have been given to the members in the notice convening the meeting.
- (e) Where a Director (other than a managing Director or executive Director) being willing renders or is called upon to perform extra services or to make any special exertions in going or residing outside the State or otherwise for the Company, the Directors may arrange with that Director, a special fee or remuneration by payment of a stated sum of money determined by the Directors and that special fee or remuneration may be either in addition to or in substitution for his fees or remuneration or his share in the fees or remuneration provided for in this Constitution. The payment shall be disclosed to the members at the next annual general meeting.
- (f) A Director shall, in addition to his fees or remuneration or his share in the fees or remuneration provided for in this Constitution, be reimbursed out of the funds of the Company, such reasonable travelling, accommodation and other expenses as he may incur when travelling to or from and attending meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.
- (g) In addition to any other fees or remuneration otherwise provided by this Constitution, on or after a Director ceases to hold office by reason of retirement, death or otherwise, the Directors shall have the power to pay him, or in the case of his death, his widow, dependants or legal personal representatives, such sum as the Directors shall think fit, but in any event, not exceeding the sum permitted by or

approved in accordance with the Corporations Law, and such sum may be in the form of a lump sum or be paid by instalments.

### **11.3 Vacation of Office and Conflict of Interest**

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Law, the office of a Director becomes vacant if he:
- (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) resigns his office by notice in writing to the Company or refuses to act;
  - (iii) ceases to hold office as an executive of the Company (in the case of an executive Director); or
  - (iv) is absent from the meetings of the Directors for a continuous period of 6 calendar months without special leave of absence from the Directors and the Directors resolve that his office shall be vacated, but attendance by his alternate shall be deemed to be attendance by him for the purposes of this Clause 11.3(a)(iv).
- (b) A Director (including an alternate Director) in his capacity as such, shall not vote in respect of any contract or arrangement or proposed contract or arrangement in which he has, directly or indirectly, a material interest and shall not be present while the matter is being considered at a meeting of Directors unless permitted to do so in accordance with the Corporations Law and the Listing Rules. The provisions of section 232A of the Corporations Law shall apply in the case of any such material interest.
- (c) A Director may, notwithstanding his office as such and the fiduciary relationship established by that office:
- (i) hold any other office or place of profit (except that of auditor of the Company) in the Company or in any body corporate in which the Company is a member or otherwise interested, provided however that a Director shall not without the approval of the Directors hold the office of a director of any other company which in the opinion of the Directors is for the time being in active competition with the Company;
  - (ii) enter into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and may participate in any association, institution, fund, trust, scheme or convenience for past or present employees or Directors of the Company; and
  - (iii) subject to Clause 11.3(e), retain for his own benefit, any profit arising from any such other office or place of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to such office or place of profit or received by reason of participation in any such association, institution, fund, trust, scheme or convenience.

- (d) Any contract or arrangement entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.
- (e) A Director who is in any way directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Company or who holds any office or possesses any property by which, directly or indirectly, duties or interests might be created in conflict with his duties or interests as Director, shall declare the nature of his interest or the nature, character and extent of the conflict (as the case may be) in accordance with section 231 of the Corporations Law.

#### **11.4 Rotation of Directors**

- (a)
  - (i) An election of directors shall take place each year. A Director (other than the managing Director) shall not retain office for a period in excess of 3 years or beyond the third annual general meeting following his election (whichever is the longer period) without submitting himself for re-election.
  - (ii) Subject to paragraph (i) and Clause 11.4(d) at the annual general meeting in each year, one-third of the Directors in office or if their number is not a multiple of 3, the number nearest to one-third, shall retire from office.
- (b) A retiring Director may act until the conclusion of the meeting at which he retires and is eligible for re-election.
- (c) The Directors to retire by rotation at each annual general meeting are those who have been longest in office since their election, but as between Directors who have been in office an equal length of time, those to retire shall, in default of agreement between them, be determined by lot in any manner determined by the Chairman of Directors or if he is not able and/or willing to act, by the Deputy Chairman.
- (d) For the purpose of ascertaining the number and identity of the Directors to retire by rotation, neither a managing Director, a Director appointed by the Directors to fill a casual vacancy or as an addition to the existing Directors, nor a Director whose office has become vacant pursuant to section 228 of the Corporations Law shall be taken into account.

