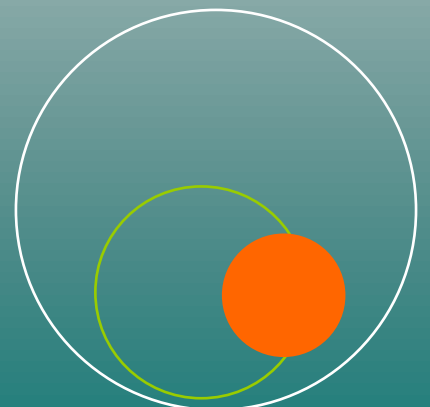




Constitution of IMB Ltd

Trading as IMB Bank
ABN 92 087 651 974

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Constitution

of

IMB Ltd

a company limited by shares and guarantee

1 Preliminary

Definitions

1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

Article means an Article of this Constitution.

Board means the Board of Directors of the Company.

Borrower means a person who has obtained a Loan from the Company and includes 2 or more persons who have jointly obtained financial accommodation from the Company.

Company means IMB Ltd.

Constitution means this Constitution as amended from time to time, and a reference to a particular Article has a corresponding meaning.

Deposit means a sum of money deposited with the Company.

Depositor means a person who has funds on deposit and includes 2 or more persons who jointly have funds on deposit.

Director means an individual holding office as a director of the Company.

Directors means all or some of the Directors acting as a Board.

Executive Director means an individual appointed as an executive director under Article 15.25.

Loan includes any form of financial accommodation.

Managing Director means an individual appointed as a managing director under Article 15.25.

Member means any person who is a member of the Company by way of guarantee whose name is for the time being entered in the Register of Members as a member of the Company, and includes a Shareholder Member.

Part means a Part of this Constitution.

Preference Share means a share issued upon such terms and conditions as the Board may determine, with the rights, privileges, obligations and liabilities set out in Article 4.4.

Prescribed Interest Rate means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means the then current 90 day bank bill swap rate.

Redeemable Preference Share means a share issued upon such terms and conditions as the Board may determine, with the rights, privileges, obligations and liabilities set out in Article 4.7.

Register of Members means the register of Members of the Company under the Corporations Act.

Registered Office means the registered office of the Company.

Representative means, in the case of a body corporate Member that:

- (a) is a Shareholder Member, a person appointed to represent that Member at a general meeting of the Company in accordance with the Corporations Act; and
- (b) is not a Shareholder Member, a person appointed to represent that Member at a general meeting of the Company under Article 3.17.

Secretary means an individual appointed under Article 16.1 as secretary of the Company and includes the person holding the office of secretary at the time of the adoption of this Constitution, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Section means a section of the Corporations Act.

share means any share in the capital of the Company including ordinary Shares, Preference Shares, Redeemable Preference Shares and any other type of share issued by the Company.

Share means an ordinary share in the capital of the Company.

Shareholder Member means any Member of the Company who is a member of the Company by way of both shares and guarantee.

Interpretation

1.2 In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word “person” includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a law includes regulations and instruments made under the law;

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- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
 - (f) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time; and
 - (g) a reference to an amount paid on a share includes an amount credited as paid on that share.

1.3 Unless the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

1.4 Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.5 This Constitution is divided into Parts as indicated by its contents.

Replaceable rules not to apply

1.6 Unless specifically stated to apply elsewhere in this Constitution, the provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Membership

2.1 Members of the Company shall consist of persons who are:

- (a) members by way of guarantee alone; and
- (b) Shareholder Members.

All persons who are Members of the Company are members by way of guarantee.

3 Members

3.1 Every person who, according to the Company's records was a member of the Company immediately prior to the adoption of this Constitution is a Member of the Company.

3.2 The Directors may admit any person as a Member upon the person complying with the requirements of Articles 3.3 and 3.4 and agreeing to be bound by this Constitution.

Application for membership

- 3.3 A person who wishes to become a Member must complete and lodge with the Company, at the Registered Office or any branch office or agency of the Company, an application in the form approved by the Board.
- 3.4 Where the person is seeking to become a Depositor the person must also tender a minimum amount of \$1.00 to the Company, which, on membership being granted, will constitute a Deposit.
- 3.5 The Board may refuse any membership application and need not give a reason for refusal. If an application for membership is refused, any amount lodged will be returned to the applicant without interest.

Approval of application and admission to membership

- 3.6 Subject to the Corporations Act, the Board or its delegate may approve applications for membership as a Member in accordance with the procedures adopted by the Board.
- 3.7 On approval of an application for membership as a Member the Board or the delegate approving the application must:
- (a) allocate to the applicant a membership number; and
 - (b) enter in the Register of Members the name of the applicant and such other particulars as the Board and the Corporations Act requires.
- 3.8 Following approval of an application, a person becomes a Member of the Company when their name is entered in the Register of Members.

Delegation

- 3.9 The Board may delegate to any committee of the Board or to any officer or officers of the Company the power to approve or reject applications for membership.
- 3.10 The delegation of this power may be made concurrently to any number of officers of the Company and does not exclude the right of the Board to consider and to approve or reject any application for membership.

Minors

- 3.11 The Company may admit a minor as a Member.
- 3.12 A Member who is a minor may not:
- (a) vote at a meeting of the Company; or
 - (b) hold office in the Company.

Joint Members

- 3.13 The Company may admit 2 or more persons to membership as joint Members.

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- 3.14 The persons constituting joint Members may determine the order in which their names are to appear in the Register of Members. If they do not determine the order, the Company may enter the names in the order it considers to be appropriate.
- 3.15 The joint Member who is named first in the Register of Members will be the primary joint Member. Notices or other documents may be given or sent to the primary joint Member and for all purposes under this Constitution and, to the maximum extent permissible, the Corporations Act, membership is taken to be solely that of the primary joint Member.
- 3.16 Any Deposit held jointly by 2 or more Members is deemed to be held by all such Members as joint tenants.

Body corporate Members

- 3.17 A body corporate may be a Member of the Company and may by notice to the Company appoint a person to represent it at meetings of Members at which it is entitled to attend and vote.
- 3.18 The appointment of the Representative must be in writing under the common seal of the body corporate, or as otherwise permitted by the body corporate's constitution, or under the hand of a duly authorised attorney of the appointor. An appointment may be a standing one.
- 3.19 The original, or a copy certified as a true copy by an officer of the body corporate, of:
- (a) the notice of the appointment; and
 - (b) any power of attorney under which the appointment is executed,
- must be lodged with the Secretary of the Company at least 48 hours, or other longer period permitted by legislation, before any meeting at which the person is to represent the body corporate.
- 3.20 A person appointed under Article 3.17 is entitled to exercise the same rights of voting as a Member of the Company and is eligible to be appointed as a Director if the person holds the qualifications required for holding office as a Director.

Application fees

- 3.21 Except as expressly provided in this Constitution, a Member is not required to make any payment, or acquire any share or interest prior to exercising the Member's rights of membership. No application fees or admission fees are payable for admission to membership other than in respect of:
- (a) any amount to be paid upon subscription or issue of shares which qualify a person for membership as a Shareholder Member;
 - (b) any loan application fees payable on application for a loan under Article 10.3;

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- (c) a minimum Deposit as specified in Article 3.4; and
 - (d) any fee imposed under Article 7.2.

Dormancy

- 3.22 The Board may, by resolution, determine a person's account to be dormant if no Member initiated transactions have been made within a period of at least 6 years or any longer period provided for by legislation.
- 3.23 The Board must ensure that, at least 1 month before an account is declared dormant, a notice to that effect is sent to the Member at the Member's last known address as shown in the Register of Members.
- 3.24 A person who has had an account declared dormant will be entitled to have their membership and account fully reinstated on application unless the money in the account has been dealt with in accordance with the relevant law dealing with unclaimed money.

