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AUSTRALIAN SECURITIES  
& INVESTMENTS COMMISSION



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**CONSTITUTION OF  
CERAMIC FUNDS MANAGEMENT LIMITED**

*094 185 092.*



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*Corporations Law*  
Public Company Not Listed

**CONSTITUTION  
OF  
CERAMIC FUNDS MANAGEMENT LIMITED**

**INTRODUCTION**

**1. Replaceable Rules Excluded**

- 1.1 The replaceable rules contained in the Law do not apply to the Company.

**2. Definitions and Interpretation**

**2.1 Definitions**

In this constitution:

- (1) “**auditor**” means any person appointed for the time being to perform the duties of an auditor of the Company;
- (2) “**business day**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (3) “**Company**” means Ceramic Funds Management Limited;
- (4) “**directors**” means the directors for the time being of the Company or the directors assembled as a board;
- (5) “**executive director**” means a director in full-time employment of the Company or any subsidiary or related body corporate other than a managing director;
- (6) “**Law**” means the *Corporations Law* and includes any amendment or re-enactment of it or any legislation passed in substitution for it; and
- (7) “**secretary**” means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary.

**2.2 Interpretation**

- (1) Reference to:
  - (a) one gender includes the others;

- (b) the singular includes the plural and the plural includes the singular; and
  - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
- (a) an expression has in this constitution the same meaning as in the Law; and
  - (b) if an expression is given different meanings for the purposes of different provisions of the Law, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings are for convenience only and do not form part of this constitution or affect its interpretation.

## **APPOINTMENT OF DIRECTORS**

### **3. Number of Directors**

*[compare section 221(2)]*

- 3.1 The number of the directors must be not less than 3 nor more than 9.
- 3.2 The Company in general meeting may by resolution increase or reduce the number of directors but the number must not be reduced below 3.

### **4. Directors' Qualifications**

- 4.1 A share qualification for directors may be fixed by the Company in general meeting. Unless and until so fixed a director is not required to hold any share in the Company.

### **5. Appointment of Directors**

*[compare replaceable rules 224C and 224D]*

- 5.1 The first directors are those named in the application for registration of the Company.
- 5.2 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.

### **6. Insufficient Directors**

*[compare replaceable rule 224(1)]*

- 6.1 In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of

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increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

## **ALTERNATE DIRECTORS**

*[compare replaceable rule 225A]*

### **7. Appointment**

- 7.1 A director may appoint any person approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.
- 7.2 A managing director may not appoint an alternate to act as managing director.
- 7.3 An alternate director is not required to have any share qualification.
- 7.4 An alternate director is not taken into account for the purpose of rule 3.

### **8. Rights and Powers of Alternate Director**

- 8.1 An alternate director is entitled to notice of meetings of the directors and, if the appointing director is not present at a meeting, is entitled to attend and vote in his or her stead.
- 8.2 When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

### **9. Suspension or Revocation of Appointment**

- 9.1 A director may suspend or revoke the appointment of an alternate director appointed by him or her.
- 9.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

### **10. Form of Appointment, Suspension or Revocation**

- 10.1 Every appointment, suspension or revocation under rule 7 or rule 9.1 must be in writing and a copy must be given to the Company. The notice may be given by facsimile.

### **11. Termination of Appointment**

- 11.1 The appointment of an alternate director automatically determines:
  - (1) if the appointing director ceases to hold office as director;
  - (2) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or

- 
- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

**12. Power to Act as Alternate for More than 1 Director**

- 12.1 A director or any other person may act as alternate director to represent more than 1 director.

**POWERS OF DIRECTORS**

**13. Validation of Acts of Directors and Secretaries**

*[compare section 226]*

- 13.1 The acts of a director or secretary of the Company are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- 13.2 Where a person whose office as director of the Company is vacated under a provision of the Law purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

**14. General Business Management**

*[compare replaceable rule 226A]*

- 14.1 The business of the Company is to be managed by or under the direction of the directors.
- 14.2 The directors may exercise all the powers of the Company except any powers that the Law or this constitution requires the Company to exercise in general meeting.
- 14.3 No rule made or resolution passed by the Company in general meeting can invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.
- 14.4 The directors may pay all expenses incurred in promoting and forming the Company.
- 14.5 Any sale of the Company's main undertaking may only be made subject to approval or ratification by a general meeting.

**15. Borrowing Powers**

- 15.1 Without limiting the generality of rule 14, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

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**16. Appointment of Attorney**

- 16.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 16.2 A power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

**17. Negotiable Instruments**

*[compare replaceable rule 226B]*

- 17.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 17.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

**18. Committees of Directors**

*[compare replaceable rule 226]*

- 18.1 The directors may delegate any of their powers to a committee of directors.
- 18.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 18.3 The meetings and proceedings of any committee consisting of 2 or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 18.4 The directors may establish local boards or agencies for managing any of the affairs of the Company in any specified locality and may appoint any persons to be members of the local board or any managers or agents and may fix their remuneration.

**MANAGING DIRECTOR**

*[compare replaceable rule 226Q]*

**19. Power to Appoint**

- 19.1 The directors may appoint 1 or more of themselves to the office of managing director of the Company for the period, and on the terms (including as to remuneration), the directors see fit.

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**20. Qualifications**

20.1 A person ceases to be managing director if he or she ceases to be a director.

**21. Powers**

21.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on a managing director any of the powers that the directors can exercise.

21.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

**22. Withdrawal of Appointment or Powers**

22.1 The directors may revoke or vary:

- (1) an appointment; or
- (2) any of the powers conferred on the managing director.

**23. Temporary Appointments**

23.1 If a managing director becomes incapable of acting in that capacity the directors may appoint another director to act temporarily as managing director.

**REMOVAL AND RESIGNATION OF DIRECTORS**

**24. Removal of Directors**

*[compare section 227]*

24.1 Subject to the Law the Company may by resolution remove a director from office.

**25. Resignation of Director**

*[replaceable rule 227A]*

25.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

**26. Vacation of Office of Director**

*[compare section 224 and 229]*

26.1 In addition to any other circumstances in which the office of a director becomes vacant under the Law the office of a director becomes vacant if the director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

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- (3) is absent from 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
  - (4) ceases to be qualified as a director under rule 4;
  - (5) fails to pay any call due on any shares held by him or her for 1 month or any further time the directors allow after the call is made;
  - (6) being an executive director ceases to be employed full time by the Company or a subsidiary or related body corporate;
  - (7) becomes prohibited from being a director under or by reason of any order made under the Law;
  - (8) is removed by resolution in accordance with rule 24; or
  - (9) resigns from office in accordance with rule 25.

