

Constitution

Newcrest Mining Limited

ACN 005 683 625

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Constitution

Table of Contents

1.	Interpretation	1
6.	Issue of shares with special rights	3
7.	Preference shares	3
8.	Shares at the disposal of the Board	4
9.	Directors may participate	4
10.	Surrender of shares	4
11.	Joint holders	5
12.	Non-recognition of equitable or other interests	5
13.	Certificates	6
14.	Uncertificated holdings	6
15.	Power to make calls	6
16.	Obligation for calls	6
17.	When a call is made	6
18.	Interest on the late payment of calls	7
19.	Instalments	7
20.	Notice requiring payment of sums payable	7
21.	Time and place for payment	7
22.	Forfeiture on non-compliance with notice	7
22A.	Consequences of forfeiture	8
23.	Notice of forfeiture	8
24.	Disposal of forfeited shares	8
25.	Annulment of forfeiture	8
26.	Liability despite forfeiture	8
27.	Company's lien or charge	8
28.	Sale of shares to enforce lien	9
29.	Title to shares forfeited or sold to enforce lien	9
30.	Payments by the Company	10
31.	Transfers	11
32.	Board may refuse to register	12
33.	Closing Register, entitlement to vote	12
34.	Transfer and certificate (if any)	12
35.	Transmission on death	12

Constitution

36.	Transmission by operation of law	13
37.	Alteration of capital	13
38.	General meetings	13
39.	Notice of general meeting	13
40.	Business of general meetings	14
41.	Quorum	14
42.	Chairman	14
43.	Acting Chairman	15
44.	General conduct of meeting	15
45.	Adjournment	15
46.	Voting on show of hands	16
47.	When a poll may be demanded	16
48.	Taking a poll	16
49.	Special meetings	16
50.	Voting rights	17
51.	Voting rights of personal representatives, etc	17
52.	Proxies	18
53.	Validity of vote	18
54.	Board may issue forms of proxy	19
55.	Attorneys of shareholders	19
56.	Directors	19
57.	Power to appoint Directors	20
58.	Remuneration of Directors	20
59.	Remuneration of Directors for extra services	20
60.	Travelling and other expenses	20
61.	Retirement benefits	20
62.	Directors may contract with Company	21
63.	Director may hold other office	21
64.	Exercise of voting power in other corporations	21
65.	Directors may lend to the Company	22
66.	Director may appoint alternate Director	22
67.	Termination of office of Director	23
68.	Directors who are employees of the Company	23
69.	Retirement and nomination of Directors	23

Constitution

70.	Appointment of a Managing Director	24
71.	Managing Director not to be subject to retirement by rotation	24
72.	Procedures relating to Board meetings	24
73.	Meetings by technology	25
74.	Votes at meetings	25
75.	Chairman	25
76.	Powers of meetings	26
77.	Committees	26
78.	Validity of acts	26
79.	Resolution in writing	26
80.	General powers of the Board	27
81.	Power to borrow and guarantee	27
82.	Power to give security	27
83.	Power to authorise debenture holders, etc to make calls	27
84.	Power to issue bond, debenture or other security	27
85.	Personal liability of officer	28
86.	Seal	28
87.	Powers to determine dividends	28
88.	Dividend plans	28
89.	Employee share plans	29
90.	Interim dividends	30
91.	Distribution otherwise than in cash	30
92.	Capitalisation of profits	30
93.	Transfer of shares	31
94.	Retention of dividends; unclaimed dividends	31
95.	How distributions are payable	31
96.	Service of notices	32
97.	When notice deemed to be served	32
98.	Shareholder not known at registered address	33
99.	Reckoning of period of notice	33
100.	Notice to transferor binds transferee	33
101.	Service on deceased shareholders	33
102.	Winding up	33
103.	Indemnity of officers	34

Constitution

104. Approval of proportional takeover bids	35
105. Restricted securities	36
106. Sale of small holdings	37

Constitution of Newcrest Mining Limited ACN 005 683 625

Preliminary

The name of the Company is Newcrest Mining Limited.

The Company is a public company limited by shares.

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

Interpretation

1. Interpretation

In this Constitution unless the context requires otherwise:

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

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASTC Settlement Rules means the operating rules of ASTC or of any relevant organisation which is an alternative or successor to, or replacement of, ASTC or of any applicable CS facility licensee.

ASX means ASX Limited (ABN 98 008 624 691) and any successor body.

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

business day means a day which is a business day for the purposes of the Listing Rules.

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

Chairman means the Chairman of the Board or other person occupying the position of Chairman or Acting Chairman under Rule 42 or Rule 43.

Committee means a Committee to which powers have been delegated by the Board under Rule 77.

Company means Newcrest Mining Limited.

Constitution means this Constitution as amended.

CS facility licensee means a person who holds a licence under the Act which authorises the person to operate a clearing and settlement facility.

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

Listing Rules means the ASX Listing Rules and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time.

Constitution

Office means the registered office of the Company.

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

proper ASTC transfer has the meaning given in the Corporations Regulations.

Register means the register of shareholders of the Company or of other holders of securities of the Company, as the case may be.

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

retiring Director means a Director who is required to retire under Rule 69.1 and a Director who ceases to hold office under Rule 57.

Rules means these Rules, as amended.

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

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

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

Uncertificated Securities Holding means securities of the Company which under the Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form.

Uncertificated Transfer System means any system operated under the Act, the Listing Rules or the ASTC Settlement Rules which regulates the transfer or registration of, or the settlement of transactions affecting, securities of the Company in uncertificated form and includes CHESS (as defined in the ASTC Settlement Rules) as it applies to securities in certificated and uncertificated form.

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

2. A word or phrase which is given a meaning by the Act has the same meaning in this Constitution. Words in the singular include the plural and vice versa.
3. A reference to the Act or any other statute or regulation is to the Act, statute or regulation as modified or substituted.
4. A reference to the Listing Rules or the ASTC Settlement Rules is to the Listing Rules or the ASTC Settlement Rules (as the case may be) in force in relation to the Company after taking into account any waiver or exemption which is in force either generally or in relation to the Company.
5. The headings do not affect the construction of this Constitution.

Constitution

Shares

6. Issue of shares with special rights

- 6.1 Without affecting any special rights conferred on the holders of any shares, any share in the capital of the Company may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Board may determine.
- 6.2 Unless otherwise provided by the terms of issue, the issue of any new shares ranking equally with existing shares is not a variation of the rights conferred on the holders of the existing shares.