Cessation of membership

- 3.25 A Member will cease to be a Member of the Company:
 - (a) if the person is expelled in accordance with this Constitution;
 - (b) where any contract of membership is rescinded on the grounds of misrepresentation or mistake;
 - (c) where the Member is a body corporate, if the Member is dissolved or otherwise ceases to exist, has a liquidator or provisional liquidator appointed to it, or is unable to pay its debts;
 - (d) if the person becomes bankrupt or insolvent or makes an arrangement or composition with his creditors generally; or
 - (e) on death.

The Company is to record that a Member has ceased to be a Member pursuant to this Article 3.25 promptly following the Company being aware of the event giving rise to the cessation of membership.

- 3.26 Unless membership is held and continues to be held in another capacity, a Member will cease to be a Member of the Company:
 - (a) if the person fails to pay any money to the Company which may be required to be paid on approval as a Member;
 - (b) if the person's account has been determined to be dormant under Article 3.22 and has not been reinstated;
 - (c) if the person was admitted to membership as a Member because the person is also a Depositor, when the whole of the Deposit and all interest thereon are withdrawn from the Company; or

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- (d) if the person was admitted to a membership as a Member because the person is also a Borrower, when the whole of the person's Loan from the Company and all interest and fees payable thereon have been repaid.

Death of a Member

3.27 Subject to the Corporations Act, the estate of a deceased Member:

- (a) remains liable to the Company for the amount of any unpaid financial accommodation provided by the Company to the deceased Member; and
- (b) retains the right to any entitlements due from the Company.

3.28 The Company may make payments out of the account of a deceased Member in accordance with the Banking Act 1959.

Termination of membership

3.29 A Member may, prior to the commencement of winding up of the Company by notice in writing to the Company, resign membership with immediate effect.

3.30 The Board may by notice in writing to the Member, terminate the membership of any Member where:

- (a) the Member has failed to discharge their obligations to the Company whether under this Constitution or arising out of any contract; or
- (b) the Member has been guilty of conduct detrimental to the Company.

3.31 The Board may not resolve to expel a Member until it has given the Member:

- (a) 14 days' notice in writing specifying the intention to propose the resolution, the grounds of the resolution and the time and place of the meeting at which the Board resolution will be proposed; and
- (b) an opportunity of being heard at the Board meeting.

3.32 At the Board meeting the Member is entitled:

- (a) to be present with or without a legal representative; and
- (b) to be heard either in person or through the Member's legal representative.

3.33 An expelled Member has the right to appeal in accordance with the provision of Articles 10.7 to 10.9.

3.34 Any money standing to the credit of a Member who has been expelled, after satisfaction of all liabilities and obligations of the Member, will be repaid to the Member.

4 Shareholder Members

4.1 A Member who acquires shares and whose name is entered in the Register of Members as a holder of shares shall be a Shareholder Member of the Company.

Directors to issue shares

4.2 Subject to the Corporations Act, this Constitution and any special rights conferred on the holders of any shares or class of shares:

- (a) the issue of shares in the Company is under the control of the Directors and the Directors may issue or dispose of shares to such persons at such times and on such terms and conditions and having attached to them such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise as the Directors think fit;
- (b) the Directors may grant to any person an option over shares or pre-emptive rights during such time and for such consideration as they think fit; and
- (c) the Directors have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.

Preference Shares

4.3 The Company may issue Preference Shares upon such terms and conditions as the Board may determine at the time of such issue.

4.4 The holder of a Preference Share will have all of the rights of a holder of Shares, and:

- (a) the right to receive a distribution of profits by way of dividends or interest on a non-cumulative basis in priority to Shares at the rate fixed by the Board at the time of issuing the Preference Shares;
- (b) the right to receive interest out of the revenue of the Company as determined by the Board; and
- (c) such other rights as the Board may determine at the time of issuing the Preference Shares.

4.5 The Company may issue different classes of Preference Shares provided that, in relation to the return of capital and any distribution of surplus assets and profits in the winding up of the Company or upon any reduction of capital, each class of Preference Share will rank equally with the other classes of Preference Shares.

Redeemable Preference Shares

4.6 The Company may issue Redeemable Preference Shares upon such terms and conditions as the Board may determine at the time of issue.

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- 4.7 The holder of a Redeemable Preference Share will have all of the rights of a holder of Shares, and:
- (a) the right to receive a distribution of profits by way of dividends or interest on a non-cumulative basis in priority to Shares and Preference Shares, at the rate fixed by the Board at the time of issuing the Redeemable Preference Shares;
 - (b) the right to receive interest out of the revenue of the Company as determined by the Board; and
 - (c) such other rights as the Board may determine at the time of issuing the Redeemable Preference Shares.
- 4.8 The Company may issue different classes of Redeemable Preference Shares provided that, in relation to the return of capital in the winding up of the Company, each class of Redeemable Preference Share will rank equally with the other classes of Redeemable Preference Shares, and in priority to Shares and Preference Shares.
- 4.9 The Company may only redeem Redeemable Preference Shares:
- (a) on the terms on which they are on issue;
 - (b) if the Redeemable Preference Shares are fully paid up; and
 - (c) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

Share and option certificates

- 4.10 The Company must issue to each Shareholder Member and option holder one or more certificates for the shares and options held by the person. The Company is not required to issue more than one certificate or statement for shares or options held by several persons.
- 4.11 Delivery of a certificate for a share or option to one of several joint Shareholders is sufficient delivery to all such holders.

Joint holders of shares

- 4.12 Where two or more persons are registered as the joint holders of shares then they are deemed to hold the shares as joint tenants with rights of survivorship.
- 4.13 The joint Shareholder Member who is named first in the Register of Members will be the primary joint Shareholder Member. Notices or other documents may be given or sent to the primary joint Shareholder Member and for all purposes under this Constitution and the Corporations Act membership is taken to be solely that of the primary joint Shareholder Member.

4.14 The Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate in respect of shares jointly held.

Cessation of membership

4.15 A Shareholder Member ceases to be a Member immediately if the person ceases to hold any shares and such person does not remain as a Member by way of guarantee alone.

Variation of rights

4.16 If the share capital of the Company is divided into different classes of shares, the rights attached to a class, unless otherwise provided by the terms of issue of the shares of that class, may be varied or cancelled in any way with:

- (a) the consent in writing of the holders of at least three-quarters of the issued shares of that class; or
- (b) the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (c) For the purposes of this Article 4.16, where the issued shares of a class carry no voting rights, at a separate meeting of the holders of the shares of that class each holder of such shares has one vote, regardless of the number of shares held.

4.17 The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless otherwise:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act.

4.18 The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every separate meeting of the holders of a class of shares except that a quorum is constituted by at least 25 persons who represent at least 10% of the Shareholder Members of the class (unless only one person holds a share of the class, in which case that person constitutes a quorum).

Death of a Shareholder Member

4.19 Subject to the Corporations Act, the estate of a deceased Shareholder Member remains liable to the Company for any unpaid amount on any share.

Maximum permissible shareholding

- 4.20 The maximum permissible shareholding of a holder of Shares (“Shareholder”) is 5% of all Shares issued by the Company. If a Shareholder has more than the maximum permissible shareholding, the Company must either:
- (a) declare the excess Shares to be forfeited and deal with the excess Shares in accordance with Articles 9.5 to 9.7 and 9.10 to 9.13, with any proceeds of the sale of forfeited Shares to be applied in order of payment of:
 - (i) the expenses of the sale;
 - (ii) any expenses necessarily incurred in respect of the forfeiture;
 - (iii) any calls then due and unpaid;
 - (iv) any money owing to the Company by the Shareholder under any loan documentation,
 - (b) and the balance (if any) must be paid to the Shareholder; or
 - (c) subject to the Corporations Act, cancel the excess Shares and pay to the Shareholder the amount paid up on the Shares together with any other amount to which the Shareholder may be entitled in relation to the Shares.
- 4.21 A Shareholder is not entitled to vote at a meeting of Members during the period that their shareholding exceeds the maximum permissible shareholding.