#### **DIRECTORS' INTERESTS**

##### **27. Prohibition on Being Present or Voting**

*[compare section 232A]*

27.1 Except where permitted by the Law a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

27.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Law from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

##### **28. Director to Disclose Interests**

*[compare section 231]*

28.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.

28.2 A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.

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28.3 For the purposes of rules 28.1 and 28.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the director (or by persons including the director or by a body corporate of which the director is a member or officer) in respect of a loan to the Company; or
- (2) the position of the director as a director of a related body corporate.

## 29. Effect of Interest in Contract

*[compare replaceable rule 231(1A)]*

29.1 If a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
  - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
  - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
  - (c) the director is not disqualified from the office of director.

29.2 For the purposes of rule 29.1 "**contract**" includes an arrangement, dealing or other transaction.

## 30. Other Interests

30.1 Without limiting rule 28 or rule 29 a director may to the extent permitted by the Law:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
- (2) enter into any contract with the Company giving the director an option to take up shares in the Company; and
- (3) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

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**31. Extension of meaning of “Company”**

31.1 For the purposes of rules 28, 29 and 30 “**Company**” includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

**32. Other Directorships and Shareholdings**

32.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

32.2 Subject to the Law:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

**REMUNERATION OF DIRECTORS**

*[compare replaceable rule 236A]*

**33. Payment of Remuneration**

33.1 The directors are to be paid the remuneration that the Company determines by resolution.

33.2 The remuneration of directors accrues daily.

**34. Payment of Expenses**

34.1 The Company may also pay the directors' travelling and other expenses that they properly incur:

- (1) in attending directors' meetings or any meetings of committees of directors;

- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company's business.

### **35. Cancellation, Suspension, Reduction or Postponement**

- 35.1 A resolution of directors cancelling, suspending, reducing or postponing payment of any remuneration of any director binds the director.

### **36. Financial Benefit**

*[compare Chapter 2E - sections 243A and following]*

- 36.1 To the extent, if any, required by the Law, a director must ensure that the requirements of the Law are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

## **SECRETARY**

### **37. Terms of Office of Secretary**

*[compare replaceable rule 240(4A)]*

- 37.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

## **INDEMNITY AND INSURANCE**

### **38. Indemnity**

*[compare section 241]*

- 38.1 To the extent permitted by the Law, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be):

- (3) to any other person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- (4) for costs and expenses:
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
  - (b) in connection with an application in relation to those proceedings, in which the Court grants relief to the person under the Law.

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### **39. Insurance**

*[compare section 241A]*

39.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against:

- (1) any liability other than a liability incurred by the person as an officer of the Company or a related body corporate arising out of conduct involving:
  - (a) a wilful breach of duty in relation to the Company; or
  - (b) without limiting rule 44.1(1)(a), a contravention of subsection 232(5) or (6) of the Law; and
- (2) any costs and expenses incurred by the person in defending proceedings, whether civil or criminal, whatever their outcome.

### **40. Director Voting on Contract of Indemnity or Insurance**

*[compare section 232A(2A)]*

40.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

### **41. Meaning of "Officer"**

41.1 For the purposes of rules 38, 39 and 40, "officer" means a director, secretary, executive officer or a member of a local board or agency appointed under rule 18.4.

## **INSPECTION OF RECORDS**

### **42. Rights of Inspection**

*[compare replaceable rule 247D and sections 173, 247A and 251B]*

42.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.

42.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolutions of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.

### **43. Confidential Information**

43.1 Except as provided by the Law, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or

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any trade secret, secret process or other confidential information of or used by the Company.

## **DIRECTORS' MEETINGS**

*[compare sections 248A to 248G]*

### **44. Circulating Resolutions**

*[compare replaceable rule 248A]*

- 44.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution, except a director absent from Australia who has not left a facsimile number at which he or she may be given notice, sign a document containing a statement that they are in favour of the resolution set out in the document.
- 44.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 44.3 The resolution is passed when the last director signs.
- 44.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 44 must be treated as a document in writing signed by that director.

### **45. Meetings of Directors**

- 45.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.
- 45.2 The minutes of any meeting of the directors must state the method of meeting and the persons present.

### **46. Calling Directors' Meetings**

*[compare replaceable rule 248Q]*

- 46.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

### **47. Notice of Meeting**

*[compare replaceable rule 248Q]*

- 47.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
  - (2) is absent from Australia and has not left a facsimile number at which he or she may be given notice.

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47.2 A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

**48. Waiver of Notice**

48.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

**49. Technology Meeting of Directors**

*[compare section 248C]*

49.1 A directors' meeting may be held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

49.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

49.3 The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

49.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.

49.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.

49.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

**50. Chairing Directors' Meetings**

*[compare replaceable rule 248E]*

50.1 The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

50.2 The directors must elect a director present to chair a meeting, or part of it, if:

- (1) a director has not already been elected to chair the meeting; or

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- (2) a previously elected chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting.

50.3 The directors may appoint a deputy chair who in the absence of the chair at a meeting of the directors may exercise all the powers and authorities of the chair.

#### **51. Quorum**

*[compare replaceable rule 248F]*

51.1 The quorum for a directors' meeting is 2 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

51.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Law, entitled to vote).

#### **52. Passing of Directors' Resolutions**

*[compare replaceable rule 248G]*

52.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

52.2 The chair does not have a casting vote in addition to any vote he or she has as a director.

52.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

#### **53. Restriction on Voting**

53.1 No director is entitled to be present in person or by an alternate director or to vote at a meeting of directors or to be counted in a quorum if and so long as he or she has failed to pay any call to the Company on shares held by him or her after the date upon which the payment should have been made.

### **MEETINGS OF MEMBERS**

#### **54. Circulating Resolutions**

*[compare section 249A]*

54.1 This rule 54 applies to resolutions which the Law, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Law to remove an auditor.

54.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint members must sign.

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- 54.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 54.4 The resolution is passed when the last member signs.
- 54.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 54 it is entitled to assume that the copy is a true copy.

**55. Resolutions of 1 Member Company**

*[compare section 249B]*

- 55.1 If the Company has only 1 member it may pass a resolution by the member recording it and signing the record.
- 55.2 If there is only 1 issued share in the Company but it is held by more than 1 person, the provisions of this constitution as to general meetings apply as if each holder were a separate member of the Company.

**56. Calling of General Meeting**

*[compare replaceable rule 249C and section 249D]*

- 56.1 A director may call a meeting of the Company's members.
- 56.2 Except as permitted by law, a general meeting, to be called the "annual general meeting", must be held at least once in every calendar year.
- 56.3 Except as provided in the Law no member or members may call a general meeting.