7. Preference shares

If the Company at any time proposes to create and issue any preference shares:

- (a) the preference shares may be issued on the terms that they are, or at the option of the Company are, liable to be redeemed out of profits or the proceeds of a new issue of shares made for the purpose of the redemption or otherwise;
- (b) the preference shares confer on the holders the right to convert the preference shares into ordinary shares if and on the basis the Board determines at the time of issue of the preference shares;
- (c)
 - (i) the preference shares confer on the holders a right to receive out of the profits of the Company available for dividend a preferential dividend at the rate or of the amount (which may be subject to an index) and on the basis determined by the Board at the time of issue of the preference shares;
 - (ii) in addition to the preferential dividend, the preference shares may participate with the ordinary shares in dividends if and to the extent the Board determines at the time of issue of the preference shares; and
 - (iii) the preferential dividend may be cumulative if and to the extent the Board determines at the time of issue of the preference shares;
- (d) the preference shares are to confer on the holders:
 - (i) the right on redemption and in a winding up to payment in cash in priority to any other class of shares of:
 - (A) the amount paid or agreed to be considered as paid on each of the preference shares; and
 - (B) the amount (if any) equal to the aggregate of any dividends accrued but unpaid and of any arrears of dividends; and
 - (ii) the right, in priority to any payment of dividend on any other class of shares, to the preferential dividend;
- (e) the preference shares do not confer on the holders any further rights to participate in assets or profits of the Company;

Constitution

- (f) the holders of the preference shares have the same rights as the holders of ordinary shares to receive notices, reports and accounts and to attend and be heard at all general meetings, but are not to have the right to vote at general meetings except as follows:
 - (i) on any question considered at a general meeting if, at the date of the meeting, the dividend on the preference shares is in arrears;
 - (ii) at a general meeting on a proposal:
 - (A) to reduce the share capital of the Company;
 - (B) that affects rights attached to the preference shares;
 - (C) to wind up the Company;
 - (D) for the disposal of the whole of the property, business and undertaking of the Company;
 - (iii) at a general meeting on a resolution to approve the terms of a buy-back agreement; and
 - (iv) on any question considered at a general meeting held during the winding up of the Company; and
- (g) the Company may issue further preference shares ranking *pari passu* in all respects with (but not in priority to) other preference shares already issued and the rights of the issued preference shares are not to be taken to have been varied by the further issue.

8. Shares at the disposal of the Board

Except as provided by contract or this Constitution to the contrary, all unissued shares are under the control of the Board which may grant options on the shares, issue or otherwise dispose of the shares on the terms and conditions and for the consideration it thinks fit. An issue of shares of the same class as an existing class of shares is not to be considered to constitute a variation of the rights of the holders of shares in the existing class.

9. Directors may participate

Subject to the Listing Rules, any Director or any person who is an associate of a Director for the purposes of the Listing Rules may participate in any issue by the Company of securities.

10. Surrender of shares

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

Constitution

11. Joint holders

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

(a) **Number of holders**

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

(b) **Liability for payments**

the joint holders of the shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the shares;

(c) **Death of joint holder**

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

(d) **Power to give receipt**

any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders;

(e) **Notices and certificates**

only the person whose name stands first in the Register as one of the joint holders of the shares is entitled, if the Company determines to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is considered to be notice to all the joint holders; and

(f) **Votes of joint holders**

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

12. Non-recognition of equitable or other interests

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

Constitution

Form of Holding of Shares

13. Certificates

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

14. Uncertificated holdings

If and for so long as dealings in securities of the Company take place under an Uncertificated Transfer System:

- (a) the Company need not issue any certificate in respect of securities held as an Uncertificated Securities Holding; and
- (b) the Register may distinguish between shares or other securities held in certificated form and shares or other securities held as an Uncertificated Securities Holding.

Calls

15. Power to make calls

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

16. Obligation for calls

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

17. When a call is made

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

Constitution

18. Interest on the late payment of calls

- 18.1 If any sum payable in respect of a call is not paid on or before the date for payment, the shareholder from whom the sum is due must pay:
- (a) interest on the sum from the due date to the date of payment at the rate the Board determines; and
 - (b) any costs and expenses incurred by the Company by reason of non-payment or late payment of the sum.
- 18.2 The Board may waive the whole or part of any interest, costs or expenses paid or payable under Rule 18.1.

19. Instalments

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

Forfeiture and Lien

20. Notice requiring payment of sums payable

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

21. Time and place for payment

The notice referred to in Rule 20 must state a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made and that, if payment is not made by the time and at the place specified, the shares in respect of which the sum is payable are liable to be forfeited.

22. Forfeiture on non-compliance with notice

If there is non-compliance with the requirements of any notice given under Rule 20, any shares in respect of which notice has been given may be forfeited by a resolution of the Board passed at any time after the day specified in the notice for payment. The forfeiture is to include all dividends, interest and other money payable by the Company in respect of the forfeited shares and not paid before the forfeiture.

Constitution

22A. Consequences of forfeiture

A person whose shares have been forfeited:

- (a) ceases to be a shareholder in respect of the forfeited shares at the time and on the date of the passing of the Board resolution approving the forfeiture;
- (b) has no claims or demands against the Company in respect of those shares;
- (c) has no other rights incident to the shares except the rights that are provided by the Act or saved by this Constitution; and
- (d) remains liable to the Company in accordance with Rule 26.

23. Notice of forfeiture

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

24. Disposal of forfeited shares

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

25. Annulment of forfeiture

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

26. Liability despite forfeiture

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

27. Company's lien or charge

- 27.1 The Company has a first and paramount lien or charge, for unpaid calls, instalments, interest due in relation to any calls or instalments and any amounts the Company is called on by law to pay in respect of the shares of a shareholder, on shares registered in the name of the shareholder in respect of which the calls, instalments and interest are due and

Constitution

unpaid (whether then payable or not) or in respect of which the amounts are paid and on the proceeds of sale of the shares.

- 27.2 The lien or charge extends to all dividends and entitlements determined or payable in respect of the shares but, if the Company registers a transfer of any shares on which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien or charge of the Company in respect of that claim. The Board may retain those dividends or entitlements and may apply them in or towards satisfaction of all amounts due to the Company in respect of which the lien exists.
- 27.3 No person is entitled to exercise any rights or privileges as a shareholder until the shareholder has paid all calls and instalments of calls and other moneys (including interest) for the time being payable in respect of every share held by the shareholder.
- 27.4 The Company may do all things necessary or appropriate under the ASTC Settlement Rules and the Listing Rules in order to protect or enforce any lien or charge.
- 27.5 The Board may at any time exempt a share wholly or in part from the provisions of this Rule 27.
- 27.6 Nothing in this Rule 27 affects any right or remedy which any law confers on the Company and any right or remedy is enforceable by the Company whether against the shareholder or the shareholder's personal representative.