#### **11.5 Powers of Directors**

- (a) Subject to the Corporations Law, the management of the business of the Company is vested in the Directors and they may exercise all such powers of the Company and do all such acts and things as the Company is by this Constitution or otherwise authorised to exercise and do.
- (b) Without limiting the generality of Clause 11.5(a), the Directors may exercise all powers of the Company to borrow or raise or secure the payment or repayment of any sum or sums of money, to charge, mortgage or otherwise encumber any or all of the undertakings, property, assets or business of the Company (both present or future whatsoever and wheresoever situate) or all or any of its uncalled capital and to issue notes, bonds, debentures or any other securities whatsoever or give any

other security or guarantee for any debt, liability or obligation of the Company or of any other person, in each case in such manner and on such terms and conditions as the Directors in their absolute discretion think fit.

- (c) Subject to section 241 of the Corporations Law, where a Director or other officer of the Company becomes personally liable for the payment of a sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or other security over the whole or any part of the Company's undertakings, property or assets (present or future) including its uncalled capital, by way of indemnity to secure him against any loss in respect of that liability.

## 11.6 Proceedings of Directors

### (a) Regulation and Notice of Meetings

- (i) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (ii) Without limiting the generality of Clause 11.6(a)(i), a Directors meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw his consent within a reasonable period before the meeting. Each of the Directors taking part in such conference must be able to hear each of the other Directors taking part during the meeting. The provisions of this Constitution relating to proceedings of Directors shall apply so far as they are capable of application (*mutatis mutandis*) to such conferences.
- (iii) A Director may, and the Secretary shall upon the request of a Director, convene a meeting of the Directors.
- (iv) Notice of meetings of Directors shall be given to each Director by delivering or posting the notice or by sending the notice by communication service to the last address or communication service number (as the case may be) within Australia provided by the Director for the purposes of this Clause 11.6(a).
- (v) If any of the Directors consider that a meeting of the Directors is required upon short notice for consideration of urgent business, notice of such meeting and of the general nature of the business for discussion at it may be given by telephone or communication service to each Director at his last telephone number within Australia provided by the Director for the purposes of this Clause 11.6(a).
- (vi) Notice of meetings of Directors may be given to each Director at his last address or communication service or telephone number outside Australia provided by the Director for the purposes of this Clause 11.6(a) **PROVIDED HOWEVER** that the Director or Secretary convening the meeting of Directors is not in any way obliged to give notice of the meeting to a Director at such an address or communication service or telephone number outside Australia.

- (vii) For the purposes of this Clause 11.6(a), "communication service" means any facsimile, telex, electronic post service or other electronic means of written communication.
- (viii) Neither the accidental omission to give notice, the non-receipt of notice nor the non-availability of a Director to receive notice shall, invalidate any meeting of Directors to which the notice relates.
- (ix) Unless otherwise determined by the Directors, 3 Directors shall constitute a quorum at a meeting of Directors.

(b) **Chairman**

- (i) The Directors may elect a Chairman and Deputy Chairman and may determine the periods during which they are to hold office respectively.
- (ii) The Chairman or Deputy Chairman may be removed by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors.
- (iii) The Chairman of Directors or in his absence the Deputy Chairman, shall preside at meetings of the Directors but if at the time of any meeting, no such Chairman or Deputy Chairman has been elected and is in office or if at any meeting, no such Chairman or Deputy Chairman is present within fifteen minutes of the time appointed for holding such meeting, the Directors present shall choose one of their number to be chairman of that meeting.

(c) **Determination of Questions**

- (i) Subject to this Constitution, questions arising at a meeting of the Directors shall be decided by a majority of votes of the Directors present and competent to vote on them and any such decision shall for all purposes, be deemed to be a decision of the Directors.
- (ii) In the case of an equality of votes, the Chairman of the meeting has a casting vote, in addition to his deliberative vote, unless only 2 Directors are present or are competent to vote on the question at issue, in either of which cases, the Chairman shall not have a casting vote.

(d) **Delegation of Powers**

- (i) The Directors may delegate any of their powers to committees consisting of such Director or Directors as they think fit and may at any time revoke that delegation.
- (ii) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Directors.
- (iii) Subject to Clause 11.6(d)(ii), the meetings and proceedings of a committee consisting of 2 or more Directors shall be governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are capable of application (*mutatis mutandis*) to meetings and proceedings of committees.