**57. Amount of Notice of Meeting**

*[compare section 249H]*

- 57.1 Subject to the provisions of the Law as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

**58. Persons Entitled to Notice of General Meeting**

*[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]*

- 58.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each member entitled to vote at the meeting;
  - (2) each director;
  - (3) the Company's auditor; and
  - (4) subject to rule 59.1, every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his or her death or bankruptcy, would be entitled to receive notice of the meeting.

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58.2 No other person is entitled to receive notice of general meetings.

58.3 If a share is held jointly, then unless the share is the only issued share in the Company, notice need only be given to 1 of the members, being the joint member named first in the register of members.

#### **59. Notice upon Transmission**

59.1 A person entitled to a share in consequence of the death or bankruptcy of a member is not entitled to notice of meetings until the person has produced all information as to the person's entitlement that the directors properly require.

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

#### **60. How Notice is Given**

*[compare section 249J(3)]*

60.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the member.

#### **61. When Notice Is Given**

*[compare replaceable rule 249J(4)]*

61.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

61.2 Except as provided by rule 61.3, a notice of meeting sent by facsimile, or other electronic means, is taken to be given on the business day after it is sent.

61.3 Service by facsimile or electronic mail is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or

- 
- (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

**62. Contents of Notice**

*[compare section 249L]*

**62.1 A notice of a general meeting must:**

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (4) contain a statement setting out the following information:
  - (a) that the member has a right to appoint a proxy;
  - (b) that the proxy need not be a member of the Company; and
  - (c) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

**63. Constructive Notice**

- 63.1 Every person who by operation of law, transfer or any other means becomes entitled to any share is bound by every notice in respect of the share which, before his or her name and address is entered on the register of members, has been duly given to the person from whom he or she derives title or to any previous holder of the share.

**64. Notice of Adjourned Meeting**

*[replaceable rule 249M]*

- 64.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

**65. Accidental Omission to Give Notice**

*[compare section 1322(3)]*

- 65.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not automatically invalidate the proceedings at or any resolution passed at the meeting.

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**66. Postponement of General Meeting**

- 66.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by shareholders as provided by the Law) for not more than 42 days after the date for which it was originally called.
- 66.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 68.3 or rule 69.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

**67. Technology**

*[section 249S]*

- 67.1 The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

**68. Quorum**

*[compare replaceable rule 249T]*

- 68.1 The quorum for a meeting of the Company's members is 2 members and the quorum must be present at all times during the meeting.
- 68.2 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are counted. However, if a member has appointed more than 1 proxy or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy or body corporate representative, the individual is counted only once.
- 68.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
    - (a) if the date is not specified - the same day in the next week;
    - (b) if the time is not specified - the same time; and
    - (c) if the place is not specified - the same place.
- 68.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

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**69. Chair at General Meetings**

*[compare replaceable rule 249I]*

69.1 If the directors have appointed 1 of their number as chair of their meetings, the person appointed presides as chair at every general meeting.

69.2 Where a general meeting is held and:

- (1) a chair has not been appointed as referred to in rule 69.1; or
- (2) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present must appoint another director or if no director is present or willing to act then the members present may appoint any 1 of their number to be chair of the meeting.

69.3 The chair must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

**70. Business at Adjourned Meetings**

*[replaceable rule 249V(2)]*

70.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**PROXIES AND BODY CORPORATE REPRESENTATIVES**

**71. Who Can Appoint A Proxy**

*[compare mandatory rule 249X]*

71.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members or at a meeting of the holders of a class of shares may appoint a person as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

71.2 The appointment may specify the proportion or number of votes that the proxy may exercise.

71.3 If the member is entitled to cast 2 or more votes at the meeting, the member may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

71.4 Disregard any fractions of votes resulting from the application of rule 71.2 or rule 71.3.

**72. Rights of Proxies**

*[compare section 249Y]*

72.1 A proxy appointed to attend and vote for a member has the same rights as the member:

- (1) to speak at the meeting;

- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

72.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

72.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

### **73. When Proxy Form Must Be Sent to All Members**

*[section 249Z]*

73.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the member requested the form or list - the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise - the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

### **74. Appointing a Proxy**

*[compare section 250A]*

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

- (1) the member's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

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

74.3 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;

- (3) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 74.3 does not affect the way that the person can cast any votes the person holds as a member.

74.4 An appointment does not have to be witnessed.

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

**75. Form of Proxy Sent Out by Company**

75.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular transaction; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

75.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

75.3 Despite rule 75.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

**CERAMIC FUNDS MANAGEMENT LIMITED**

ACN .....

I/We, \_\_\_\_\_ of \_\_\_\_\_, being a member/members of the abovenamed company, appoint \_\_\_\_\_ of \_\_\_\_\_ or, in his or her absence, \_\_\_\_\_ of \_\_\_\_\_ as my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general meeting of the company to be held on \_\_\_\_\_ and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on \_\_\_\_\_

\* Strike out whichever is not desired.

† To be inserted if desired.

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## **76. Receipt of Proxy Documents**

*[compare section 250B]*

- 76.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 24 hours before the meeting:
- (1) the proxy's appointment; and
  - (2) if the appointment is signed by the appointor's attorney - the authority under which the appointment was signed or a certified copy of the authority.
- 76.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 76.3 The Company receives an appointment or authority when it is received at any of the following:
- (1) the Company's registered office;
  - (2) a facsimile number at the Company's registered office; or
  - (3) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.
- 76.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a facsimile number or electronic address; and
  - (2) a requirement (if any) in the notice of meeting that:
    - (a) the transmission be verified in a way specified in the notice; or
    - (b) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

## **77. Validity of Proxy Vote**

*[section 250Q(1) and replaceable rule 250Q(2)]*

- 77.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- 77.2 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (1) the appointing member dies;

- 
- (2) the member is mentally incapacitated;
  - (3) the member revokes the proxy's appointment;
  - (4) the member revokes the authority under which the proxy was appointed by a 3rd party; or
  - (5) the member transfers the share in respect of which the proxy was given.

#### **78. Body Corporate Representative**

*[section 250D]*

78.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders; or
- (3) relating to resolutions to be passed without meetings.

The appointment may be a standing one.

78.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

78.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

78.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

#### **79. Attorney of Member**

79.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 24 hours before the meeting, in the same way as the appointment of a proxy.

### **VOTING AT MEETINGS OF MEMBERS**

#### **80. How Many Votes a Member Has**

*[compare replaceable rule 250E]*

80.1 Subject to any rights or restrictions attached to any class of shares, at a meeting of members:

- 
- (1) on a show of hands, each member has 1 vote; and
  - (2) on a poll, each member has 1 vote for each share the member holds.