28. Sale of shares to enforce lien

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

29. Title to shares forfeited or sold to enforce lien

- 29.1 In a sale or a re-allotment of forfeited shares or in the sale of shares to enforce a lien or charge, an entry in the Board's minute book that the shares have been forfeited, sold or re-allotted in accordance with this Constitution is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture, sale or re-allotment of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-allotment.
- 29.2 In a re-allotment, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- 29.3 In a sale, the Company may appoint a person to execute, or may otherwise effect, a transfer in favour of the person to whom the shares are sold.
- 29.4 On the issue of the receipt or the transfer being executed or otherwise effected the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares prior to the re-allotment or purchase and the person is not bound to see to the regularity of the

Constitution

proceedings or to the application of the purchase money or consideration and the person's title to the shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-allotment.

- 29.5 The net proceeds of any sale or re-allotment are to be applied first in payment of all costs in relation to the enforcement of the lien or charge or the forfeiture and of the sale or re-allotment, next in satisfaction of the amount in respect of which the lien or charge exists as is then payable to the Company (including interest) or the amount in respect of the forfeited shares then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-allotment or to the person's executors, administrators or assigns on the production of any evidence as to title required by the Board.

Payments by the Company

30. Payments by the Company

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

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

the Company in each case:

- (i) is to be fully indemnified from all liability by the holder or the holder's personal representative and by any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate;
- (ii) has a lien or charge on the securities for all money paid by the Company in respect of the securities under or because of any law;
- (iii) has a lien on all dividends, bonuses and other money payable in respect of the securities registered in the Register as held either jointly or solely by the holder for all money paid or payable by the Company in respect of the securities because of any law, together with interest at a rate the Board may determine from the date of

Constitution

payment to the date of repayment, and may deduct or set off against any dividend, bonus or other money payable any money paid or payable by the Company together with interest;

- (iv) may recover as a debt due from the holder or the holder's personal representative, or any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate, any money paid by the Company because of any law which exceeds any dividend, bonus or other money then due or payable by the Company to the holder together with interest at a rate the Board may determine from the date of payment to the date of repayment; and
- (v) except in the case of a proper ASTC transfer, may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any securities by the holder or the holder's personal representative until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend, bonus or other money then due or payable by the Company to the holder, until the excess is paid to the Company.

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

Transfer and Transmission of Securities

31. Transfers

- 31.1 A transfer of any securities may be effected by:
 - (a) a written transfer in the usual or common form or in any form the Board may prescribe or in a particular case accept, duly stamped (if necessary) being delivered to the Company;
 - (b) a proper ASTC transfer, which is to be in the form required or permitted by the Act or the ASTC Settlement Rules; or
 - (c) any other electronic system established or recognised by the Listing Rules in which the Company participates in accordance with the rules of that system.
- 31.2 Except in the case of a proper ASTC transfer, the transferor is deemed to remain the holder of the securities transferred until the name of the transferee is entered on the Register. A proper ASTC transfer is taken to be recorded in the Register and the name of the transferee to be registered as the holder of the securities comprised in the proper ASTC transfer, as provided in the ASTC Settlement Rules.
- 31.3 The Board may take any action it thinks fit to comply with the ASTC Settlement Rules and may request the ASTC to apply a holding lock to prevent a transfer of securities the subject of the ASTC Settlement Rules if the Board thinks fit.
- 31.4 The Company may do anything necessary or desirable to facilitate participation by the Company in any Uncertificated Transfer System.

Constitution

32. Board may refuse to register

- 32.1 The Board may refuse to register any transfer of securities:
- (a) if the registration of the transfer would result in a contravention of or failure to observe the provisions of any applicable law or the Listing Rules;
 - (b) on which the Company has a lien;
 - (c) on which a call has been made and is due and unpaid;
 - (d) if to do so would result in more than three persons being registered as joint holders of the securities (except in the case of personal representatives of a deceased shareholder); or
 - (e) if permitted to do so under this Constitution or the Listing Rules.
- 32.2 The decision of the Board relating to the registration of a transfer is absolute. Failure to give notice of refusal to register any transfer as may be required under the Act or the Listing Rules does not invalidate the decision of the Board.

33. Closing Register, entitlement to vote

The Register may be closed at any time the Board thinks fit and the Board may specify a time by reference to which the entitlement of persons to vote at any general meeting of the Company is to be determined.

34. Transfer and certificate (if any)

- 34.1 Every transfer must be left for registration at the Office or any other place the Board determines. Unless the Board otherwise determines either generally or in a particular case, the transfer is to be accompanied by the certificate (if any) for the securities to be transferred. In addition, the transfer is to be accompanied by any other evidence which the Board may require to prove the title of the transferor, the transferor's right to transfer the securities, due execution of the transfer or due compliance with the provisions of any law relating to stamp duty. The requirements of this Rule do not apply in respect of a proper ASTC transfer.
- 34.2 Subject to Rule 34.1, on each application to register the transfer of any securities or to register any person as the holder in respect of any securities transmitted to that person by operation of law or otherwise, the certificate (if any) specifying the securities in respect of which registration is required must be delivered to the Company for cancellation and on registration the certificate is considered to have been cancelled.
- 34.3 Each transfer which is registered may be retained by the Company for any period determined by the Board after which the Company may destroy it.

35. Transmission on death

The personal representative of a deceased shareholder (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities

Constitution

registered in the name of the deceased shareholder. Subject to compliance by the transferee with this Constitution, the Board may register any transfer signed by a shareholder prior to the shareholder's death, despite the Company having notice of the shareholder's death.

36. Transmission by operation of law

A person (a *transmittee*) who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a holder in respect of the securities or may (subject to the provisions in this Constitution relating to transfers) transfer the securities. The Board has the same right to refuse to register the transmittee under Rule 32.1 as if the transmittee were the transferee named in a transfer presented for registration.

37. Alteration of capital

The Company in general meeting may reduce or alter its share capital in any manner provided for by the Act. The Board may do anything which is required to give effect to any resolution authorising reduction or alteration of the share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or sale of fractions of shares and distribution of net proceeds as it thinks fit.

General Meetings

38. General meetings

The Board may convene general meetings of the Company to be held at the time and places and in the manner determined by the Board. No shareholder or individual Director may convene a general meeting of the Company except where entitled under the Act to do so. By resolution of the Board any general meeting may be cancelled or postponed prior to the date on which it is to be held, except where the cancellation or postponement would be contrary to the Act. The Board may give notice (if any) of cancellation or postponement as it thinks fit but any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

39. Notice of general meeting

Notice of a general meeting may be given in the form and manner which the Board thinks fit. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice, does not invalidate any resolution passed at that meeting.