5 Lien

Lien on share

- 5.1 The Company has a first and paramount lien on every share for:
- (a) all due and unpaid calls and instalments in respect of that share;
 - (b) all money which the Company may be called on by law to pay in respect of that share;
 - (c) all money payable by the Shareholder Member to the Company;
 - (d) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
 - (e) reasonable expenses of the Company in respect of the default on payment,
- and the lien extends to all dividends, rights and other distributions from time to time declared paid or made in respect of that share.

5.2 Nothing in this Constitution prejudices or affects any right or remedy which any law may confer on the Company, and as between the Company and every Shareholder Member, Shareholder Member's executors, administrators and estate wherever constituted or situated any right or remedy which any law confers on the Company is enforceable by the Company.

5.3 The Directors may at any time exempt a share wholly or in part from the provisions of Article 5.1.

Sale under lien

5.4 Subject to Article 5.5, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

5.5 A share on which the Company has a lien may not be sold by the Company unless:

- (a) a sum in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

Transfer on sale under lien

5.6 For the purpose of giving effect to a sale under Article 5.4, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer.

5.7 The Company must register the purchaser as the holder of each share comprised in any such transfer and the purchaser is not bound to see to the application of the purchase money.

5.8 The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share.

Proceeds of sale

5.9 The proceeds of a sale under Article 5.4 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

6 Calls on shares

Directors to make calls

- 6.1 The Directors may make calls on a Shareholder Member in respect of any money unpaid on the shares of that Shareholder Member, if the money is not by the terms of issue of those shares made payable at fixed times.
- 6.2 A call may be made payable by instalments.
- 6.3 The Directors may revoke or postpone a call.

Time of call

- 6.4 A call is to be deemed to be made at the time when the resolution of the Directors authorising the call is passed.

Members' liability

- 6.5 Each Shareholder Member must pay to the Company the amount called on the shares at the time or times and place specified by the Directors.
- 6.6 The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
- 6.7 The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Shareholder Member does not invalidate the call.

Interest on default

- 6.8 If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum and at the place specified by the Directors, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

Fixed instalments deemed calls

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

Differentiation between Shareholder Members as to calls

- 6.10 The Directors may, on the issue of shares, differentiate between the Shareholder Members as to the amount of calls to be paid and the times of payment.

Prepayment of calls

- 6.11 The Directors may accept from a Shareholder Member the whole or a part of the amount unpaid on a share although no part of that amount has been called.

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- 6.12 The Directors may authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Shareholder Member paying the sum.

7 Transfer of shares

Forms of instrument of transfer

- 7.1 Subject to this Constitution, a Shareholder Member may transfer all or any of the Shareholder Member's shares by instrument in writing in any usual or common form or in any other form that the Directors approve.

Registration procedure

- 7.2 The instrument of transfer:

- (a) must be executed by or on behalf of both the transferor and the transferee; and
- (b) must be delivered to the Company for registration, or submitted for registration in any other manner approved by the Directors, at the Registered Office, or any place of business of the Company, accompanied by such fee (if any) as the Directors may require and the information determined by the Directors to show the right of the transferor to make the transfer.

- 7.3 A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the Register of Members in respect of the shares and a transfer of shares does not pass the right to any dividends declared on the shares until registration.

Directors' powers to decline to register

- 7.4 The Directors may decline to register any transfer of shares, without being bound to give any reason whatsoever for so doing and must do so if there is a breach of Article 4.20.

8 Transmission of shares

Transmission of shares on death of holder

- 8.1 In the case of the death of a Shareholder Member:

- (a) the survivor or survivors where the deceased was a joint holder; and
- (b) the legal personal representatives of the deceased where the deceased was a sole holder,

are the only persons recognised by the Company as having any title to the deceased's interest in shares held by that Shareholder Member, but this Article does not release the estate of a deceased joint holder from any

liability in respect of a share held jointly by the deceased with other persons.

Right to registration on death or bankruptcy

- 8.2 Subject to any applicable legislation, a person becoming entitled to a share in consequence of the death or bankruptcy of a Shareholder Member may, on such information being produced as is properly required by the Directors, either elect to be registered as holder of the share or nominate another person to be registered as the transferee of the share. Where the surviving joint holder becomes entitled to a share in consequence of the death of a Shareholder Member the Directors must, on satisfactory evidence of that death being produced to them, direct the Register of Members to be altered accordingly.
- 8.3 If the person becoming entitled elects to be registered as holder of the share under Article 8.2, the person must deliver or send to the Company a notice in writing signed by the person, in such form as the Directors approve, stating that the person so elects.
- 8.4 If the person becoming entitled nominates another person to be registered as the transferee of the share under Article 8.2, the person must execute a transfer of the share to the other person.
- 8.5 All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the Shareholder Member had not occurred and the notice or transfer was a transfer signed by that Shareholder Member.

Effect of transmission

- 8.6 If the registered holder of a share dies or becomes bankrupt, the personal representative or the trustee of the estate of the registered holder, as the case may be, is, on the production of such information as is properly required by the Directors, entitled to the same dividends, distributions 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 registered holder had not died or become bankrupt.
- 8.7 If two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they are, for the purpose of this Constitution, deemed to be joint holders of the share.

9 Forfeiture of shares

Notice requiring payment of call

- 9.1 If a Shareholder Member fails to pay a call or instalment of a call on the day and at the place appointed for payment of the call or instalment, the

Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, serve a notice on the Shareholder Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

- 9.2 The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

Forfeiture for failure to comply with notice

- 9.3 A share in respect of which the notice under Article 9.1 has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- 9.4 A forfeiture under Article 9.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.
- 9.5 Subject to the Corporations Act, a share forfeited under Article 9.3 (or declared by the Company to be forfeited under Article 4.20(a)) may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit.
- 9.6 If any share is forfeited under Article 9.3 (or declared by the Company to be forfeited under Article 4.20(a)) notice of the forfeiture must be given to the Shareholder Member holding the share immediately prior to the forfeiture and an entry of the forfeiture and its date must be made in the Register of Members.
- 9.7 The Directors may accept the surrender of any share which they are entitled to forfeit on such terms as they think fit and any share so surrendered is deemed to be a forfeited share.

Cancellation of forfeiture

- 9.8 At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

Effect of forfeiture on former holder's liability

- 9.9 A person whose shares have been forfeited:
- (a) ceases to be a Shareholder Member in respect of the forfeited shares and loses all entitlement to dividends and other distributions or entitlements on the shares;
 - (b) if applicable, remains as a Member by way of guarantee alone; and

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- (c) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale.

Evidence of forfeiture

- 9.10 A statement in writing declaring that the person making the statement is a Director or the Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

Transfer of forfeited share

- 9.11 The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- 9.12 On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- 9.13 The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

Forfeiture applies to non-payment of instalment

- 9.14 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.

10 Rights and liabilities of Members

Financial benefit to a related party

- 10.1 The Company must not provide a financial benefit to a related party of the Company except in accordance with the Corporations Act.

Financial accommodation to Members

- 10.2 The Company may provide financial accommodation to its Members.
- 10.3 A person who wishes to obtain financial accommodation must apply to the Company in a manner approved by the Company. The application must be accompanied by such payment as the Board requires.