**(e) Signed Document Passing Resolution**

- (i) Subject to the provisions of the Corporations Law, a resolution in writing signed by all the Directors or all the members of a committee of Directors who are entitled to vote on the resolution and who are for the time being present within Australia (but if any Director is absent from Australia, signed by his alternate Director, if he has an alternate Director present within Australia) is as valid and effectual as if it had been passed at a meeting of the Directors or committee duly called and constituted and may consist of several documents in like form each signed by one or more of the Directors or the members of a committee, as the case may be, and where the document is so signed, the document shall be deemed to constitute a minute of that meeting.
- (ii) The meeting referred to in Clause 11.6(e)(i) shall be deemed to be held on the day on which the document was signed and at the time at which the document was last signed or if the Directors or the members of a committee signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director or a member of a committee, as the case may be.
- (iii) For the purposes of this Clause 11.6(e), an electronically transmitted facsimile copy of a document, the original of which in the opinion of the Secretary has been apparently signed by a Director or a member of a committee, shall be deemed to be a document signed by such Director or member.
- (iv) A reference in Clause 11.6(e)(i) to all Directors or all members of a committee of Directors does not include a reference to a Director or a member who, at a meeting of Directors or a committee of Directors, would not be competent to vote on the resolution or a reference to an alternate Director whose appointor has signed the document referred to in Clause 11.6(e)(i).

**(f) Defect in Appointment**

All acts of the Directors, a committee of Directors or a member of a committee or a person acting as a Director or committee or member of a committee, are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

**(g) Vacancy in Office**

In the event of a vacancy in the office of a Director, the remaining Director or Directors may act, but if the number of remaining Director or Directors is not sufficient to constitute a quorum at a meeting of Directors, the remaining Director or Directors may act only for the purpose of increasing the number of Directors to that number or of convening a general meeting of the Company but not for any other purpose.

### 11.7 **Managing Director**

- (a) The Directors may appoint one of their number to be a managing Director of the Company for such period and on such terms and conditions as they think fit and, subject to the terms of any agreement entered into between the Company and him, may revoke any such appointment.
- (b) A managing Director while he continues to hold that office is not subject to retirement by rotation nor to be taken into account in determining the rotation of Directors, but subject to the terms of any agreement between the Company and him, he is subject to the same provisions as to resignation and removal as the other Directors of the Company.
- (c) The managing Director's appointment automatically ceases if he ceases for any reason to be a Director.
- (d) Notwithstanding Clauses 11.2(a) and 11.2(b), the remuneration of an executive Director (including a managing Director) shall, subject to the terms of any agreement between the Company and him, be determined by the Directors in such manner and on such terms and conditions as they think fit (whether by way of salary, bonus, commission or participation in profits or a combination of all or any of such ways) but shall not be by way of commission on or percentage of operating revenue.
- (e) The Directors may confer upon a managing Director for the time being, such of the powers conferred on and exercisable by the Directors on such terms and conditions and with such restrictions as they think fit. Any of those powers may be conferred collaterally with or to the exclusion of or in substitution for such powers of the Directors and may be revoked, withdrawn or varied at any time by the Directors.

### 11.8 **Alternate Directors**

- (a) Subject to the provisions of the Corporations Law, a Director may by writing under his hand, appoint a person (whether a member of the Company or not and whether a Director in his own right or not) approved by a majority of the other Directors, to act as an alternate Director in his place on such terms and conditions and for such period as he thinks fit.
- (b) An alternate Director:
  - (i) may at any time be removed or suspended from office by writing under the hand of the Director by whom he was appointed, notwithstanding that the period of the appointment of the alternate Director has not expired;
  - (ii) subject to this Constitution, is entitled to receive notice of meetings of the Directors and to attend and vote at them if the Director by whom he was appointed is not present thereat and where he is also a Director in, his own right, to have a separate vote on behalf of the Director he is representing in addition to his own vote;
  - (iii) may exercise all the powers reposed in the appointor (subject to any conditions or restrictions imposed in that regard by the appointor) but shall not have the power to appoint an alternate Director;