Constitution

Proceedings of Meetings

40. Business of general meetings

The business of an annual general meeting is to receive and consider the accounts and reports required by the Act to be laid before each annual general meeting, to elect Directors in the place of those retiring under this Constitution, when relevant to appoint an auditor, and to transact any other business which, under this Constitution, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is special. Except with the approval of the Board, with the permission of the Chairman or under the Act, no person may move at any meeting either:

- (a) in regard to any special business of which notice has been given under Rule 39, any resolution or any amendment of a resolution; or
- (b) any other resolution which does not constitute part of special business of which notice has been given under Rule 39.

41. Quorum

- 41.1 Five shareholders present constitute a quorum for a meeting. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless a quorum is present at the commencement of the meeting.
- 41.2 A general meeting that does not have a quorum present within 15 minutes after the time for the meeting specified in the notice of the meeting is dissolved unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 15 minutes after the time for the meeting, the meeting is dissolved.

42. Chairman

- 42.1 The Chairman of the Board is entitled to chair every general meeting.
- 42.2 If at any general meeting:
 - (a) the Chairman of the Board is not present at the specified time for holding the meeting; or
 - (b) the Chairman of the Board is present but is unwilling to act as chairman of the meeting,the Deputy Chairman of the Board is entitled to chair the meeting.
- 42.3 If at any general meeting:
 - (a) there is no Chairman of the Board or Deputy Chairman of the Board;
 - (b) the Chairman of the Board and Deputy Chairman of the Board are not present at the specified time for holding the meeting; or

Constitution

- (c) the Chairman of the Board and the Deputy Chairman of the Board are present but each is unwilling to act as chairman of the meeting,

the Directors present may choose another Director as chairman of the meeting and if no Director is present or if each of the Directors present is unwilling to act as chairman of the meeting, a shareholder chosen by the shareholders present may chair the meeting.

43. Acting Chairman

If during any general meeting the Chairman acting under Rule 42 is unwilling to chair any part of the proceedings, the Chairman may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be Acting Chairman of the meeting during the relevant part of the proceedings. On the conclusion of the relevant part of the proceedings the Acting Chairman is to withdraw and the Chairman is to resume to chair the meeting.

44. General conduct of meeting

The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the shareholders present. The Chairman may require the adoption of any procedures which are in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the meeting and may be determined by the Chairman whose decision is final.

45. Adjournment

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

Constitution

46. Voting on show of hands

Subject to Rule 47, each question submitted to a general meeting is to be decided in the first instance by a show of hands of the shareholders present and entitled to vote. In the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a shareholder or as a proxy, attorney or duly appointed representative of a shareholder. Unless a poll is demanded, a declaration by the Chairman following a vote on a show of hands that a resolution has been passed or lost is conclusive.

47. When a poll may be demanded

- 47.1 The Chairman may demand and determine that any question to be submitted to a general meeting be determined by a poll without first submitting the question to the meeting to be decided by a show of hands.
- 47.2 A poll may be demanded by shareholders in accordance with the Act (and not otherwise) or by the Chairman. No poll may be demanded on the election of a chairman of a meeting or, unless the Chairman otherwise determines, the adjournment of a meeting. The demand for a poll may be withdrawn.

48. Taking a poll

- 48.1 If a poll is demanded as provided in Rule 47, it is to be taken in the manner and at the time and place as the Chairman directs.
- 48.2 The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chairman considers appropriate.
- 48.3 The result of the poll is the meeting's resolution of the motion on which the poll was demanded.
- 48.4 A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

49. Special meetings

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

Constitution

Votes of Shareholders

50. Voting rights

- 50.1 Subject to restrictions on voting affecting any class of shares and to Rules 7, 11(f) and 53:
- (a) on a show of hands:
 - (i) subject to paragraphs (ii) and (iii), each shareholder present having the right to vote on the resolution has one vote;
 - (ii) where a shareholder has appointed more than one person as representative, proxy or attorney for the shareholder, none of the representatives, proxies or attorneys is entitled to vote; and
 - (iii) where a person is entitled to vote because of paragraph (i) in more than one capacity, that person is entitled only to one vote;
 - (b) on a poll, only shareholders present are entitled to vote and each shareholder present having the right to vote on the resolution:
 - (i) has one vote for each fully paid share held; and
 - (ii) for each other share held, has a vote in respect of the share which carries the same proportionate value as the proportion of the amount paid up or agreed to be considered as paid up on the total issue price of that share at the time the poll is taken bears to the total issue price of the share; and
 - (c) where the Board has approved, consistently with the Act, other means (including electronic) for the casting and recording of votes by shareholders on any resolution to be put to a general meeting, every shareholder having the right to vote on the resolution:
 - (i) has one vote for each fully paid share held; and
 - (ii) for each other share held, has a vote in respect of the share which carries the same proportionate value as the proportion of the amount paid up or agreed to be considered as paid up on the total issue price of that share at the time the poll is taken bears to the total issue price of the share.
- 50.2 The Board may, subject to law, determine that, at any general meeting, a shareholder who is entitled to attend and vote at that meeting is entitled to exercise their vote by a valid notice of voting intention (a **Direct Vote**). A Direct Vote includes a vote delivered to the Company by post, fax, electronic or other means approved by the Board. The Board may specify the form, method and timing of giving a Direct Vote at a meeting in order for the vote to be valid.

51. Voting rights of personal representatives, etc

Where a person satisfies the Board at least 48 hours before the holding of a general meeting (unless the person has previously satisfied the Board as to the person's right to vote) that the person is a personal representative as referred to in Rule 35 or a transmittee

Constitution

as referred to in Rule 36, the person may vote at the general meeting in the same manner as if the person were the registered holder of the securities referred to in Rule 35 or 36, as the case requires.

52. Proxies

- 52.1 A shareholder who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the member in accordance with the Act but not otherwise. A proxy appointed to attend and vote in accordance with the Act may exercise the rights of the shareholder on the basis and subject to the restrictions provided in the Act but not otherwise.
- 52.2 A form of appointment of a proxy is valid if it is in accordance with the Act or in any form (including electronic) which the Board may prescribe or accept from time to time consistently with the requirements of the Act and the Listing Rules.
- 52.3 A form of appointment of a proxy and the original or a certified copy of any authority under which the form of appointment of a proxy was validated by the shareholder must be received by the Company at least 48 hours before the meeting in respect of which the proxy has been appointed. If the meeting in respect of which a proxy has been appointed is adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 52.4 Any form of appointment of a proxy which is incomplete may be completed by the Secretary on the authority of the Board and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- 52.5 Any Director or employee of the Company who is appointed as proxy under this Constitution is entitled to vote in accordance only with those instructions given on appointment (if any), unless notice in writing signed by the principal, in accordance with Rule 52.2:
- (a) of any variation to those instructions; or
 - (b) of any instructions given in the absence of any instructions given on appointment, is received at the Office before the meeting or adjourned meeting.
- 52.6 For the purposes of Rules 52.2 and 52.5, where a notice of meeting provides for electronic lodgement of proxies, a proxy (or a notice of varied instructions or instructions given in the absence of any instructions given on appointment) lodged at the electronic address specified in the notice is taken to have been received at the Office and validated by the shareholder if there is compliance with the requirements set out in the notice.