Approval

- 10.4 The Board will have an absolute discretion to approve or refuse to approve financial accommodation in full or in part or to impose conditions on any approval, without being obliged to give any reasons.

Delegation of power to approve

- 10.5 The Board may delegate its power to any one or more officers or holders of a named office to approve or reject applications for financial accommodation.
- 10.6 The Board must establish a policy for the delegation of the power to approve or reject applications for financial accommodation and the limits, if any, within which officers may exercise any delegated power.

Dispute resolution

- 10.7 The Board must appoint a person to settle disputes between the Company and a Member (in the capacity as a Member), and establish procedures for the settlement of such disputes.
- 10.8 A dispute between the Company and a Member (in the capacity as a Member) where not settled by the Company's internal procedures, will be settled by arbitration in accordance with the Commercial Arbitration Act 1984.
- 10.9 Nothing in Article 10.7 or 10.8 will apply to any dispute as to the construction or effect of the Corporations Act or the Banking Act 1959, or of any mortgage, or of any contract contained in any document other than this Constitution.
- 10.10 For the purposes of Articles 10.7 to 10.9:
- “Company” includes the Board and any officer;
- “Member” includes:
- (a) any person who has ceased to be a Member for not more than three months; and
 - (b) any person claiming by or through a Member or by or through a person referred to in (a).

Charge on Deposits

- 10.11 The Company will have a charge on any Deposit to any account of, and upon any dividend, interest, bonus or rebate payable to, a Member or past Member and on any dividend, interest, bonus or rebate payable to a Member or past Member in respect of any debt due from the Member or past Member to the Company, and may be entitled to appropriate any amount credited or payable to the Member or past Member in or towards payment of any such debt.
- 10.12 The Company will inform a Member:
- (a) at the time the person first makes a Deposit; and
 - (b) at least once a year after that time;

that the Company may charge the credit balance of the Member's Deposit for any debt owed by the Member to the Company.

- 10.13 The provisions of Articles 10.11 and 10.12 are in addition to and not in place of the right of the Company to combine accounts and claim set-off.

Authorised withdrawal

- 10.14 The Company may upon receipt of the necessary documentation from a legal, statutory or Government authority and where required by law, withdraw funds from a Member's account and forward the proceeds to the designated authority. The Company may levy a fee for providing this service.

Recognition of interests

- 10.15 The Company may indicate by making an entry in the relevant account that money deposited is held by a person on trust for some other named person. Where money deposited is held on trust for any person, the trustee (or the trustees who are registered jointly as a Member) will for all the purposes of the Company be regarded as a Member of the Company.
- 10.16 The Company is not to be regarded as being affected by notice of any trust in relation to money deposited whether or not any such entry is made.
- 10.17 The Company is not required to recognise a person as holding a share on any trust, except as required by law.
- 10.18 The Company is not required to recognise any equitable, contingent, future or partial interest in any share or unit of a share or any other right in respect of a share except an absolute right of ownership in the registered holder, whether or not it has notice of the interest or right concerned, except as required by law.
- 10.19 Where shares are held on trust for any person, the trustee (or the trustees who are registered jointly as a Shareholder Member) will for all the purposes of the Company be regarded as a Shareholder Member of the Company.

Application and investment of funds

- 10.20 The Company may apply and manage its funds and make such investments in accordance with the policies of the Company as are approved by the Board and not in contravention of the Corporations Act.

Liability of Members

- 10.21 Subject to Article 10.23, the liability of Members of the Company is limited and each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member or within one year after they cease to be a Member, for payment of the Company's debts and liabilities contracted before they cease to be a Member and of the costs, charges and expenses of the winding up and for adjustment of the

rights of the contributories among themselves, an amount not exceeding the sum of \$1.00.

10.22 In addition to the amount referred to in Article 10.21, Shareholder Members are also liable to pay the amount (if any) unpaid on any shares held by them.

10.23 Article 10.21 does not apply to those Members who are Members by virtue of Article 3.1.

11 General meetings

Annual general meeting

11.1 Annual general meetings of the Company are to be held in accordance with the Corporations Act.

General meeting

11.2 The Directors may convene a general meeting of the Company and the Directors must convene and arrange to hold a general meeting when requisitioned by Members in accordance with the Corporations Act.

Notice of general meeting

11.3 Except where Section 249H(2) applies, at least 21 days notice must be given of a meeting of the Members, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.

11.4 Notice of a meeting of Members must be given in accordance with Section 249J, and the replaceable rule in Section 249J(4) applies.

11.5 A notice of a general meeting must:

- (a) set out the place, date and time of meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and
- (b) state that:
 - (i) a Member who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy;
 - (ii) a proxy need not be a Member; and
 - (iii) a Member (if any) who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes which each proxy is appointed to exercise.

11.6 If a special resolution is to be proposed, the notice of meeting must set out an intention to propose the special resolution and state the resolution.

11.7 The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

Postponement or cancellation of meeting

11.8 Where a general meeting (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

11.9 Written notice of cancellation or postponement of a general meeting must be given to each Member who is entitled to receive, and each other person who is entitled to receive, notice of a general meeting under the Corporations Act or this Constitution and must specify the reason for cancellation or postponement (as the case may be).

11.10 A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

11.11 The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the meeting required to be given by this Constitution or the Corporations Act.

11.12 The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the notice convening the postponed meeting.

11.13 The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by, any Member or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

11.14 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and

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- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

- 11.15 Articles 11.8 to 11.14 (both inclusive) do not apply to a general meeting convened by Members under Section 249F or by the Directors pursuant to a requisition of Members under the Corporations Act.

12 Proceedings at general meetings

Representation of Member

- 12.1 A Member entitled to vote may be present and vote in person or may be represented at any meeting of the Company by:

- (a) proxy;
- (b) attorney; or
- (c) in the case of a body corporate which is a Member, a Representative.

- 12.2 A person may not act as proxy or Representative for more than 3 Members, unless that person is the chairman of the meeting.

- 12.3 Unless the contrary intention appears, a reference to a Member in Part 12 means a person who is a Member, or is a proxy, attorney or Representative of that Member.

Quorum

- 12.4 Subject to Article 12.7, 25 persons entitled to attend and vote at the meeting each being present either as a Member, or as a proxy, attorney or Representative of a Member are a quorum at a general meeting.

- 12.5 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chairman of the meeting, on the chairman's own motion or at the instance of a Member, proxy, attorney or Representative who is present, otherwise declares.

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

- (a) if convened by, or on requisition of, Members, is dissolved; and

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- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and other persons entitled to notice of the meeting.

12.7 At a meeting adjourned under Article 12.6(b), 25 persons each being a Member, or a proxy, attorney or Representative of a Member present at the meeting are a quorum and, if a quorum is not present within 10 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

Appointment and powers of chairman of general meeting

12.8 If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

12.9 If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence): the deputy chairman (if any); a Director chosen by a majority of the Directors present; the only Director present; a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

12.10 The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may determine any dispute about the admission or rejection of a vote (including a vote recorded in a form of proxy);
- (c) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (d) may, having regard where necessary to Sections 250S and 250T, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this Article is final.

Adjournment of general meetings

- 12.11 The chairman may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to a new day, time or place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 12.12 When a meeting is adjourned for 21 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 12.13 Except as provided by Article 12.12, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- 12.14 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.
- 12.15 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

Voting on a resolution

12.16 At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded:

- (a) before the vote is taken;
- (b) before the voting results on the show of hands are declared; or
- (c) immediately after the voting results on the show of hands are declared,

by:

- (d) the chairman;
- (e) not less than 5 Members entitled to vote on the resolution; or
- (f) Members with at least 5% of the votes that may be cast on the resolution of a poll.

On a show of hands, a declaration by the chairman is conclusive evidence of the result.