80.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

80.3 A member is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

### **81. Jointly Held Shares**

*[compare replaceable rule 250F]*

81.1 If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

81.2 This applies whether the vote is cast in person or by proxy or by attorney.

81.3 Several executors or administrators of a deceased member are treated, for the purposes of rule 81.1, as joint holders.

### **82. Objections to Right to Vote**

*[compare replaceable rule 250G]*

82.1 A challenge to a right to vote at a meeting of members:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

82.2 A vote not disallowed following the challenge is valid for all purposes.

### **83. Votes Need Not All Be Cast in the Same Way**

*[section 250H]*

83.1 On a poll a person voting who is entitled to 2 or more votes:

- (1) need not cast all the votes; and
- (2) may cast the votes in different ways.

### **84. How Voting Is Carried Out**

*[compare replaceable rule 250J, section 251A]*

84.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.

84.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

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**85. Matters on which a Poll may be Demanded**

*[compare section 250K]*

85.1 A poll may be demanded on any resolution.

85.2 A demand for a poll may be withdrawn.

**86. When a Poll is Effectively Demanded**

*[compare section 250L]*

86.1 At a meeting of the Company's members, a poll may be demanded by:

- (1) at least 5 members entitled to vote on the resolution;
- (2) a member or members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (3) the chair.

86.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

86.3 The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

**87. When and How Polls Must Be Taken**

*[compare replaceable rule 250M]*

87.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

87.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

87.3 The 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.

87.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

**88. Chair's Casting Vote**

*[compare replaceable rule 250E(3)]*

88.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a casting vote.

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**89. Voting Rights of Persons Entitled under Transmission Rule**

89.1 A person entitled under the transmission rule (rule 128) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

- (1) 24 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the Company documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement; or
- (2) the directors have previously admitted the person's right to vote at the meeting in respect of the shares.

**ANNUAL GENERAL MEETING**

*[compare section 250N]*

**90. Business of an Annual General Meeting**

*[compare sections 250R, 250S and 250T]*

90.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (1) the consideration of the annual financial report, directors' report and auditor's report;
- (2) the election of directors
- (3) the appointment of the auditor; and
- (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all other business transacted at any other general meeting is special business.

90.2 The business of the annual general meeting also includes any other business which under this constitution or the Law ought to be transacted at an annual general meeting.

90.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.

90.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

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## **91. Resolutions Proposed by Members**

*[compare section 249O]*

91.1 No member may at any meeting move any resolution relating to special business unless:

- (1) the member has given not less than 30 business days' previous notice in writing of the member's intention to move an ordinary resolution or 2 months' notice in writing of the member's intention to move a special resolution at the meeting by leaving the notice and a signed copy of the resolution at the registered office of the Company; or
- (2) the resolution has previously been approved by the directors.

91.2 Upon receiving a notice referred to in rule 91.1(1) the secretary must:

- (1) if the notice convening the meeting has already been despatched, immediately notify the members of the proposed resolution; or
- (2) otherwise include notice of the proposed resolution in the notice convening the meeting.

## **MEETINGS OF MEMBERS HOLDING SHARES IN A CLASS**

### **92. Variation of Class Rights**

*[compare sections 246B and 246G]*

92.1 Rights attached to shares in a class of shares may be varied or cancelled only:

- (1) by special resolution of the Company; and
- (2) either:
  - (a) by special resolution passed at a meeting of the members holding shares in the class; or
  - (b) with the written consent of members with at least 75% of the votes in the class.

92.2 Rule 92.1 applies whether or not the Company is being wound up.

92.3 The Company must give a notice in writing of the variation or cancellation of shares to members of the class affected within 7 days after variation or cancellation of the shares.

92.4 The provisions of this constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of members holding shares in a class except that:

- (1) a quorum is constituted by not less than 2 members who, between them, hold or represent 25% of the issued shares of the class; and
- (2) any member who holds or represents shares of the class may demand a poll.

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## MINUTES

### 93. Minutes to be Kept

*[compare section 251A]*

- 93.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
  - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
  - (3) resolutions passed by members without a meeting; and
  - (4) resolutions passed by directors without a meeting.
- 93.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
  - (2) the chair of the next meeting.
- 93.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 93.4 Without limiting rule 93.1 the directors must record in the minute books:
- (1) all appointments of officers and executive employees;
  - (2) the names of the directors and alternate directors present at all meetings of directors and the Company; and
  - (3) the method by which a meeting of directors was held.

## ACCOUNTS, AUDIT AND RECORDS

### 94. Accounts

*[compare sections 285-297, 314-317]*

- 94.1 The directors must cause proper accounting and other records to be kept in accordance with the Law.
- 94.2 The directors must distribute copies of every profit and loss account and balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Law.

### 95. Audit

*[compare sections 301, 327-331]*

- 95.1 A registered company auditor must be appointed.

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- 95.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Law.

## SHARES

### 96. Control of Issue of Shares

*[compare sections 254A and 254B]*

- 96.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Law and rule 99, the issue of shares in the Company is under the control of the directors.
- 96.2 Subject to the Law the directors may issue shares to persons at times and on terms and conditions the directors see fit.
- 96.3 Subject to the Law, any preference shares may, with the sanction of a special resolution of the Company in general meeting, be issued on the terms that they are, or at the option of the Company are, liable to be redeemed.
- 96.4 The directors may grant to any person options or other securities with rights of conversion to shares or pre-emptive rights to any shares for any consideration and for any period.
- 96.5 Upon giving 7 days' notice in writing of its intention to do so, the Company may redeem all or any redeemable preference shares. The notice must be delivered or posted to the holder of the redeemable preference shares accompanied by a cheque for the amount paid up in respect of the shares to be redeemed. Redemption takes place 7 days after delivery or posting the notice and cheque.

### 97. Ordinary Shares

- 97.1 All issued shares of the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:
- (1) the right to attend and vote at meetings of the Company and on a show of hands to 1 vote and on a poll to 1 vote for each share held;
  - (2) the right to participate in dividends (if any) declared on the class of shares held; and
  - (3) on the winding up of the Company, the right to repayment of the capital paid up on their shares and to participate in the division of any surplus assets or profits of the Company and in this regard to rank *pari passu* with all other shareholders having the same right.

### 98. Founder's Share

- 98.1 A founder's share may be issued upon incorporation of the Company, but only to the first member of the Company, upon the following terms and conditions:

- (1) it is a redeemable preference share redeemable at its issued value without any notice in the manner provided by the Law and upon redemption it is cancelled; and
- (2) until it is redeemed the holder has the same rights as the holders of ordinary shares with respect to the matters listed in section 254A(2) of the Law.