53. Validity of vote

- 53.1 The validity of any resolution is not affected by the failure of any proxy or attorney to vote, in respect of that resolution, in accordance with instructions (if any) of the principal given before the relevant meeting or adjourned meeting.

Constitution

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

54. Board may issue forms of proxy

The Board may issue with any notice of general meeting of shareholders or any class of shareholders forms of proxy for use by the shareholders. Each form may include the names of any of the Directors or of any other persons willing to act as proxies or as persons who are to be proxies where the shareholder does not specify in the form the name of the person or persons to be appointed as proxies. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

55. Attorneys of shareholders

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

Directors

56. Directors

- 56.1 The number of Directors (not including alternate Directors) must be the number, not being less than three nor more than eleven, which the Board may determine but the Board may not reduce the number below the number of Directors in office at the time of the reduction. All Directors are to be natural persons.
- 56.2 Each Director must be the holder of, or have held on their behalf, such number of ordinary shares in the Company as the Board prescribes from time to time. A Director must satisfy this requirement within such period as the Board prescribes from time to time after:
- (a) the person's appointment as a Director;
 - (b) the commencement of this Rule; and

Constitution

(c) any amendment to the number of shares prescribed by the Board under this Rule, unless the person is prohibited from acquiring the relevant shares during the relevant period by reason of the operation of the Act.

57. Power to appoint Directors

The Board has the power at any time to appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not exceed the maximum number determined under Rule 56. Any Director appointed under this Rule may hold office only until the next annual general meeting of the Company and is then eligible for election at that meeting.

58. Remuneration of Directors

As remuneration for services each non-executive Director is to be paid or provided with the amount determined by the Board, which will be payable at the time and in the manner determined by the Board, but the aggregate remuneration paid or provided to all the non-executive Directors in any year may not exceed an amount fixed by the Company in general meeting.

The expression *remuneration* in this Rule does not include any amount which may be paid by the Company under Rule 59, 60, 61 or 103.

59. Remuneration of Directors for extra services

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

60. Travelling and other expenses

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

61. Retirement benefits

Any person (including any officer of the Company) may be paid or provided with a benefit (including a prescribed benefit) in connection with the retirement from office (including a prescribed office) of any officer of the Company, in accordance with the Act. The Board may make arrangements with any officer with respect to, providing for, or effecting payment or provision of, benefits in accordance with this Rule.

Constitution

62. Directors may contract with Company

- 62.1 A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- 62.2 A Director who is in any way interested in a contract or proposed contract with the Company shall, as soon as practicable after becoming aware of the relevant facts, declare the nature of his or her interest at a meeting of the Directors.
- 62.3 Except where a Director is constrained by the Act, a Director may be present at a meeting of the Board while a matter in which the Director has an interest is being considered and may vote in respect of that matter.
- 62.4 Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

63. Director may hold other office

- 63.1 A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- 63.2 A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or shareholder of, or holder of any other office or position under, the corporation or organisation.

64. Exercise of voting power in other corporations

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

Constitution

65. Directors may lend to the Company

Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company or underwrite or guarantee the subscription of shares or securities of the Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

Alternate Directors

66. Director may appoint alternate Director

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

- (a) the appointment of the alternate Director is terminated or suspended from office on receipt at the Office of notice in writing from the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (d) the alternate Director is not, unless the Board otherwise determines, (without affecting the right to reimbursement for expenses under Rule 60) entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the alternate Director by the Company is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors; and

Constitution

- (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

Termination of Office of Director

67. Termination of office of Director

The office of a Director is terminated:

- (a) on the Director being absent from meetings of the Board during a period of three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (b) on the Director resigning office by notice in writing to the Company;
- (c) on the Director being removed from office under the Act; or
- (d) on the Director being prohibited from being a Director by reason of the operation of the Act.

68. Directors who are employees of the Company

The office of a Director who is an employee of the Company or any of its subsidiaries is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director of the Company.

Election of Directors

69. Retirement and nomination of Directors

- 69.1 A Director (other than an exempt Managing Director under Rule 71) may not hold office for a continuous period in excess of three years or past the third annual general meeting following the Director's last election or re-election to the Board, whichever is the longer, without submitting for re-election. If no Director would otherwise be required (by this Rule 69 or Rule 57) to submit for election or re-election but the Listing Rules require that an election of Directors be held, the Director to retire at the annual general meeting is the Director (other than an exempt Managing Director under Rule 71) who has been longest in office since their last election, but, as between persons who became Directors on the same day, the one to retire (unless they otherwise agree among themselves) shall be determined by ballot.
- 69.2 Any retiring Director who seeks election or re-election at a general meeting retains office until the dissolution or adjournment of the meeting at which the Director retires or vacates office.
- 69.3 No person (other than a retiring Director) is eligible for election to the office of Director at any general meeting unless the person or a shareholder intending to nominate the person

Constitution

has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the shareholder to nominate the nominee. To be valid, the notice is required to be left at the Office not less than 40 days nor more than 50 days before the meeting unless the nominee has been recommended by the Board for election, in which case the notice is required to be left at the Office at least 28 days before the meeting.

Managing Director

70. Appointment of a Managing Director

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

71. Managing Director not to be subject to retirement by rotation

An exempt Managing Director is not required to submit for re-election pursuant to Rule 69 while continuing to hold the office of Director, but is subject to the same provisions as to termination of office under Rule 67 and removal as the other Directors of the Company. An exempt Managing Director is the Managing Director or, if there is more than one Managing Director, the Managing Director designated by the Board to be an exempt Managing Director.

Proceedings of Directors

72. Procedures relating to Board meetings

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

Constitution

73. Meetings by technology

73.1 For the purposes of the Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a meeting of the Board:

- (a) telephone;
- (b) video;
- (c) electronic mail;
- (d) any other technology which permits each Director to communicate with every other participating Director; or
- (e) any combination of these technologies.

A Director may withdraw the consent given under this Rule 73.1 in accordance with the Act.