- (iv) subject to Clause 11.8(c), automatically ceases to be an alternate Director if the Director by whom he was appointed ceases to be a Director;
  - (v) whilst acting as a Director, is responsible to the Company for his own acts and defaults and the Director by whom he was appointed is not responsible for such act or default;
  - (vi) is not entitled to receive any fees or remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, but shall be entitled to be reimbursed out of the funds of the Company for all reasonable travelling, accommodation and other expenses incurred by him in travelling to or from and attending meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company; and
  - (vii) shall not be taken into account separately from the Director by whom he was appointed in determining the rotation of Directors or the number of Directors, but subject to this, an alternate Director shall be counted in determining a quorum for the purposes of Clause 11.6(a)(vi) except where the alternate Director is also a Director in his own right.
- (c) Where the Director by whom an alternate Director was appointed retires by rotation but is re-elected by the meeting at which he retires, the appointment of the alternate Director continues to operate after his re-election or deemed re-election as if the appointor had not so retired.

#### **11.9 Associate Directors**

- (a) The Directors may appoint a person (whether a member of the Company or not) to be an associate Director and may at any time remove a person so appointed.
- (b) The Directors may define and limit the duties, powers and remuneration of associate Directors, but the remuneration of an associate Director shall be by fixed sum and not by way of a commission on or percentage of operating profits or revenue.
- (c) An associate Director shall not have any right to attend or vote at meetings of Directors or a committee of Directors except by the invitation and with the consent of the Directors or a committee of Directors.

#### **11.10 Local Management**

- (a) The Directors may provide for the management and transaction of the affairs of the Company in a specified locality whether in Australia or abroad in such manner as they think fit.
- (b) Without limiting the generality of Clause 11.10(a), the Directors may:
  - (i) establish local boards or agencies for managing any of the affairs of the Company in any such specified locality and may appoint persons (whether members of the Company or not) to be members of those local boards or to be managers or agents;

- (ii) delegate to a person so appointed, any of the powers vested in the Directors and may authorise the members for the time being of any such local board or any of them to fill up vacancies and to act notwithstanding such vacancies.
- (c) Any such appointment or delegation by the Directors pursuant to Clause 11.10 may be made on such terms and conditions as the Directors think fit and the Directors may remove a person so appointed and may cancel or vary any such delegation.

### **11.11 Appointment of Attorney**

- (a) The Directors may by power of attorney executed in a manner set out in sections 127(1) or (2) of the Corporations Law, appoint a person or persons (jointly or severally and whether a member or members of the Company or not) to be the attorney or attorneys of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this Constitution) and for such period and on such terms and conditions as the Directors think fit. The Directors may appoint local Directors or agents by communication service in cases of urgency to act for or on behalf of the Company.
- (b) Without limiting the generality of Clause 11.11(a), any such appointment may be made in favour of the Directors or members of the Company or any of the members of a local board or in favour of a body corporate or of the members, directors, nominees or managers of a body corporate or firm or otherwise in favour of any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- (c) Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers for the time being vested in him.

### **11.12 Minutes**

- (a) The Directors shall in accordance with the Corporations Law, cause minutes of all proceedings of general meetings and of meetings of Directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose.
- (b) Except in the case of documents that are deemed to be minutes by virtue of Clause 11.6(e), those minutes shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting.

## **12 SECRETARY**

### **12.1 Appointment by Directors**

The Directors shall appoint at least one Secretary of the Company and may at any time terminate any such appointment(s).

## **12.2 Terms of Office**

A Secretary of the Company holds office on such terms and conditions, as to remuneration or otherwise, as the Directors determine.

## **13 SEAL**

### **13.1 Types of Seals**

- (a) The Company may have a common seal and may have:
  - (i) a duplicate common seal, which shall be a facsimile of the common seal with the addition on its face of the words "Share Seal" or "Certificate Seal"; and
  - (ii) an official seal for use in any place outside the State, which shall be a facsimile of the common seal with the addition on its face of the name of every place where it is to be used.
- (b) The Directors shall provide for the safe custody of all seals in such manner as they think fit.