Questions decided by majority

12.17 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of votes cast by those Members (or the proxies, attorneys or Representatives of those Members) entitled to attend and vote on the resolution are in favour of it.

Poll

- 12.18 If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 12.19 A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately. A poll demanded on any other question shall be taken before the close of the meeting at a time to be fixed by the chairman, and the meeting may continue for the transaction of other business.
- 12.20 For the purposes of determining the result of any poll the chairman may adjourn the meeting for a period not exceeding 14 days.
- 12.21 A demand for a poll may be withdrawn.

Equality of votes - chairman's casting vote

- 12.22 If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or as a proxy, attorney or Representative of a Member. In the event of an equal vote the matter will be decided in the negative.

Offensive material

- 12.23 A person may be refused admission to, or required to leave and not return to, a meeting if the person:
- (a) refuses to permit examination of any article in the person's possession; or
 - (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairman considers to be dangerous, offensive or liable to cause disruption.

Entitlement to vote

- 12.24 Subject to Article 12.25 and any rights or restrictions for the time being attached to any class or classes of shares and irrespective of the number of accounts or shares held or whether the person is the primary joint Member:
- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and

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- (b) on a poll, each Member present in person has one vote and each person present as proxy or attorney or Representative of a Member has one vote for each Member that the person represents.
- 12.25 Subject to the rights or restrictions for the time being attached to any class or classes of shares, a Member is entitled to attend a meeting but is only entitled to vote at that meeting if:
- (a) the Member has held the minimum amount of \$250 on deposit with the Company continuously for a period of at least 90 days immediately preceding the relevant meeting; or
- (b) the Member is the holder of at least 100 fully paid Shares.
- 12.26 A non-Member may be permitted to attend a meeting of Members at the discretion of the chairman, but may not speak at the meeting unless invited to do so by the chairman or if approved by a resolution of the Members.
- 12.27 A Member may be required to provide reasonable evidence to establish their voting rights under Article 12.25.
- 12.28 If a Member has been appointed to act as a Representative, proxy or attorney of another Member, subject to the Corporations Act that person may vote both as a Member and for that other Member if the requirements of Article 12.25 are satisfied.
- 12.29 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

Joint Members' vote

- 12.30 In the case of joint Members, only the vote of the primary joint Member will be accepted, whether they tender a vote or not, and whether the vote is tendered in person or by proxy, attorney or Representative. Any vote tendered by any other joint holder will be excluded.

Vote of Member of unsound mind

- 12.31 If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then subject to satisfactory evidence being provided to the Company the Member's committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

Objection to voting qualification

- 12.32 An objection may not be raised to the right of a person to attend or vote at the meeting or adjourned meeting except at that meeting or adjourned meeting. Any such objection must be referred to the chairman of the meeting, whose decision is final. The chairman may adjourn the meeting

to allow time to assess the eligibility of Members to vote. A vote not disallowed under such an objection is valid for all purposes.

Appointment of proxy

12.33 A Member entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. A proxy need not be a Member.

12.34 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:

- (a) the Member's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

An appointment may be a standing one.

12.35 An undated appointment is to be taken to have been dated on the day it is given to the Company.

12.36 An appointment may specify the way the proxy is to vote on a particular resolution. In that event:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
- (c) if the proxy is the chairman, the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chairman, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Member, this Article does not affect the way that the person can cast any voting rights they hold as a Member.

12.37 Except to the extent that the appointment of a proxy expressly limits the exercise by the proxy of the power to vote at a meeting, a proxy has the same rights to attend, vote and otherwise act at the meeting as a Member attending the meeting in person.

12.38 An appointment of a proxy does not need to be witnessed.

12.39 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

12.40 An instrument appointing a proxy is to be taken to confer authority to demand or join in demanding a poll.

Receipt of proxy and other instruments

12.41 An instrument appointing a proxy may not be treated as valid unless the instrument (and any power of attorney under which the instrument is signed or, in the case of an unregistered power, a copy of that power or authority certified as a true copy) is received by the Company, not less than 48 hours, or other longer period permitted by legislation, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the Registered Office or at any other place specified for that purpose in the notice convening the meeting.

If the notice convening a general meeting specifies a facsimile number to which a proxy and related materials may be sent, then receipt by the facsimile machine on that number of a complete and legible facsimile of the document will be taken as a receipt by the Company at a specified place for the purposes of this Article.

Validity of vote in certain circumstances

12.42 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding:

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument, or of the authority under which the instrument was executed, or of the power; or
- (c) the execution of a transfer of the share in respect of which the instrument or power is given,

if notice in writing of the death, unsoundness of mind, revocation or transfer has not been received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

Director entitled to notice of meeting

12.43 A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares and is entitled to speak at those meetings.

Auditor entitled to notice of meeting

12.44 The Company must give its auditor:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member is entitled to receive.

13 The Directors

Number of Directors

13.1 Subject to Article 13.4, the permissible number of Directors is the number not less than 5 nor more than 10. The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution. The Company in general meeting may by resolution increase or reduce the number of Directors, provided that at no time can that number be reduced to less than 5.

Appointment of Director

13.2 The Company in general meeting may by resolution (or by ballot if required by Article 13.5) appoint any person qualified under Article 13.22 to be a Director. The Directors may at any time appoint any person to be a Director to fill a casual vacancy. The Company may appoint one employee of the Company, nominated by the Board and otherwise qualified under Article 13.22 to be a Director.

13.3 The Directors may waive the requirements of Article 13.22 in the case of a Director appointed to fill a casual vacancy.

13.4 Where the Company merges with or acquires another company under a takeover, scheme of arrangement or any other reconstruction or amalgamation, the Directors may appoint one or more additional Directors each being a person who immediately before the merger or acquisition held office as a director of the other company and without regard to the maximum number of Directors specified in Article 13.1, provided that the number of additional Directors so appointed must not be more than half the number of Directors in office immediately before the merger or acquisition.

Ballot procedures

13.5 At any general meeting where the number of proposed resolutions to appoint or re-appoint a person as a Director is greater than the number of vacancies on the Board at that time, the appointment of Directors is to be determined by ballot in accordance with Articles 13.6 to 13.18.

13.6 Any ballot required by Article 13.5 is to be conducted either:

- (a) at the general meeting at which the resolutions to appoint persons as Directors have been proposed; or
- (b) if the Board so determines, in the period of 2 hours immediately prior to the general meeting provided the results of the ballot are announced at that meeting.

13.7 Where a ballot is to be held, the Board must appoint a returning officer, who may appoint assistant returning officers. A returning officer or assistant returning officer must not be a Director or a candidate in the ballot.

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- 13.8 A candidate in a ballot may appoint a scrutineer and the Board may appoint a maximum of 3 scrutineers. A scrutineer must not be a candidate in the ballot.
- 13.9 A scrutineer must:
- (a) observe the sorting, counting and recording of ballot papers;
 - (b) ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and
 - (c) raise any query with the returning officer regarding any of the ballot papers.
- 13.10 The returning officer is to prepare ballot papers for each ballot held. The order in which the candidates appear on the ballot paper is to be determined by the returning officer by lot. Ballot papers are to contain appropriate instructions as to completion for the benefit of voters.
- 13.11 The returning officer must cause some authenticating mark to appear on each ballot paper prior to their distribution to Members.
- 13.12 A ballot closes at a time specified by the returning officer.
- 13.13 Immediately after the close of a ballot, the returning officer must:
- (a) cause the ballot papers to be scrutinised under the returning officer's supervision and reject any ballot papers found to be informal under Article 13.14;
 - (b) count the votes in accordance with Articles 13.15 and 13.16;
 - (c) prepare and sign a declaration of the ballot as to:
 - (i) the number of ballot papers lodged;
 - (ii) the number of formal votes;
 - (iii) the number of informal votes;
 - (iv) the number of votes cast for each candidate; and
 - (v) the names of those persons appointed as a Director;
 - (vi) deliver the statement to the chairman of the meeting.
- 13.14 A ballot paper is informal if:
- (a) it is not authenticated by the authenticating mark of the returning officer; or
 - (b) it has no vote indicated on it or it does not indicate the Member's preference for a candidate.