## **99. Pre-emptive Rights on Issue or Sale of Shares by Company**

*[compare replaceable rule 254I]*

- 99.1 Before issuing shares of a particular class, the directors must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.
- 99.2 To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
- (1) the number of shares offered; and
  - (2) the period for which it will remain open.
- 99.3 The directors may issue any shares not taken up under the offer under rule 99.1 as they see fit.
- 99.4 The Company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with rule 99.1.
- 99.5 Despite rule 104.1 where the Company proposes to sell shares which are subject to a lien under that rule, it must first offer the shares to other existing holders of shares of the same class as if the shares were being issued under rule 99.1.
- 99.6 Despite rule 129.5 where the Company proposes to sell or dispose of forfeited shares under that rule, it must first offer the shares to existing holders of shares of the same class as if the shares were being issued under rule 99.1.

## **100. Conversion of Shares**

*[compare section 254H]*

- 100.1 The Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.
- 100.2 Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

## **101. Calls on Partly-paid Shares**

*[compare section 254M]*

- 101.1 If shares in the Company are partly-paid, the member is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

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- 101.2 A call may be made payable by instalments.
- 101.3 A call may be revoked, postponed or extended as the directors determine.
- 101.4 A call must be treated as made at the time when the resolution of the directors authorising the call is passed.
- 101.5 Each member must pay the amount called on the member's shares according to the terms of the notice of call.
- 101.6 At least 30 business days before the due date for payment, the Company must send notices to all members on whom the call is made who are on the register of members when the call is announced. The notice must include each of the following:
- (1) the name of the member;
  - (2) the number of shares held by the member;
  - (3) the amount of the call;
  - (4) the due date for payment of the call; and
  - (5) the consequences of non-payment of the call.
- 101.7 The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the members does not invalidate the call.
- 101.8 On the trial or hearing of any action for the recovery of any money due for any call and in any circumstances where it is necessary to prove the right to forfeit or sell shares for non-payment of a call it is sufficient to prove:
- (1) that the name of the member sued is entered in the register of members as the holder or 1 of the holders of the shares in respect of which the call was made;
  - (2) that the resolution making the call is recorded in the minute book;
  - (3) that:
    - (a) notice of the call was given to the registered holder of the shares in accordance with this constitution; or
    - (b) in the case of calls or instalments payable at fixed times by the terms of issue of any share or otherwise, those terms apply; and
  - (4) that the sum or call has not been paid.
- Proof of the above matters is conclusive evidence of the debt or of the right to forfeit or sell shares for non-payment of a call and it is not necessary to prove the appointment of the directors who made the call or the passing of the resolution or anything else.
- 101.9 The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

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- 101.10 If a sum called is not paid on or before the date for payment, the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid) at the rate the directors determine calculated from the day payment is due till the time of actual payment. The directors may waive payment of that interest wholly or in part.
- 101.11 Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, must be treated for the purposes of this constitution as a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, the provisions of this constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
- 101.12 The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 101.13 The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up. The directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at the rate agreed upon between the directors and the member paying the sum.
- 101.14 Any amount paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which the advance has been made.
- 101.15 The directors may at any time repay the amount so advanced upon giving to such member 1 month's notice in writing.
- 101.16 If a sum called in respect of a share is not paid before or on the due date for payment of the sum, the Company may proceed to recover the amount due with interest and expenses (if any) by action, suit or otherwise but the exercise of this right is without prejudice to the right to forfeit the share of any member in arrears and either or both of these rights may be exercised by the directors in their discretion.

## **102. Right to Lien**

- 102.1 The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- 102.2 The Company also has a first and paramount lien on all shares registered in the name of a member (whether solely or jointly with others) for all money presently payable by the member or the member's estate to the Company.
- 102.3 The directors may at any time exempt a share wholly or in part from the provisions of this rule 102.
- 102.4 The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

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### **103. Imposition of a Liability**

103.1 This rule 103 applies where any law for the time being of any country, State or place:

- (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a member; or
- (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the register of members as held either jointly or solely by a member or in respect of any dividend or other money which is or may become due or payable or is accruing due to the member by the Company on or in respect of the share;

whether in consequence of:

- (3) the death of the member;
- (4) the liability of the member for income tax or other tax;
- (5) the liability of the executor or administrator of the member or of the member's estate for any estate, probate, succession, death, stamp or other duty; or
- (6) anything else.

103.2 If any liability contemplated by rule 103.1 is imposed on the Company, the Company:

- (1) must be fully indemnified by the member or the member's executor or administrator from all liability;
- (2) has a first and paramount lien upon all shares registered in the register of members as held either jointly or solely by the member and upon all dividends and other money payable in respect of the shares for any liability arising under or in consequence of that law and for any amount paid in complete or partial satisfaction of the liability and for interest on any amount so paid at the rate per annum set by the directors from the date of payment to the date of repayment. The Company may deduct from or set off against the dividends or other money payable any money so paid or payable by the Company together with interest;
- (3) may recover as a debt due from the member or the member's executor or administrator wherever situated any money paid by the Company under or in consequence of that law and interest on the money at the rate and for the period referred to in rule 103.2(2) in excess of any dividend or other money then due or payable by the Company to the member; and
- (4) may, if the money is paid or payable by the Company under that law refuse to register a transfer of the shares by the member or the member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of the dividend or other money then due or payable by the Company to the member, until the excess is paid to the Company.

103.3 This rule 103 does not prejudice or affect any right or remedy which that law may confer or purport to confer on the Company and as between the Company and the member and the member's executors, administrators and estate wherever situated any right or remedy

conferred or purported to be conferred by that law on the Company is enforceable by the Company.

#### **104. Sale of Shares the Subject of Lien**

104.1 Subject to rule 104.2, the Company may sell, in the manner the directors see fit, any shares on which the Company has a lien.

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

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

104.3 To give effect to a sale of shares under rule 104, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.

104.4 The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the application of the purchase money.

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

104.6 The proceeds of a sale under rule 104 must be applied by the Company in payment of the sum presently payable in respect of which the lien exists, and the residue (if any) must (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares immediately prior to the sale.

#### **105. Surrender of Shares**

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

#### **106. Power to Capitalise and Issue Debentures to Members**

*[compare section 254S]*

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

106.2 The directors, or the Company in general meeting on the recommendation of the directors, may apply profits, including reserves and sums otherwise available for distribution to members, to:

- (1) pay up any amount unpaid on issued shares;

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- (2) pay up shares, debentures or unsecured notes to be issued to members as fully-paid; or
  - (3) partly as mentioned in rule 106.2(1) and partly as mentioned in rule 106.2(2).
- 106.3 The amount applied under rule 106.2 must be applied for the benefit of members in the proportions in which the members would have been entitled to dividends if the amount applied had been distributed as a dividend.
- 106.4 For the purpose of rule 106.3 the directors may to the extent necessary to adjust the rights of the members among themselves:
- (1) issue fractional certificates or make cash payments in cases where shares, debentures or unsecured notes become issuable in fractions;
  - (2) fix the value for distribution of any specific assets or any part of them;
  - (3) round down any payment to the nearest dollar; and
  - (4) vest any cash or specific assets in trustees upon trust for the persons entitled to the dividend or capitalised fund.