### **13.2 Use of Seal**

- (a) The seal shall be used only by the authority of the Directors and every document to which the seal is affixed shall be signed by a Director and countersigned by the Secretary or a second Director or by some other person appointed generally or in a particular case by the Directors for that purpose.
- (b) The seal may be affixed to or printed on certificates for shares, options and other securities by mechanical means so as to produce a facsimile of such seal and signatures. In addition, the Directors may determine generally or in a particular case, that the seal and the signatures of the Director, Secretary or other person appointed by the Directors for the purpose of signing documents to which the seal is affixed, may be affixed, printed or otherwise written on documents by a specified mechanical means so as to produce a facsimile of such seal and signatures.

### **13.3 Cheques and Negotiable Instruments**

All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, shall be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the Company or not) in such manner as the Directors shall from time to time determine.

## **14 RESERVES**

### **14.1 Establishment and Application of Reserves**

The Directors may:

- (a) before declaring a dividend, set aside out of the profits of the Company, such sums as they think fit as reserves to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied;
- (b) pending any such application, use the reserves, at the discretion of the Directors, in the business of the Company or invest the reserves in such investments as the Directors think fit; and
- (c) carry forward so much of the profits remaining as they think ought not be distributed as dividends without transferring these profits to a reserve.

## **15 DIVIDENDS**

### **15.1 Declaration of Dividend**

- (a) The Directors may authorise the payment by the Company to members of such dividends as appear to the Directors to be justified by the profits of the Company. The payment of such dividend shall not require the sanction of a general meeting.
- (b) The Company in general meeting may declare a dividend if and only if the Directors have recommended a dividend.
- (c) A dividend declared by the Company in general meeting shall not exceed the amount recommended by the Directors.

### **15.2 Interim and Preferential Dividends**

- (a) The Directors may authorise the payment by the Company to members of such interim dividends as appear to the Directors to be justified by the profits of the Company. Each interim dividend so paid shall be payable on a date fixed by the Directors.
- (b) The Directors may also pay preferential dividends on shares issued upon terms that preferential dividends are payable on such shares on fixed dates.
- (c) The payment of any such interim dividend or preferential dividend shall not require the sanction of a general meeting.

### **15.3 Payment of Dividends**

- (a) No dividend shall be paid otherwise than out of profits of the Company and a declaration by the Directors as to the amount of profits available for dividends shall be conclusive evidence of the amount so available.
- (b) No dividend or other moneys payable on or in respect of a share shall bear interest against the Company.

- (c) The Directors may deduct from any dividend payable to a member, all sums of money (if any) presently payable by him to the Company and due and unpaid on account of calls in relation to shares held by him in the Company.
- (d) A transfer of shares shall not pass the right to any dividend declared on those shares before registration of their transfer.
- (e) The Directors may retain the dividends payable upon shares in respect of which any person under Clause 7 is entitled to be registered as the holder of those shares or is entitled to transfer such shares to some other person, until such person shall become registered as the holder of them or shall duly transfer the shares concerned in accordance with that Clause.
- (f) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement relating to the Restricted Securities, the holder of the Restricted Securities shall not be entitled to any dividend in respect of the Restricted Securities.
- (g) Any dividend, interest or other money payable in cash in respect of shares may be paid:
  - (i) by cheque sent through the post or by courier to the address of the member shown in the register or in the case of joint holders, to the address of that holder whose name stands first in the register in respect of the joint holding, or to such address as the holder or joint holders in writing directs or direct;
  - (ii) by electronic transfer; or
  - (iii) in such manner as the Directors determine.

#### **15.4 Dividend Entitlement**

- (a) Subject to the rights of persons (if any), entitled to shares with special rights as to dividend, all dividends shall be declared and paid proportionately according to the amounts paid (not credited as paid) of, the total amounts paid or payable (excluding amounts credited) on the shares in respect of which the dividend is paid, including where a larger amount is paid up on some shares than on others.
- (b) All dividends shall be apportioned and paid proportionately to the amounts paid (not credited as paid) of the total amounts paid or payable (excluding amounts credited) on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.
- (c) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this Clause 15.4 as paid or credited as paid on the share.

#### **15.5 Dividends In Specie**

- (a) Any general meeting of the Company declaring a dividend may, acting on the prior recommendation of the Directors, or the Directors, in declaring any dividend (including an interim dividend), may direct payment of the dividend wholly or

partly by the distribution of specific assets, including paid up shares in, or notes or debentures of, the Company or any other corporation or in any one or more ways, and may direct that the dividend payable in respect of any particular shares shall be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares shall be paid in cash.