73.2 Where Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other participating Directors:

- (a) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
- (b) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

74. Votes at meetings

74.1 Questions arising at any meeting of the Board are decided by a majority of votes, and, in the case of an equality of votes, the Chairman has (except when only two Directors are present or except when only two Directors are competent to vote on the question then at issue) a second or casting vote.

74.2 Subject to the Act and the Listing Rules, a Director with a material personal interest in a matter that is being considered at a meeting of the Board may be counted in a quorum and may vote on the matter.

75. Chairman

The Board may elect a Chairman and a Deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or Deputy Chairman is elected or if at any meeting the Chairman and the Deputy Chairman are not present at the time specified for holding the meeting, the Directors present may choose one of their number to be chairman of the meeting.

Constitution

76. Powers of meetings

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

77. Committees

77.1 The Board may delegate any of its powers to Committees consisting of any one or more Directors or any other person or persons as the Board thinks fit. In the exercise of delegated powers, any Committee formed or person or persons appointed to the Committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

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

78. Validity of acts

78.1 All actions at any meeting of the Board or by a Committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.

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

79. Resolution in writing

A resolution in writing signed by all Directors is a valid resolution of the Board. The resolution may consist of several documents in the same form each signed by one or more of the Directors. For the purposes of this Rule the references to **Directors** include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director.

Constitution

Powers of the Board

80. General powers of the Board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by Act required to be exercised or done by the Company in general meeting.

81. Power to borrow and guarantee

Without limiting the generality of Rule 80, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

82. Power to give security

Without limiting the generality of Rule 80, the Board may charge any property or business of the Company or any of its uncalled capital and may issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, in each case in the manner and on the terms it thinks fit.

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

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

84. Power to issue bond, debenture or other security

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

Constitution

85. Personal liability of officer

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

86. Seal

The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Board.

Dividends

87. Powers to determine dividends

- (a) The Board may from time to time determine that a dividend is payable to the shareholders entitled. The dividend is (subject to the rights of, or any restrictions on, the holders of shares created or raised under any special arrangement as to dividend) payable on each share on the basis of the proportion which the amount paid is of the total amounts paid, agreed to be considered to be paid or payable on the share. The Board may fix the amount, the time for payment and the method of payment of a dividend.
- (b) No dividend bears interest against the Company.

88. Dividend plans

88.1 The Board may establish and maintain one or more dividend plans (including the establishment of rules) under which shareholders may elect with respect to some or all of their shares (subject to the rules of the relevant plan):

- (a) to reinvest in whole or in part dividends paid or payable or which may become payable by the Company to the shareholder in cash by subscribing for shares in the capital of the Company;
- (b) to receive a dividend from the Company by way of the issue of shares paid up from the Company's share capital;
- (c) that dividends from the Company not be paid and that instead a payment or distribution other than a dividend be made by the Company;
- (d) that cash dividends from the Company not be paid and that instead a cash dividend be received from a related corporation nominated by the Board; and
- (e) to participate in a dividend selection plan, including but not limited to a plan under which shareholders may elect to receive a dividend from the Company or any related corporation which is less in amount but franked to a greater extent than the ordinary cash dividend paid by the Company or any related corporation

Constitution

or to receive a dividend from the Company or any related corporation which is greater in amount but franked to a lesser extent than the ordinary cash dividend paid by the Company or any related corporation.

- 88.2 Under a dividend plan established in accordance with Rule 88.1, any shareholder may elect for a specified period or for a period to be determined by specified notice (in either case determined by the Directors and prescribed in the rules of the plan) that all or some of the ordinary shares held by that shareholder and designated by the shareholder in accordance with the rules of the plan (the designated shares) are to participate in the dividend plan. During that period the designated shares are entitled to participate in the dividend plan subject to the rules of the dividend plan.
- 88.3 If there is any inconsistency between any dividend plan established in accordance with Rule 88.1 or the rules of any dividend plan and this Constitution, this Constitution prevails.
- 88.4 The Board is authorised to do all things which it thinks desirable or necessary for the purpose of implementing every dividend plan established in accordance with Rule 88.1.
- 88.5 The Board is authorised to vary the rules of any dividend plan established in accordance with Rule 88.1 in its discretion and to suspend or terminate any dividend plan in its discretion. Any dividend plan may be suspended, terminated or varied by resolution of a general meeting of the Company.
- 88.6 Where the Company in general meeting has approved the adoption of a dividend plan, the Board may determine and announce that each shareholder entitled to participate in the dividend may elect that the payment of the dividend be satisfied in respect of all, or a number of shares less than all, of the shares held by the shareholder by the issue of paid up shares in accordance with the plan.

89. Employee share plans

- 89.1 The Board may, subject to the Listing Rules:
- (a) establish and give effect to any employee share plan under which securities of the Company or any related body corporate of the Company may be issued, acquired or otherwise provided to or for the benefit of any officer (including any Director) or employee of the Company or any of its related bodies corporate or to or for the benefit of a relative of that officer or employee or any company, trust or other entity or arrangement in which that officer or employee or a relative of that officer or employee has an interest;
 - (b) amend, suspend or terminate any employee share plan established by it;
 - (c) give financial assistance in connection with the acquisition of securities of the Company or a related body corporate under any employee share plan in any manner permitted by the Act; and
 - (d) in addition to its powers under Rule 92, resolve to apply the whole or a portion of any sum, standing to the credit of any reserve or other account in paying up in full

Constitution

unissued securities of the Company to be issued to the holders of securities of the Company in accordance with the employee share plan.

- 89.2 Rule 89.1 does not limit the Board's powers to establish an employee share plan or limit the scope or structure of a plan.

90. Interim dividends

The Board may pay to the shareholders on account of any dividend any interim dividend it thinks fit.

91. Distribution otherwise than in cash

- 91.1 The Board may determine that payment of a dividend be effected wholly or in part by the distribution of specific assets or documents of title and in particular by the issue or transfer of paid up shares, debentures, debenture stock or grant of options of the Company or any other corporation.

- 91.2 The Board may appoint any officer of the Company to sign on behalf of each shareholder entitled to participate in the dividend any document in the Board's opinion desirable or necessary:

- (a) to vest in the shareholder title to assets; and
- (b) in the case of a distribution of shares in any corporation, to constitute the shareholder's agreement to become a member of the corporation,

and, in executing the document, the officer acts as agent and attorney for the shareholder.

92. Capitalisation of profits

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

- 92.2 The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with, including specifying that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made.

- 92.3 The Board may make all necessary appropriations and applications of the amount to be capitalised under Rule 92.1 and all necessary issues of fully paid shares or debentures.