## **107. Joint Holders**

- 107.1 Where 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 107.2 and to the following:
- (1) the Company is not bound to register more than 3 persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
  - (2) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
  - (3) on the death of any 1 of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the directors may require such evidence of death as they see fit;
  - (4) any 1 of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
  - (5) only the person whose name stands first in the register of members as 1 of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.
- 107.2 Where 3 or more persons are registered holders of a share in the register of members (or a request is made to register more than 3 persons) only the first 3 named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased shareholder.

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## DIVIDENDS AND RESERVES

### 108. Source of Dividends

*[section 254T]*

108.1 A dividend may only be paid out of profits of the Company.

### 109. Determination of Dividends

*[compare replaceable rules 254U and 254W]*

109.1 The directors may determine that a dividend is payable and fix:

- (1) the amount;
- (2) the time for payment; and
- (3) the method of payment.

109.2 The Company in general meeting may determine a dividend, but may do so only if the directors have recommended a dividend.

109.3 A dividend determined by the Company in general meeting must not exceed the amount recommended by the directors.

109.4 Interest is not payable on a dividend.

### 110. Power to Employ Reserves

110.1 The directors may, before recommending or determining any dividend, set aside out of the profits of the Company those sums they think proper as reserves, to be applied, at the discretion of the directors, for any purpose to which the profits of the Company may be properly applied.

110.2 Pending the application of reserves under rule 110.1, the reserves may, at the discretion of the directors, be used in the business of the Company or be invested as the directors see fit.

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

### 111. Crediting of Dividends

111.1 Subject to the rights of persons (if any) entitled to shares with special rights as to dividend and to this rule 111, all dividends are apportioned and paid proportionately to the amounts paid or credited as paid on the shares.

111.2 If a share is issued on terms that it will rank for dividend as from a particular date, that share ranks for dividend only from that date.

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111.3 An amount paid or credited as paid on a share during the period for which a dividend is declared only entitles the holder of the share to an apportioned amount of the dividend as from the date of payment.

111.4 An amount paid or credited as paid on a share in advance of a call is not to be taken for the purposes of this constitution to be paid or credited as paid on the share.

## **112. Dividends Where Different Classes of Shares**

112.1 If there is more than 1 class of shares on issue, any dividend whether interim or otherwise may be paid on the shares of any 1 or more class or classes to the exclusion of the shares of any other class or classes.

112.2 If at any meeting dividends are declared on more than 1 class, the dividend declared on the shares of 1 class may be at a higher or lower rate than or at the same rate as the dividend declared on the shares of another class, but the shares within each class must share equally in any dividend declared in respect of that class.

112.3 No objection may be raised to any resolution which declares a higher rate of dividend on the shares of any class than the dividend declared on the shares of any other class or which declares a dividend on the shares of any class to the exclusion of the shares of any other class on the ground that the resolution was passed by the votes of the holders of the shares of a class to receive the higher rate of dividend or to receive the dividend (as the case may be) and that the resolution was opposed by the holders of the shares of a class to receive the lower rate of dividend or to be excluded (as the case may be).

## **113. Deductions from Dividends**

113.1 The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by the member to the Company on account of calls or otherwise in relation to shares in the Company.

## **114. Unclaimed Dividends**

114.1 Unclaimed dividends may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.

## **115. Entitlement to Dividends**

115.1 Unless otherwise specified in the resolution determining the dividend, all dividends are payable to the members who are upon the register of members on the day the resolution declaring the dividend is passed or on the date fixed for payment, as applicable.

## **116. Payment of Dividends on Transmission**

116.1 The directors may retain the dividends or bonuses payable on any share to which rule 128 applies until the person entitled to elect to be registered as holder of the share or to transfer the share does so.

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### **117. Payment of Dividends by Asset Distribution**

117.1 Any general meeting or the directors determining a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate, and the directors must give effect to that resolution.

117.2 Where a difficulty arises in regard to a distribution referred to in rule 117.1, the directors may settle the matter as they think expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any of those specific assets in trustees as the directors consider expedient.

### **118. Manner of Payment of Dividends**

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

- (1) directly into an account, with a bank or some other financial institution, that the holder or joint holders in writing directs or direct; or
- (2) by cheque sent through the post directed to:
  - (a) the address of the holder as shown in the register of members, or in the case of joint holders, the address shown in the register of members as the address of the joint holder first named in the register; or
  - (b) any other address that the holder or joint holders in writing directs or direct.

### **119. Dividend Reinvestment, Bonus Share and Employee Incentive Plans**

119.1 A general meeting of the Company or the directors may:

- (1) establish 1 or more plans ("Plan") under which some or all members may elect in terms of 1 or more of the following for a period or periods as provided in the Plan:
  - (a) that dividends to be paid in respect of some or all of the shares held by the members may be satisfied by the issue of fully paid ordinary shares; and
  - (b) that dividends are not to be declared or paid in respect of some or all of the shares held by the member, but that the member is to receive an issue of fully paid ordinary shares; and
- (2) vary, suspend or terminate the Plan.

119.2 The Company in general meeting may by special resolution:

- (1) establish a plan that shares be offered or issued to some or all employees of the Company whether or not for consideration; or

(2) vary, suspend or terminate a plan established under rule 119.2(1).

119.3 Any Plan has effect in accordance with its terms and the directors must do all things necessary and convenient for the purpose of implementing the Plan, including, without limitation, the making of each necessary allotment of shares and of each necessary appropriation, capitalisation, application, payment and distribution of funds which lawfully may be appropriated, capitalised, applied, paid or distributed for the purpose of the allotment.

119.4 For the purpose of giving effect to any Plan, the directors may make an appropriation, capitalisation, application, payment or distribution and the powers of the directors may be exercised (and with adjustments as may be required) even if only some of the members or holders of shares of any class participate in the appropriation, capitalisation, application, payment or distribution.

119.5 In offering opportunities to members or employees to participate in any Plan, the directors may give any information that in their opinion may be useful to assist members or employees in assessing the opportunity and making requests to their best advantage. The directors, the Company and its officers are not responsible for, nor are they obliged to provide, any legal, taxation or financial advice in respect of the choices available to members or employees.

119.6 The directors are under no obligation:

- (1) to admit any member or employee as a participant in any Plan; or
- (2) to comply with any request made by a member or employee who is not admitted as a participant in any Plan.