- (b) Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and in particular, may fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed, in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

## **15.6 Dividend Plans**

- (a) Notwithstanding any other provision of this Constitution (except for Clause 21) and in particular, notwithstanding Clauses 15.1 to 15.5 inclusive, but subject to the requirements of the Corporations Law, the Directors may in their absolute discretion establish on such terms and conditions as they think fit:
- (i) plans for cash dividends paid by the Company in respect of shares issued by the Company and interest paid by the Company on unsecured notes or debenture stock issued by the Company to be reinvested by way of subscription for shares in the Company; and
  - (ii) a plan permitting holders of ordinary shares to the extent that his ordinary shares are fully paid up, to have the option to elect to forgo his right to share in any dividends (whether interim or otherwise) payable in respect of such shares and to receive instead an issue of ordinary shares credited as fully paid up to the extent as determined by the Directors.
- (b) The Directors may in their absolute discretion, modify, suspend or terminate all or any plans established pursuant to Clause 15.6(a) from time to time on not less than one month's written notice to all members of the Company.
- (c) The powers given to the Directors by this Clause 15.6 are additional to the other powers reposed in the Directors by this Constitution and shall not in any way be limited, restricted or otherwise affected by Clauses 15.1 to 15.5 inclusive.

## **16 CAPITALISATION OF PROFITS**

The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

## **17 ACCOUNTS AND AUDIT**

### **17.1 Requirements as to Accounts and Audits**

The Directors shall ensure that the requirements of the Corporations Law as to accounts and audit are complied with by the Company.

## **17.2 Auditor**

The auditor of the Company or his agent authorised by him in writing for the purpose, is entitled to attend general meetings, to receive all notices of and other communications relating to general meetings which a member is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as such, but does not have the right to vote at any general meeting.

## **17.3 Inspection of Company Records**

- (a) Subject to the provisions of the Corporations Law, the Directors shall determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open to inspection by the members and other persons.
- (b) A member or other person (not being a Director) has no right to inspect any such documents of the Company except as conferred by statute or authorised by the Directors and is not entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.

## **18 NOTICES**

### **18.1 Mode of Service**

A share certificate, cheque, warrant, notice or other document may be given by the Company to any member either by serving it on him personally or by sending it by post or courier to him at his address as shown in the register or the address supplied by him to the Company for the giving of notices to him or by sending it to any facsimile number or electronic address given to the Company by the member. In the case of joint holders, such documents may be served on the joint holder whose name appears first in the register in respect of the share. In the case of an overseas shareholder, such documents shall be forwarded by air mail, recognised couriered air service, facsimile transmission, electronic mail or in another way that ensures it will be received quickly.

### **18.2 Deemed Receipt of Notice**

- (a) A document sent by ordinary post, courier, air mail or recognised couriered air service in accordance with this Clause 18 by the Company shall be deemed to have been received or served on the day next following that on which it was posted or dispatched and in proving delivery or service, it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped (if posted) and was posted or dispatched.
- (b) In the case of a facsimile transmission, service shall be deemed effected at the time when transmission of the facsimile is completed by the Company.
- (c) In the case of an electronic mail transmission, service shall be deemed effected on the day and at the time specified in a delivery report, or if no delivery report is received, on the next business day (but is not deemed to have been received if a delivery report indicates a delivery failure).

**18.3 Proof of Service**

A certificate in writing signed by a Director, Secretary or other officer of the Company that:

- (a) a document or its envelope or wrapper was so addressed and stamped (if posted) and was posted or dispatched; or
- (b) a document was sent by facsimile transmission and that a transmission report was produced by the machine from which it was sent which indicated that the facsimile was sent in its entirety; or
- (c) a document was sent by electronic mail, and that a delivery report was received indicating the document was delivered, or that no delivery report was received indicating a delivery failure,

shall be prima facie evidence of those facts.

**18.4 Notice of General Meeting of the Company**

- (a) Notice of every general meeting and of any adjournment of it shall be given in the manner authorised by this Clause to:
  - (i) every member;
  - (ii) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of meeting;
  - (iii) every Director; and
  - (iv) the auditor for the time being of the Company.
- (b) Except as required by the Listing Rules, no other person is entitled to receive notices of general meetings.