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- 13.15 On any ballot, the persons receiving the highest number of votes in accordance with the numbers of vacancies to be filled are appointed as Directors.
- 13.16 In the case of an equality of votes, the person to be appointed as Director must be decided by lot.
- 13.17 The returning officer must preserve ballot papers for at least 3 months after the declaration of any ballot.
- 13.18 No appointment of a Director will be voided on account of any error or omission of the returning officer which did not affect the results of the ballot.

Removal of Director

- 13.19 The Company in general meeting may by resolution under Section 203D remove a Director from office as a Director.

Term of and retirement from office

- 13.20 A Director must retire from office at the start of the third annual general meeting after the Director was last appointed. The term of office of a Director appointed to fill a casual vacancy will end at the start of the next annual general meeting after the Director was appointed to fill the casual vacancy.

Retirement of an additional Director

- 13.21 An additional Director appointed under Article 13.4 must retire at the start of the second annual general meeting following the date of the merger or acquisition and such vacancy shall not be filled unless the number of Directors is reduced to less than that permitted by Article 13.1.

Qualification of Directors

- 13.22 (a) A person is not eligible to be a Director if the person:
- (i) is a minor;
 - (ii) is not:
 - (A) a Member; or
 - (B) the Representative, appointed under section 250D of the Corporations Act, of a body corporate Member;
 - (iii) subject to Article 13.2, is an employee of the Company;
 - (iv) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his creditors or made an assignment of his remuneration for their benefit;

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- (v) is prohibited from being a director of a body corporate by the Corporations Act for a reason other than the person's age;
 - (vi) has been convicted in the last 10 years:
 - (A) of an indictable offence in relation to the promotion, formation or management of a body corporate; or
 - (B) of an offence involving fraud or dishonesty;
 - (vii) has not provided a declaration in such form as the Board may require:
 - (A) as to the person's eligibility for appointment as a Director;
 - (B) as to whether the person has any interest in a contract or a proposed contact with the Company, or holds an office or has an interest in property, whereby, whether directly or indirectly, duties or interests may be created that could conflict with a director's duties; and
 - (C) including all necessary particulars relating to the person for inclusion in the register of Directors kept by the Company;
 - (viii) is a Representative of a body corporate in respect of which a liquidator, receiver, administrator or managing controller has been appointed;
 - (ix) is 3 months in arrears in relation to money due to the Company and has failed to make arrangements for payment satisfactory to the Company;
 - (x) has not been assessed by the Company as a fit and proper person in accordance with the fit and proper policy adopted by the Board of the Company or subsequently is assessed as failing to meet the fit and proper policy adopted by the Board of the Company; or
 - (xi) is subject to an APRA direction that they be removed from office in accordance with the Banking Act 1959 (Cth).
- (b) The qualification of a Director shall be the continuous holding for at least 1 year immediately prior to the date of the Director's appointment of not less than 2,000 fully paid Shares or deposits

totalling not less than \$2,000 and these amounts must be maintained throughout the Director's term of office.

- (c) The 1 year period imposed by Article 13.22(b) does not apply to the subsequent appointment of a Director appointed to fill a casual vacancy.
- (d) A person appointed by the Directors as an additional Director pursuant to Article 13.4 will not be subject to the qualification imposed by Article 13.22(b) but must acquire the relevant shareholding or deposit qualification within 28 days from the date of appointment and continue to be qualified throughout the additional Director's term of office.
- (e) The Directors may at their discretion vary or waive some or all of the requirements of this Article in relation to a particular Director.

Remuneration of Directors

- 13.23 Subject to Article 13.25, the Directors are entitled to be paid out of the funds of the Company, as remuneration for their services as Directors, such sum accruing from day to day as the Company in general meeting determines.
- 13.24 The Directors may determine how the sum for their remuneration is to be apportioned among them (excluding the remuneration of any employee Director in respect of their employment) and how and when it is to be paid.
- 13.25 If the number of Directors in office is greater than the number in office when the Directors' remuneration was last determined (whether at a general meeting or by Article 13.23) each additional Director is entitled, until the remuneration of the Directors is next determined at a general meeting, to be paid as remuneration for services as a Director an amount per annum up to a limit obtained by dividing the aggregate amount paid to the other Directors as remuneration for their services as Directors by the number of the other Directors.
- 13.26 If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director by payment of a fixed sum or salary to be determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under Articles 13.23 to 13.25.
- 13.27 Deleted pursuant to special resolution 5 in general meeting on 28/9/04¹.

¹Clause 13.27 previously read: "The Company shall pay a Director on retirement, or the estate of a Director who dies in office, a retirement benefit in recognition of past services of an amount being the amount permitted to be paid by the Corporations Act without further approval by Members. A retirement benefit paid under this Article is not remuneration to which Article 13.31 applies. This Article does not apply to a Director appointed to fill a casual vacancy."

Director's expenses

13.28 Subject to the Corporations Act, a Director is also entitled to be reimbursed out of the funds of the Company such reasonable expenses as the Director may incur in connection with the business of the Company.

Director's interests

13.29 A Director is not disqualified by the Director's office and the fiduciary relationship established by it from holding any office or place of profit, other than that of auditor, under the Company or a related body corporate of the Company. A Director may, subject to the Corporations Act:

- (a) be or become a director of or otherwise hold office or a place of profit in any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise;
- (b) contract or make any arrangement with the Company or any related body corporate whether as vendor, purchaser, broker, solicitor or accountant or other professional person or otherwise and any contract or arrangement entered or to be entered into by or on behalf of the Company or any related body corporate in which any Director is in any way interested is not avoided for that reason; and
- (c) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or any related body corporate, or any of their respective predecessors in business or their dependants or persons connected with them.

13.30 A Director who:

- (a) holds any office or place of profit under the Company;
- (b) holds any office or place of profit referred to in Article 13.29(a);
- (c) is involved in a contract or arrangement referred to in Article 13.29(b); or
- (d) participates in an association or otherwise under Article 13.29(c),

is not by reason only of that fact or any interest resulting from it or the fiduciary relationship established by it liable to account to the Company for any remuneration or other benefits accruing from it.

13.31 A Director or a firm of which the Director is a partner or employee may act in a professional capacity, other than as auditor, for the Company or any related body corporate and a Director or a Director's firm is entitled to

In accordance with special resolution 6 passed in general meeting on 28/9/04, the persons who held office as Directors of IMB at that date, will upon retirement or death in office, be paid any retirement benefits that were accrued by them up until 28/9/04.

remuneration for professional services as if the relevant Director was not a Director.

- 13.32 Each Director must disclose that Director's interests to the Company in accordance with the Corporations Act.
- 13.33 A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may not:
- (a) vote on the matter (or in relation to a proposed resolution specified in Section 195(2) in relation to the matter, whether in relation to that or a different Director); or
 - (b) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,
- except as permitted by Section 195(1). Except as provided by this Article, a Director is not disqualified from voting as contemplated by paragraph (a) or from being present as contemplated by paragraph (b).
- 13.34 The Director may be counted in the quorum present at any Director's meeting at which the contract, proposed contract or arrangement or other matter is considered if the Director is permitted by the Corporations Act to be present during the consideration.
- 13.35 For the purposes of Article 13.33, a Director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate. This Article does not apply if the Company is the insurer.
- 13.36 The restrictions contained in Article 13.33 may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting, if that is permitted by the Corporations Act.
- 13.37 If a Director has a material personal interest in a matter the Director may not participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing the same or otherwise.