119.7 In establishing and maintaining any Plan, the directors must act in accordance with this constitution and may exercise all or any of the powers conferred on them by the terms of the Plan, by this constitution or by the Law.

## TRANSACTIONS AFFECTING SHARE CAPITAL

### 120. Brokerage or Commission

*[compare section 258Q]*

120.1 The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.

120.2 Payments by way of brokerage or commission may be satisfied by the payment of cash, by the issue of fully or partly paid shares or other securities or partly by the payment of cash and partly by the issue of fully or partly paid shares or other securities.

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## TITLE TO AND TRANSFER OF SHARES

### **121. Entitlement to Share Certificates**

*[compare sections 1086 and 1087]*

- 121.1 A person whose name is entered as a member in the register of members is entitled without payment to 1 certificate for the shares registered in the member's name or to several certificates in reasonable denominations.
- 121.2 Where shares are held jointly by several persons the Company is not bound to issue more than 1 certificate and delivery of a certificate to 1 of several joint holders is sufficient delivery to all of them.
- 121.3 A certificate must state:
- (1) the name of the Company and its jurisdiction of registration;
  - (2) the number of the certificate;
  - (3) the number and class of shares for which the certificate is issued; and
  - (4) the extent to which the shares are paid up.

### **122. Replacement of Certificates**

*[compare section 1089]*

- 122.1 If any certificate or other document of title to shares is worn out or defaced then upon production of the certificate or document to the directors they may order it to be cancelled and issue a new certificate in its place upon the conditions prescribed by the Law.
- 122.2 If any certificate or other document of title to shares is stolen, lost or destroyed then the directors must issue a duplicate of the certificate or document upon the conditions prescribed by the Law.

### **123. Recognition of Ownership**

- 123.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- 123.2 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these rules or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

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## **124. Transfer of Shares**

*[compare section 1091]*

124.1 Subject to this constitution, a member may transfer all or any of the member's shares by instrument in writing in any usual or common form or in any other form that the directors approve.

## **125. Pre-emptive Rights**

125.1 No shares may be transferred to a person who is not a member so long as any member or members are willing to purchase them.

125.2 In order to ascertain whether any member is willing to purchase the shares, the proposing transferor must give notice in writing ("**transfer notice**") to the Company that the transferor wishes to transfer them. The transfer notice constitutes the Company the agent for sale of the proposing transferor in respect of the shares mentioned in it. The transfer notice must state the price placed by the transferor upon the shares proposed to be transferred. The transfer notice is not revocable except with the sanction of the directors.

125.3 If the Company finds a member or members willing to purchase the shares ("**purchasing members**") and gives notice of this to the proposing transferor within 1 month after being served with the transfer notice, the transferor is bound upon payment of the price placed on the shares by the proposing transferor to transfer the shares to the purchasing members.

125.4 The proposing transferor is not bound to transfer the shares the subject of the transfer notice or any of them to the purchasing members unless all the shares the subject of the transfer notice are purchased.

125.5 If in any case the proposing transferor after becoming bound to transfer the shares under rule 125.5 makes default in transferring them, the Company may receive the purchase money and must then cause the name of the purchasing members to be entered in the register of members as the holders of the shares and must hold the purchase money in trust for the proposing transferor. The receipt of the Company for the purchase money is a good discharge to the purchasing members and after the names of the purchasing members have been entered in the register in purported exercise of this power the validity of the proceeding may not be questioned by any person.

125.6 If the Company does not find a member or members willing to purchase the shares and give notice of this to the proposing transferor within 1 month after being served with the transfer notice, the proposing transferor is at any time within 3 months afterwards at liberty subject to rule 126 to sell and transfer the shares (or any of them) to any person at a price not less than the price placed on the shares in the transfer notice.

125.7 The directors may make and from time to time vary rules as to the mode in which any shares specified in the transfer notice may be offered to the members and as to their rights in regard to the purchase of the shares and in particular may give any member or class of members a preferential right to purchase them. Until otherwise determined the shares must be offered to all members as nearly as may be in proportion to the shares already held by them.

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**126. Registration of Transfers - Directors' Discretion**

*[compare replaceable rule 1091E]*

126.1 The directors may in their discretion refuse to register a transfer of shares without assigning any reason for refusal.

**127. Registration of Transfers - Procedure**

*[compare replaceable rule 1091D]*

127.1 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

127.2 Before a transfer of shares is registered:

- (1) the transfer and any share certificate must be lodged at the Company's registered office or any other place the directors allow;
- (2) any fee payable on registration of the transfer must be paid; and
- (3) the directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

127.3 The directors may suspend the registration of transfers of shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

127.4 The directors may in their discretion dispense with any of the requirements of rule 127.2.

127.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.

127.6 All powers of attorney granted by members which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company are deemed as between the Company and the grantor of the powers to remain in full force and may be acted upon until express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.

**128. Transmission of Shares**

*[compare replaceable rules 1091AA, 1091AB and 1091B and section 1091A]*

128.1 If a shareholder who does not own shares jointly dies, the Company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

128.2 If the person entitled to shares as the personal representative of a deceased shareholder, or because of the bankruptcy or mental incapacity of a shareholder ("**successor**") gives the directors the information they reasonably require to establish the successor's entitlement to be registered as holder of the shares:

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- (1) the successor may:
    - (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (b) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (2) the successor, whether or not registered as the holder of the shares, is entitled to the same rights, and is subject to the same liabilities, as if the successor were registered as holder of the shares.
- 128.3 On receiving an election under rule 128.2(1)(a), the Company must register the successor as the holder of the shares.
- 128.4 A transfer under rule 128.2(1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- 128.5 If a shareholder who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- 128.6 This rule 128 has effect subject to the *Bankruptcy Act 1966*.

## **129. Procedure for Forfeiture**

- 129.1 If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment or fails to pay any money payable under rule 103 the directors may while any part of the call or instalment or other money remains unpaid serve a notice on the member requiring payment of so much of the call or instalment or other money as is unpaid together with any interest that has accrued.
- 129.2 The notice must name a further day (not earlier than the expiration of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
- 129.3 If the requirements of a notice served under rule 129.1 are not complied with, any share in respect of which the notice has been given may, unless the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
- 129.4 The forfeiture includes all dividends declared or payable in respect of the forfeited share and not actually paid before the forfeiture.
- 129.5 The Company may sell a forfeited share or otherwise dispose of it on terms and in a manner the directors see fit.
- 129.6 The directors may at any time before a forfeited share has been sold or otherwise disposed of, annul the forfeiture upon conditions they see fit.
- 129.7 A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but (unless the ordinary shareholders resolve otherwise) remains liable

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to pay and must immediately pay to the Company all calls, instalments, interest and expenses owing upon or payable in respect of the shares at the time of forfeiture together with interest from the time of forfeiture until payment at the rate determined by the directors. The directors may enforce payment of the money as they see fit but are not under any obligation to do so.