**18.5 Previous Notice**

A person who by operation of law, or by transfer or other means becomes entitled to be registered as the holder of or to transfer a share, is bound by every notice previously given in respect of that share.

**18.6 Notice on Transmission**

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post or courier addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt or by any like description, at the address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

**18.7 Failure of Member to give Address**

No person who shall have omitted to give his address for registration shall be entitled to receive any notice from the Company.

**18.8 Day of Service**

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service shall unless it is otherwise provided be counted in such number of days or other period.

**19 WINDING UP****19.1 Powers of Liquidator**

- (a) If the Company is wound up whether voluntarily or otherwise, the liquidator may, with the sanction of a special resolution, divide among the members, in specie or kind, the whole or any part of the assets of the Company and may for that purpose, set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such assets of the Company in trustees upon such trusts for the benefit of the members or any of them as the liquidator thinks fit.
- (c) No member shall be compelled to accept any shares or other securities in respect of which there is any liability upon a division or vesting of assets under Clauses 19.1(a) and 19.1(b) respectively.
- (d) If approved by special resolution, any division referred to in this Clause 19.1 may be otherwise than in accordance with the legal rights of the members of the Company. In particular, any class of member may be given preference or special rights or may be excluded altogether or in part. If any division is made otherwise than in accordance with the legal rights of the members, any member who would be prejudiced by the distribution shall have a right of dissent and ancillary rights as if such distribution were a special resolution passed pursuant to the Corporations Law.

**19.2 Distribution of Assets**

If the Company is wound up (whether voluntarily or otherwise) and:

- (a) the assets available for distribution among the members are insufficient to repay the whole of the capital paid up as at the commencement of the winding up, such assets shall be distributed among the members so that the losses shall be borne by the members as nearly as possible in proportion to the capital paid up or which ought to have been paid up on the shares held by them as at the commencement of the winding up;
- (b) the assets available for distribution among the members are more than sufficient to repay the whole of the capital paid up as at the commencement of the winding up, the surplus shall be distributed among the members in proportion to the capital paid up or which ought to have been paid up on the shares held by them as at the commencement of the winding up.

### **19.3 Special Rights**

Clause 19 shall be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

## **20 INDEMNITY**

### **20.1 Officers**

Subject to the Corporations Law, every officer of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer of the Company or in relation thereto, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity or in any way in the discharge of his duties or by reason of or relating to his status as an officer of the Company, but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.

### **20.2 Former Officers**

Subject to the Corporations Law, every former officer of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer of the Company or in relation to such office, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity whilst an officer of the Company or in any way in the discharge of his duties whilst an officer of the Company, or by reason of or relating to his status as an officer of the Company whilst an officer of the Company but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.

### **20.3 Officer of Another Company Upon Request**

Subject to the Corporations Law, every present or former officer of the Company who is or was, at the request of the Company, serving as an officer of another company (whether that company is related to the Company or not) shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer of that other company or in relation to such office, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity whilst an officer of that other company or in any way in the discharge of his duties whilst an officer of that other company, or by reason of or relating to his status as an officer of that other company, whilst an officer of that other company but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.

### **20.4 Indemnity for Proceedings**

Subject to the Corporations Law, but without limiting the generality of Clauses 20.1, 20.2 and 20.3, every officer of the Company shall be indemnified out of the assets of the Company against any liability incurred or suffered by him in defending any civil or criminal proceedings in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Corporations Law granted to him by the Court and where proceedings are commenced but are struck out or are in any other manner discontinued or determined otherwise than by a judgment or conviction against the officer.

## **20.5 Liability as Between Officers**

Subject to the Corporations Law, no Director or other officer of the Company shall be liable for the acts, deceits, neglects or defaults of any other Director or officer of the Company, any loss or expenses happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company, the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested, any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited or left, any other loss or damage which occurs in the execution of the duties of his office or for joining in any receipt or other act for conformity, unless arising from his own negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

## **20.6 No Abrogation of Indemnity**

Nothing in this Constitution shall be construed to lessen or abrogate any indemnity or protection given or authorised to Directors or officers of the Company by law.

## **21 LISTING RULES**

If the Company is a Listed Company, the following apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules requires to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and they do not contain such provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.