Constitution

- 92.4 Where required, the Board may appoint a person to sign a contract on behalf of the shareholders entitled on a capitalisation to any shares or debentures, which provides for the issue to them, credited as fully paid, of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

93. Transfer of shares

Except as provided in the ASTC Settlement Rules where the transfer of shares occurs as the result of a proper ASTC transfer, a transfer of shares registered after the transfer books close for dividend purposes, but before a dividend is payable, does not pass the right to any dividend payable on the shares.

94. Retention of dividends; unclaimed dividends

- 94.1 The Board may retain the dividends payable on securities referred to in Rules 35 and 36 until the personal representative or the transmittee (as the case requires) becomes registered as the holder of the securities or duly transfers them. The Board may retain any dividends in respect of which (or in respect of the shares on which the dividend is payable) the Company has a lien or charge under Rule 27 and may apply any retained dividends towards satisfaction of the calls, instalments or sums owing in respect of which the lien or charge exists.
- 94.2 All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise disposed of according to law.

95. How distributions are payable

- 95.1 Payment of any dividend, interest or other money payable in cash in respect of securities of the Company may be made in any manner and by any means as determined by the Board, at the sole risk of the intended recipient.
- 95.2 Without limiting any other means of payment which the Board may adopt, any payment may be made:
- (a) by cheque sent through the post to directed to:
 - (i) the address of the security holder as shown in the Register or, in the case of joint holders, to the address shown in the Register as the address of the holder whose name stands first in the Register in respect of the joint holding; or
 - (ii) any other address as the security holder or joint holders in writing directs or direct; or
 - (b) by electronic funds transfer to an account with a bank or other financial institution nominated by the security holder or joint holders in writing and acceptable to the Company.

Constitution

- 95.3 Without limiting Rule 94.2, if the Board decides to make a payment by electronic funds transfer under Rule 95.2 and an account is not nominated by the security holder or joint holders in accordance with the requirements of Rule 95.2, the Company may hold the amount payable in a separate account of the Company until the security holder or joint holders nominate an account in accordance with the requirements of Rule 95.2.
- 95.4 Payments of dividends and other distributions by the Company may be made in Australian dollars or any other currency determined by the Board in its discretion. Payments in different currencies may be made to different security holders as determined by the Board in its discretion. If a payment is made in a currency other than Australian dollars the Board may determine in its discretion the appropriate exchange rate and the time of calculation to calculate the amount payable in the relevant currency. The determinations of the Board are, in the absence of manifest error, final.

Notices

96. Service of notices

- 96.1 A notice may be given by the Company to any shareholder, or in the case of joint holders to the shareholder whose name stands first in the Register:
- (a) personally;
 - (b) by leaving it at the shareholder's registered address;
 - (c) by sending it by prepaid post or facsimile transmission addressed to the shareholder's registered address;
 - (d) by transmitting it electronically to the electronic address given by the shareholder to the Company for giving notices;
 - (e) by notifying the shareholder of the notice's availability by an electronic means nominated by the shareholder for that purpose; or
 - (f) in such other manner permitted by the Act as the Board may determine in its discretion.
- 96.2 If the notice is signed, the signature may be written or printed, affixed or produced by some mechanical, electronic or other means.
- 96.3 Rule 96.1 applies, to the extent that it can and with any necessary changes, to sending any communication or document.
- 96.4 A reference in this Constitution to a written notice includes a notice given by fax or other electronic means or made available for access by electronic means.

97. When notice deemed to be served

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

Constitution

deemed to have been served when delivered. Any notice served on a shareholder by facsimile transmission or electronically to an electronic address, or given to a shareholder by notifying the shareholder of its availability by an electronic means nominated by the shareholder for that purpose, is deemed to have been served when the transmission or notification is sent.

98. Shareholder not known at registered address

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

99. Reckoning of period of notice

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

100. Notice to transferor binds transferee

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

101. Service on deceased shareholders

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

Winding Up

102. Winding up

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

Constitution

trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.

- 102.2 Any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed under the Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.
- 102.3 If any shares to be divided in accordance with Rule 102.1 involve a liability to calls or otherwise, any person entitled under the division to any of the shares may, by notice in writing within ten business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is to act accordingly, if practicable.

Indemnity

103. Indemnity of officers

- 103.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- 103.2 In addition to Rule 103.1, an officer of the Company and an officer of a subsidiary of the Company may be indemnified to the relevant extent out of the assets of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the subsidiary or in or arising out of the discharge of the duties of the officer where the Board considers it appropriate to do so.
- 103.3 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a subsidiary.
- 103.4 Where the Board considers it appropriate, the Company may:
- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the subsidiary or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company or a subsidiary to make the payments.
- 103.5 Where the Board considers it appropriate, the Company may:
- (a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and

Constitution

- (b) bind itself in any contract or deed with a Director or former Director to give the access.

103.6 In this Rule 103:

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

Proportional Takeovers

104. Approval of proportional takeover bids

- 104.1 Where offers have been made under a proportional takeover bid for securities in a class of securities in the Company the registration of a transfer giving effect to a takeover contract under the bid is prohibited unless and until a resolution (in this Rule 104 referred to as an **Approving Resolution**) to approve the proportional takeover bid is passed in accordance with this Rule 104.

Constitution

- 104.2 Where offers have been made under a proportional takeover bid for securities in a class of securities in the Company:
- (a) a person (other than the bidder under the proportional takeover bid or an associate of the bidder) who, as at the end of the day on which the first offer under the proportional takeover bid was made, held securities in that class is entitled to vote on an Approving Resolution in respect of that proportional takeover bid and, for the purpose of voting, is entitled to one vote for each of the securities held in that class at that time; and
 - (b) neither the bidder under the proportional takeover bid nor any associate of the bidder is entitled to vote on the Approving Resolution.
- 104.3 An Approving Resolution is to be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the Approving Resolution.
- 104.4 The provisions of this Constitution that apply in relation to a general meeting of the Company apply, with modifications as the Board determines that the circumstances require, in relation to a meeting that is convened to vote on an Approving Resolution and apply as if the meeting was a general meeting of the Company.
- 104.5 An Approving Resolution that has been voted on in accordance with this Rule 104 is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is to be taken to have been rejected.
- 104.6 This Rule 104 ceases to have effect on the third anniversary of the date of the adoption or last renewal of this Rule 104.

Restricted Securities

105. Restricted securities

- 105.1 Restricted securities within the meaning of the Listing Rules cannot be disposed of except as permitted by the Listing Rules or ASX.
- 105.2 The Company must refuse to acknowledge a disposal (including registering a transfer) of restricted securities within the meaning of the Listing Rules except as permitted by the Listing Rules or ASX.
- 105.3 During a breach of the Listing Rules relating to restricted securities within the meaning of the Listing Rules or a breach of a restriction agreement relating to the restricted securities, the holder of the restricted securities is not entitled to any dividend or distribution or voting rights in respect of the restricted securities except as permitted by the restriction agreement, the Listing Rules or ASX.