Vacation of office of Director

- 13.38 In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:
- (a) 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;
 - (b) resigns from the office by notice in writing to the Company;

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- (c) is removed from office under Article 13.19;
 - (d) retires from office under Article 13.20 or Article 13.21;
 - (e) is absent from 3 consecutive ordinary meetings of the Board without its leave;
 - (f) dies;
 - (g) ceases to be a Member of the Company;
 - (h) fails to maintain at a minimum, the requirements specified in Article 13.22(a) and (b), unless exempted under Article 13.22(c), (d) or (e);
 - (i) is 3 months in arrears in relation to any money due to the Company and has failed to make arrangements for payment satisfactory to the Company; or
 - (j) subject to Articles 13.2 and 15.25, becomes an employee of the Company.

14 Powers and duties of Directors

Directors to manage the Company

- 14.1 The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- 14.2 Without limiting the generality of Article 14.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

Power to delegate

- 14.3 Without limiting Article 14.4, the Directors may delegate all or any of their powers, authorities or discretions.

Appointment of attorney

- 14.4 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.
- 14.5 Any such power of attorney may contain such provisions for the protection and 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, authorities and discretions vested in the attorney.

Minutes

14.6 The Directors must cause minutes of general, board and board committee meetings to be made and kept in accordance with the Corporations Act.

Execution of Company cheques and other instruments

14.7 All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine from time to time.

Confidentiality

14.8 Except as otherwise required by law, every Director and other agent or officer of the Company must:

- (a) keep secret all aspects of all transactions of the Company except:
 - (i) to the extent necessary to enable the Director, agent or officer to perform their duties to the Company; and
 - (ii) as required by law; and
- (b) if requested by the Directors, sign and make a declaration not to disclose or publish any aspect of any transaction of the Company.

Custody of papers

14.9 All books of account, securities, documents and papers of the Company other than such (if any) as the Board may direct to be kept elsewhere will be kept at the Registered Office of the Company in such manner and with such provisions for their security as the Board directs.

15 Proceedings of Directors

Directors' meetings

15.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

15.2 A Director may at any time, and the Secretary must on the written request of a Director, convene a Directors' meeting.

15.3 Except as specified in Article 15.4, at least 48 hours notice must be given to each Director of all Directors' meetings.

15.4 Directors' meetings may be convened on less than 48 hours notice where:

- (a) the chairman determines that there are exceptional circumstances; or
- (b) a majority of Directors authorise the Secretary to convene a meeting on shorter notice.

15.5 Directors' meetings shall be held at intervals of no longer than 2 months.

Notice of meeting

15.6 It is not necessary to give notice of a Directors' meeting to a Director who the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia, and will not be returning before the date of the Directors' meeting.

Questions decided by majority

15.7 Questions arising at a Directors' meeting are to be decided by a majority of votes of Directors present and entitled to vote and any such decision is for all purposes to be deemed a decision of the Directors.

Chairman's casting vote

15.8 In the event of an equality of votes, the chairman of the Directors' meeting has a casting vote.

Quorum for Directors' meeting

15.9 At a Directors' meeting, the number of Directors whose presence in person is necessary to constitute a quorum is not less than half the total number of Directors or any greater number determined by the Directors from time to time. For the purposes of this Article, a quorum is present during the consideration of a matter at a Directors' meeting only if not less than half the total number of Directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

If, within 30 minutes of the time appointed for a Directors' meeting, a quorum is not present the meeting will stand adjourned to the same day, time and place in the next week or to such other day or place as those Directors present determine and notify Directors not present.

Remaining Directors may act

15.10 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum fixed by Article 13.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or of convening a general meeting.

Chairman and deputy chairman

15.11 The Directors must elect a Director as chairman of Directors' meetings and may determine the period for which the chairman will hold office.

15.12 The Directors may also elect a Director as deputy chairman of Directors' meetings to act in the chairman's absence and may determine the period for which the deputy chairman will hold office.

15.13 The chairman and deputy chairman, whilst remaining qualified to act as a Director, may only be removed from office by resolution of which notice has been given to all Directors not less than 14 days before the Directors' meeting at which the resolution is proposed. The Directors' meeting must

be one which the chairman and deputy chairman attends unless the chairman or deputy chairman wilfully absents himself or herself from that meeting.

- 15.14 If no chairman or deputy chairman is elected or if the chairman or deputy chairman is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairman of the meeting.
- 15.15 A chairman or deputy chairman who ceases to be a Director, also ceases to be the chairman or deputy chairman.

Directors' committees

- 15.16 The Directors may delegate any of their powers, other than powers required by law to be dealt with by directors as a board, to a committee or committees consisting of at least one of their number and such other persons as they think fit.
- 15.17 A committee to which any powers have been delegated under Article 15.16 must exercise the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- 15.18 The members of a committee may elect one of their number as chairman of their meetings. If a meeting of a committee is held and:
- (a) a chairman has not been elected; or
 - (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

- 15.19 A committee may meet and adjourn as it thinks proper.
- 15.20 Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting. The chairman, in addition to the chairman's deliberative vote, has a casting vote.

Written resolution by Directors

- 15.21 A resolution in writing signed by all the Directors who are eligible to vote on the resolution (being at least a quorum) is as valid and effectual as if it had been passed at a Directors' meeting held at the time when the written resolution was signed by the last eligible Director to sign it. A written resolution may consist of several documents in like form, each signed by one or more Directors. Any such document may be in the form of a facsimile transmission.

Use of technology

15.22 A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

15.23 The Directors need not all be physically present in the same place for a Directors' meeting. A Director who participates in a Directors' meeting held in accordance with this Article is deemed to be present and entitled to vote at the meeting.

Validity of acts of Directors

15.24 All acts of the Directors, a committee or a person 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.

Appointment of Managing and Executive Directors

15.25 The Directors may appoint one of their number to the office of Managing Director or as an Executive Director or to any other office, except auditor, of employment under the Company for the period and on the terms they think fit, provided that at all times the number of such offices held by Directors is limited to one. The Directors may, subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Managing Director or Executive Director from that office and may appoint another Director in their place. A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

Remuneration of Managing and Executive Directors

15.26 The remuneration of a Managing Director or an Executive Director may be fixed by the Directors.

Powers of Managing and Executive Directors

15.27 The Directors may confer on a Managing Director or an Executive Director any of the powers exercisable by them, on such terms and conditions and with such restrictions as they think fit. The Directors may at any time withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

16 Secretary

Appointment of Secretary

16.1 There must be at least one Secretary who is to be appointed by the Directors.

Suspension and removal of Secretary

16.2 The Directors may suspend or remove a Secretary from that office.

Powers, duties and authorities of Secretary

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

17 Seals

Common and duplicate common seal

17.1 The Company may but need not have:

- (a) a common seal; and
- (b) a duplicate common seal, which must be a copy of the common seal with the words “duplicate seal”, “Share seal” or “certificate seal” added.

17.2 The Directors must provide for the safe custody of each seal of the Company.

Use of common seal

17.3 The common seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the common seal. Every document to which the common seal is affixed must be signed by any two Directors, a Director and a Secretary or any two persons appointed by the Directors to sign that document or a class of documents in which that document is included.

18 Inspection of records

Inspection by Members

18.1 Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors), and a Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

19 Dividends and reserves

Payment of dividend

19.1 Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights as to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for

payment and authorise the payment or crediting by the Company to, or at the direction of, each Shareholder Member entitled thereto of that dividend.