- 129.8 A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date, is prima facie evidence of the facts as against all persons claiming to be entitled to the share.
- 129.9 The provisions of this constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **130. Transfer of Forfeited Share**

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

## **EXECUTION OF DOCUMENTS**

### **131. Common Seal**

- 131.1 The Company may, but need not, have a common seal.

### **132. Share Seal**

*[compare section 123(2)]*

- 132.1 The Company may have a duplicate common seal. It must be a copy of the common seal with the words "**duplicate seal**", "**share seal**" or "**certificate seal**" added.
- 132.2 Any certificate may be issued under the share seal.
- 132.3 For the purposes of the rule 132.2 "**certificate**" means a certificate in respect of shares, debentures, registered unsecured notes, convertible notes, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

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**133. Use of Common Seal**

*[compare sections 127(2) and 129(6)]*

- 133.1 If the Company has a common seal the directors must provide for its safe custody.
- 133.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 133.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company; or
  - (2) a director and a company secretary of the Company.

**134. Execution of Documents Without Common Seal**

*[compare section 127(1) and 129(5)]*

- 134.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 directors of the Company; or
  - (2) a director and a company secretary of the Company.

**135. Execution of Document as a Deed**

*[compare section 127(3)]*

- 135.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 133 or rule 134.

**136. Execution - General**

*[compare sections 129(5), 129(6) and 127(4)]*

- 136.1 The same person may not sign in the dual capacities of director and secretary.
- 136.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 136.3 Rules 133 and 134 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

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## INADVERTENT OMISSIONS

### 137. Formalities Omitted

*[compare section 1322]*

- 137.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

## WINDING UP

### 138. Shareholders' Rights on Distribution of Assets

- 138.1 If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set the value the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- 138.2 The liquidator may, with the sanction of a special resolution, vest the whole or any part of the property referred to in rule 138.1 in trustees upon trusts for the benefit of the contributories that the liquidator sees fit, but so that no member is compelled to accept any shares or other securities on which there is any liability.

## SIGNING

### 139. Signing

- 139.1 The person whose name is written below is the first member of the Company and agrees to this constitution.

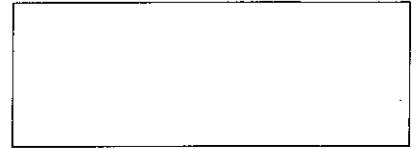
**Name of Member**

ROBERT JOHN GARVEY

DATED 17 August 2000.

**Signature of Member**

(Sgn) R J Garvey



**Form 205**

Corporations Act 2001  
136(5), 157(2), 162(3), 461(2), 491(2),  
506(1B), 507(11), 510(1A)  
Corporations Regulations 2001  
1.0.12

# Notification of resolution

If there is insufficient space in any section of the form, provide details in an annexure – refer to Guide for annexure requirements

## Company details

Company name

Avotock Funds Management Limited

ACN/ABN

094 185 092

## Lodgement details

An image of this form will be available as part of the public register.

Who should ASIC contact if there is a query about this form?

ASIC registered agent number (if applicable)

19460

Firm/organisation

Contact name/position description

Amanda Gawnne

Telephone number (during business hours)

(03) 8601 2049

Email address (optional)

Postal address

12/15 William St

Suburb/City

Melbourne

State/Territory

VIC

Postcode

3000

## Signature

This form must be signed by a current officeholder or external administrator of the company.

I certify that the information in this cover sheet and the attached sections of this form are true and complete.

Name

Amanda Gawnne

Capacity

Director

Company secretary

External administrator

Signature

[Handwritten Signature]

Annexure endorsed as specified in guide

Date signed

22/06/11  
[D] [D] [M] [M] [Y] [Y]

Provide details of resolution over page.

## Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

### For more information

Web [www.asic.gov.au](http://www.asic.gov.au)

Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)

Telephone 1300 300 630

# 1 Subject(s) of the resolution

ASIC internal form code

Please tick box(es) which apply  
Must select at least one

157(2)	<input type="checkbox"/> Change of company name Is the proposed name identical to a registered business name(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No Name reservation number (if any) <input type="text"/> If yes, I declare that I own, or am registering the company name for the owner(s) of the identical business name(s), the registration details of which are listed below. Business number <input type="text"/> State/Territory of registration <input type="text"/> <input type="text"/>	A
162(3)	<input type="checkbox"/> Change from public company to proprietary company	B
162(3)	<input type="checkbox"/> Change from proprietary company to public company	C
162(3)	<input type="checkbox"/> Change from no-liability company to company limited by shares	F
162(3)	<input type="checkbox"/> Change from limited company to unlimited company	G
162(3)	<input type="checkbox"/> Change from unlimited company to limited company	H
162(3)	<input type="checkbox"/> Change from company limited by guarantee to company limited by shares	AA
162(3)	<input type="checkbox"/> Change from company limited by both shares & guarantee to company limited by shares	AB
162(3)	<input type="checkbox"/> Change from company limited by both shares & guarantee to company limited by guarantee	AC
162(3)	<input type="checkbox"/> Change from limited (mining) company to a no-liability company	X
136(5)	<input checked="" type="checkbox"/> Alteration of constitution	J
491(2)	<input type="checkbox"/> Voluntary winding up by members/shareholders	L
491(2)	<input type="checkbox"/> Voluntary winding up by creditors	M
461(2)	<input type="checkbox"/> Company resolved to be wound up by Court	AD
506(1B)	<input type="checkbox"/> Powers & duties of liquidator (voluntary)	AF
507(11)	<input type="checkbox"/> Company's arrangement with liquidator	AG
510(1A)	<input type="checkbox"/> Binding arrangements on company/creditors	AH
	<input type="checkbox"/> Other Section number <input type="text"/> Brief description <input type="text"/>	R

# 2 Details of the resolution

Provide date of meeting

Date of meeting  
  /   /    
[D] [D] [M] [M] [Y] [Y]

Tick the appropriate box & provide details. Annexures must be endorsed as specified in the guide.

The resolution:  Set out below       in the attached annexure marked "....." (a, b, c or 1, 2, 3 etc), was passed or agreed to (as required) as a special or ordinary resolution (as applicable) in accordance with the Corporations Act 2001.

It was Resolved that the Constitution of the Company be modified by deleting clause 108 and substituting the following:  
 " 108. Payment of Dividend  
 108.1 The directors may pay any interim and final dividends that, in their judgment, the financial position of the company justifies."