Constitution

Small Shareholdings

106. Sale of small holdings

106.1 In this Rule 106, unless the context otherwise requires:

- (a) **Divestment Notice** means a notice in writing stating or to the effect that the Company intends to sell or arrange the sale of the shares of a shareholder unless within the Specified Period (which must be set out in the notice):
 - (i) the shareholding of the shareholder increases to at least a Marketable Parcel and the shareholder notifies the Company in writing of the increase;
 - (ii) the shares are sold by the shareholder; or
 - (iii) except in respect of a Divestment Notice sent to a Prescribed New Small Holder, the shareholder gives to the Company a written notice that the shareholder wishes to retain the shares.
- (b) **Effective Date** means 27 October 2005.
- (c) **New Small Holder** means a shareholder who holds less than a Marketable Parcel of shares in the Company where:
 - (i) the holding is a new holding created by the transfer of a parcel of shares that was less than a Marketable Parcel at the time a proper ASTC transfer was initiated or a paper based transfer was lodged; and
 - (ii) the transfer occurred after the Effective Date.
- (d) **Notice Date** means the date on which the Company sends to a shareholder a Divestment Notice.
- (e) **Prescribed New Small Holder** means a New Small Holder which the Company determines should be treated as a Prescribed New Small Holder with the consequences set out in this Rule 106 and, accordingly, is a person to whom the Company determines to send a Divestment Notice specifying seven days as the Specified Period.
- (f) **Sale Period** means the period of either seven days following the expiration of the Specified Period or, where Rule 106.6 applies, seven days following the date of receipt by the Company of revocation of the notice referred to in Rule 106.5(c).
- (g) **Small Holder** means a shareholder who holds less than a Marketable Parcel of shares in the Company but does not include a Prescribed New Small Holder.
- (h) **Specified Period** means either:
 - (i) a period of not less than six weeks after the Notice Date, as determined by the Company; or
 - (ii) if the Company in its discretion determines in the case of a New Small Holder, the period of seven days after the Notice Date.

Constitution

- (i) The terms **Marketable Parcel** and **Takeover** have the same meaning as they are given in the Listing Rules and the terms **Holding Adjustment** and **Issuer Sponsored Holding** have the same meaning as they are given in the ASTC Settlement Rules.
- 106.2 Where under this Rule 106 powers are conferred on the Secretary the powers may be exercised either by the Secretary or by any person nominated by the Secretary.
- 106.3 If the Secretary determines that a shareholder is a Small Holder or a Prescribed New Small Holder, the Secretary may send (subject to Rule 106.4) a Divestment Notice to the shareholder.
- 106.4 Subject to Rule 106.16, the Company may not give more than one Divestment Notice to a particular shareholder in any 12 month period.
- 106.5 Where the Company has sent to a shareholder a Divestment Notice then, unless within the Specified Period:
- (a) the shareholding of the shareholder increases to at least a Marketable Parcel and the shareholder has notified the Company in writing of the increase;
 - (b) the relevant shares are sold by the shareholder;
 - (c) (save in respect of Prescribed New Small Holders who are not entitled to give notice of a wish to retain the relevant shares) the shareholder gives to the Company a written notice that the shareholder wishes to retain the relevant shares, the shareholder is deemed to have irrevocably appointed the Company as the shareholder's agent to sell the shares the subject of the Divestment Notice during the Sale Period at the price and on the terms determined by the Secretary in the Secretary's sole discretion and to receive the proceeds of sale on behalf of the shareholder. Nothing in this Rule obliges the Company to sell the shares. For the purposes of the sale, the Company may initiate a Holding Adjustment to move all the shares from a CHES holding to an Issuer Sponsored Holding or a certificated holding or to take any other action the Company considers necessary or desirable to effect the sale.
- 106.6 Where a shareholder (not being a Prescribed New Small Holder) has given to the Company notice under Rule 106.5(c) the shareholder may at any time revoke the notice and on revocation the Company is constituted the shareholder's agent as provided in Rule 106.5.
- 106.7 The Secretary may execute on behalf of a shareholder a transfer of the shares in respect of which the Company is appointed agent under Rule 106.5 in the manner and form the Secretary considers necessary and to deliver the transfer to the purchaser. The Secretary may take any other action on behalf of the shareholder as the Secretary considers necessary to effect the sale and transfer of the shares.
- 106.8 The Company may register a transfer of shares whether or not any certificate for the shares has been delivered to the Company.
- 106.9 If the shares of two or more shareholders to whom this Rule 106 applies are sold to one purchaser, the transfer may be effected by one transfer.

Constitution

- 106.10 If shares are sold under this Rule 106, the Company must:
- (a) within a reasonable time after completion of the sale, inform the former shareholder of the sale and the total sale proceeds received by the Company; and
 - (b) if any certificate for the shares the subject of the transfer has been received by the Company (or the Company is satisfied that the certificate has been lost or destroyed or that its production is not essential), within 60 days after completion of the sale, cause the proceeds of sale to be sent to the former shareholder (or, in the case of joint holders, to the holder whose name stood first in the Register in respect of the joint holding). Payment may be made in any manner and by means as determined by the Board and is at the risk of the former shareholder.
- 106.11 The Company bears the costs of sale of the transferor of shares sold under this Rule 106 (but is not liable for tax on income or capital gains of the former shareholder).
- 106.12 All money payable to former shareholders under this Rule 106 which is unclaimed for one year after payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise disposed of according to law. No money payable under this Rule 106 by the Company to former shareholders bears interest as against the Company.
- 106.13 A certificate signed by the Secretary stating that shares sold under this Rule 106 have been properly sold discharges the purchaser of those shares from all liability in respect of the purchase of those shares.
- 106.14 When a purchaser of shares is registered as the holder of the shares, the purchaser:
- (a) is not bound to see to the regularity of the actions and proceedings of the Company under this Rule 106 or to the application of the proceeds of sale; and
 - (b) has title to the shares which is not affected by any irregularity or invalidity in the actions and proceedings of the Company.
- 106.15 Any remedy of any shareholder to whom this Rule 106 applies in respect of the sale of the shareholder's shares is limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.
- 106.16 On the date on which there is announced a Takeover, the operation of this Rule 106 is suspended. Despite Rule 106.4, on the close of the offers under the Takeover the Company may invoke the procedures set out in this Rule 106.