No interest on dividends

19.2 Interest is not payable by the Company on a dividend.

Reserves and profits carried forward

19.3 The Directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper 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.

19.4 Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

19.5 The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

Calculation and apportionment of dividends

19.6 Subject to the rights of persons (if any) entitled to shares with special rights as to dividend and to the terms of any issue of shares to the contrary, all dividends are to be paid:

- (a) in the case of fully paid shares, to their holders in proportion to the number of shares held by them respectively; or
- (b) in the case of shares which are not fully paid shares, to their holders according to the amounts paid or credited as paid on those shares, apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid.

19.7 An amount paid or credited as paid on a share in advance of a call is not to be taken as paid or credited as paid on the share for the purposes of Article 19.6.

Deductions from dividends

19.8 The Directors may deduct from any dividend payable to, or at the direction of, a Shareholder Member all sums of money (if any) presently payable by that Shareholder Member to the Company on account of calls or otherwise in relation to shares in the Company.

Distribution of specific assets

19.9 When paying a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the

Company or fully paid shares in or debentures of any other body corporate; and

- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

19.10 If a difficulty arises in regard to a distribution under Article 19.9, the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to, or at the direction of, any Shareholder Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

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

Payment by cheque and receipts from joint holders

19.11 A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address of the holder as shown in the Register of Members or, in the case of joint holders, to the address shown in the Register of Members as the address of the joint holder first named in that Register of Members;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register of Members or to such person or place directed by them.

19.12 Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

Unclaimed dividends

19.13 All unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

20 Capitalisation of profits

Capitalisation of reserves and profits

20.1 The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Shareholder Members; and
- (b) may but need not resolve to apply the sum in any of the ways mentioned in Article 20.2, for the benefit of Shareholder Members in the proportions to which those Shareholder Members would have been entitled in a distribution of that sum by way of dividend.

20.2 The ways in which a sum may be applied for the benefit of Shareholder Members under Article 20.1 are:

- (a) in paying up any amounts unpaid on shares held by Shareholder Members;
- (b) in paying up in full unissued shares or debentures to be issued to Shareholder Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

20.3 The Directors may do all things necessary to give effect to any resolution made under Article 20.1 and, in particular, to the extent necessary to adjust the rights of the Shareholder Members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Shareholder Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
 - (i) the issue to them, credited as fully paid up, of any such further shares or debentures; or
 - (ii) the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any such agreement is effective and binding on all the Shareholder Members concerned.

21 Service of documents

Service of documents

- 21.1 This Part does not apply to a notice of a meeting of Members.
- 21.2 The Company may give a document to a Member:
- (a) personally;
 - (b) by sending it by post to the address for the Member in the Register of Members or an alternative address nominated by the Member; or
 - (c) by sending it to a fax number or electronic address nominated by the Member.
- 21.3 If a document is sent by post, delivery of the document is deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and the document is deemed to have been delivered on the day after the date of its posting.
- 21.4 If a document is sent by facsimile or electronic transmission, delivery of the document is to be deemed:
- (a) to be effected by properly addressing and transmitting the facsimile or electronic transmission; and
 - (b) to have been delivered on the day following its despatch.
- 21.5 A document may be given by the Company to joint Members by giving the document to the primary joint Member.
- 21.6 A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this Article to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

22 Audit and accounts

Company to keep accounts

- 22.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act.

Company to audit accounts

- 22.2 The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

23 Winding up

Procedure

23.1 The Company may be wound up in the manner provided in the Corporations Act.

Liability of Member

23.2 Subject to the Corporations Act, a Member will not be liable, because of such membership, to contribute towards the payment of the debts and liabilities of the Company, or the costs, charges and expenses of a winding up of the Company other than the liability to:

- (a) contribute any unpaid capital on shares held by the Member;
- (b) contribute the guaranteed amount as stated in Article 10.21; and
- (c) to repay any amount unpaid in relation to the Member's contractual obligations to the Company.

Distribution of surplus

23.3 Subject to the Corporations Act and the Banking Act 1959, in the winding up of the Company the proceeds of liquidation shall be applied:

- (a) firstly, in satisfaction of all liabilities of the Company (including deposits) otherwise than in respect of the return of capital subscribed;
- (b) secondly, in satisfaction of subordinated liabilities;
- (c) thirdly, in the return of capital subscribed in respect of Redeemable Preference Shares;
- (d) fourthly, in the return of capital subscribed in respect of Shares and Preference Shares; and
- (e) fifthly, the surplus then remaining shall be distributed amongst the Members as follows:
 - (i) in the case of holders of Deposits, a sum calculated in accordance with the following formula, which sum shall be allocated amongst the holders of Deposits in proportion to the respective amounts deposited with the Company at the date of the commencement of the winding up of the Company:

$$\frac{A}{A + B} \times C$$

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- (ii) in the case of holders of Shares and Preference Shares, a sum calculated in accordance with the following formula, which sum shall be allocated amongst the holders of those shares in proportion to the respective amounts of capital paid up on those shares by them:

$$\frac{B}{A + B} \times C$$

- (iii) for the purpose of the formulae in subparagraphs (i) and (ii):
- A = twenty-seven million, one hundred and six thousand dollars (\$27,106,000) being the total amount of reserves of the Company at June 30, 1989 and disclosed in the audited accounts of the Company at that date minus the aggregate amounts of capital paid up on the Shares issued on the first issue of such Shares.
- B = aggregate amounts of capital paid up on the Shares and Preference Shares from time to time.
- C = the amount of the remaining surplus and reserves of the Company at the date of calculation of the relevant formula.
- (iv) the holders of Redeemable Preference Shares are not entitled to participate in any surplus.

24 Indemnity

Indemnity of officers

24.1 Every person who is or has been:

- (a) a Director of the Company or of a wholly-owned subsidiary of the Company;
- (b) a Secretary of the Company or of a wholly-owned subsidiary of the Company;
- (c) a person making, or participating in making, decisions that affect the whole, or a substantial part, of the business of the Company or of a wholly-owned subsidiary of the Company;
- (d) a person having the capacity to affect significantly the financial standing of the Company or of a wholly-owned subsidiary of the Company;
- (da) a director of a subsidiary of the Company who holds or held that position as a nominated representative of the Company;

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- (db) a secretary of a subsidiary of the Company who holds or held that position as a nominated representative of the Company;
 - (dc) a person making, or participating in making, decisions that affect the whole, or a substantial part of, the business of a subsidiary of the Company and who makes or participates in those decisions as a nominated representative of the Company;
 - (dd) a person having the capacity to affect significantly the financial standing of a subsidiary of the Company and who has that capacity as a nominated representative of the Company;
 - (de) a director of a company that is not a subsidiary of the Company where the director holds or held that position as a nominated representative of the Company;
 - (df) a secretary of a company that is not a subsidiary of the Company where the secretary holds or held that position as a nominated representative of the Company;
 - (dg) a person making, or participating in making, decisions that affect the whole, or a substantial part of, the business of a company that is not a subsidiary of the Company and who makes or participates in those decisions as a nominated representative of the Company; and
 - (dh) a person having the capacity to affect significantly the financial standing of a company that is not a subsidiary of the Company and who has that capacity as a nominated representative of the Company;

24.2 is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except liability for legal costs); and
- (b) all legal costs incurred by the person in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

24.3 unless and to the extent:

- (a) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (b) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

Insurance

- 24.4 The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract of insuring a person who has or has had a capacity mentioned in paragraph (a), (b), (c), (d), (da), (db), (dc), (dd), (de), (df), (dg) or (dh) of Article 24.1 against liability incurred by the person in that capacity, including a liability for legal costs, unless:
- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
 - (b) the contract would, if the Company paid the premium, be made void by statute.

