

Annexure A

Signed by:

A handwritten signature in black ink, appearing to be 'Ch. H.', written in a cursive style.

Chairman

Constitution of First Growth Funds Limited ACN 006 648 835

Corporations Act 2001 (Cth)

A Company Limited by Shares

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Constitution

Constitution of First Growth Funds Limited ACN 006 648 835

1. Replaceable Rules

This Constitution replaces the provisions of the Act described as Replaceable Rules, unless otherwise noted.

2. Interpretation

2.1 In this Constitution, unless a contrary intention appears:

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

ASIC means the Australian Securities and Investments Commission.

Auditor means the auditor of the Company from time to time.

Business Days has the meaning given in the Act.

Capital or **Share Capital** means the issued share capital of the Company from time to time.

Claim means any threat, claim or proceedings brought or made by a person against another person relating to or arising from any action, claim, Cost, demand, Damage, debt, expense, Liability, Loss, cause of action or proceeding of any kind, howsoever arising.

Company means First Growth Funds Limited ACN 006 648 835.

Constitution means this Constitution as amended or added to from time to time.

Corporate Representative means an individual appointed as a Representative of a body corporate member of the Company under section 250D of the Act.

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

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatsoever including all legal fees on a full indemnity basis, and whether calculated on a time charge basis or otherwise.

Damage includes any award, Cost, damage, expense, injunction, injury, judgment, liability, loss and order and includes any such damage suffered, incurred or sustained in connection with any Claim.

Debenture means debenture stock, bonds, notes and other securities and obligations of a corporation whether constituting a charge on its assets or not.

Debt Securities includes bonds, unsecured notes, unsecured deposit notes, mortgage debentures, mortgage debenture stock, Debentures, debenture stock and convertible unsecured notes.

Director means any person acting as a Director, regardless of that person's title.

Directors or **Board** means the whole or any number of the Directors of the Company for the time being assembled at a meeting of Directors, being not less than a quorum, or such one or more of them as shall have authority to act for the Company.

Directors' Report means a report referred to in Part 2M.3 of the Act.

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Dividend includes distribution of profit by way of a bonus issue of Shares.

DRS means the Direct Registration System that allows registered securities to be held in electronic form without having a physical security certificate (Share Certificate) issued as evidence of ownership.

Equity means the amount by which the Company's assets exceed the Company's liabilities in accordance with section 254T of the Act.

Equity Securities means shares (including preference shares), stock, stock units, units, and rights to or options to subscribe for any of the foregoing.

Exchange means a public exchange on which the Shares of the Company are listed for trading.

Executive Director includes any Director of the Company or of a subsidiary of the Company who is retained or otherwise acts in an executive capacity.

Financial Benefit means an interest of the kind set out in Chapter 2E of the Act..

Financial Report has the meaning given in section 9 of the Act.

Financial Statements has the meaning given in section 9 of the Act.

Joint Holders means two or more persons holding any Share in the Capital of the Company, whatever their interest may be in that Share.

Liabilities means any and all liabilities, debts or obligations, whether actual or contingent, present or future, qualified or unqualified or incurred jointly or severally with any other person.

Loss means any and all losses (including loss of profit and loss of expected profit), claims, actions, liabilities, damages, expenses, diminution in value or deficiencies of any kind (whether indirect, consequential or otherwise and whether known or asserted on or before Completion) including all (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions and a reference to **Losses** has a corresponding meaning.

Material Personal Interest means an interest of the kind set out in section 191 of the Act .

Managing Director means any person appointed as such under Rule 31 and includes any Acting Managing Director.

Meeting means a duly constituted meeting of Members, or a class of Members, and being either:

- (a) an annual general meeting; or
- (b) a general meeting.

Member means a person who is registered for the time being as a Member or stockholder in the Register of the Company, including the person's personal representatives and assigns.

Month means calendar month.

Notice means any notice of a general meeting of Members or class of Members and any explanatory memorandum or other documents accompanying any such notice.

Office means the registered office for the time being of the Company.

Officer has the meaning given in section 9 of the Act.

Ordinary Shares means ordinary Shares in the Capital of the Company.

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Register means the Register of Members kept under the Act and, where appropriate, includes branch registers and sub-registers.

Related Body Corporate has the meaning given in section 50 of the Act.

Replaceable Rules mean the replaceable rules set out under the Act which are applicable to companies unless displaced or modified by the company's constitution.

Reporting Issuer means a reporting issuer as defined in any applicable Securities Law.

Rule means a provision of this Constitution as amended or added to from time to time.

Secretary means any person appointed to perform the duties of Secretary of the Company and includes the acting Secretary where appropriate.

Securities has the meaning given in section 9 of the Act.

Securities Law means the securities legislation and regulations of the jurisdictions governing the affairs of the Company, including without limitation the Act and the Corporations Regulations, and the instruments, policies, rules, orders, codes, notices and interpretation notes of the applicable securities regulatory authority or applicable securities regulatory authorities related thereto.

Shares means shares in the issued Capital of the Company.

State means the State of Victoria.

Takeover Bid has the meaning given in section 9 of the Act.

2.2 Terms used in this Constitution and not defined in Rule 2.1 have the meaning given to them in the Act.

2.3 Unless the contrary intention appears, a reference in this Constitution to:

- (a) a document includes any variation or replacement of it despite any change in the identity of the parties;
- (b) one gender includes the others;
- (c) the singular includes the plural and the plural includes the singular;
- (d) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them;
- (e) a clause, subclause or paragraph is to a clause, subclause or paragraph of this Constitution;
- (f) a party to a document includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
- (g) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
- (h) money is to Australian dollars, unless otherwise stated; and
- (i) writing means printing, typewriting and all other means of representing or reproducing words in visible form, including handwriting.

2.4 The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.

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- 2.5 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.6 Headings, any table of contents or index are for convenience only and do not affect the interpretation of this Constitution.

3. Registered Office

The Directors shall determine the place of the Office.

4. Issue of Shares

- 4.1 Subject to the provisions of this Constitution, all matters relating to the issue of Shares shall be under the control of the Directors who may issue, allot or otherwise dispose of the same to such person or persons on such terms and conditions and with such rights and privileges attached and at such times as the Directors may think fit.
- 4.2 Subject to the provisions of this Constitution and any resolution passed in accordance with Rule 14, the Directors may issue new Shares with or without any special conditions, preferences or priority either as to Dividends or Capital or both and with any other special rights or advantages. In the absence of any special conditions or rights, such new Shares when issued shall be held on the same conditions as if they had been Ordinary Shares in the original Capital, and shall be subject to the provisions of this Constitution that relate to Ordinary Shares in the Company.
- 4.3 Any allotment of Shares or other Securities in the Company and dispatch of certificates shall take place in the manner prescribed in the Act, and requirements of the Securities Laws.

5. Preference Shares

- 5.1 Subject to the Act and without prejudice to any special rights previously conferred on the holders of any existing Shares or classes of Shares the Directors may issue any Shares:
- (a) with a preferential, deferred or qualified right to Dividends, or in the distribution of assets of the Company, or both;
 - (b) subject to Rule 5.3, with a special or qualified right of voting or without a right of voting; or
 - (c) with any other special privileges or advantages over or equally with any Shares previously issued or then about to be issued,
- subject to any conditions or provisions and on such terms as the Directors shall determine. Any preference Share may be issued on the terms that it is or at the option of the Company is liable to be redeemed.
- 5.2 If a Company has preference Shares on issue, the holders of the preference Shares shall have the same rights as the holders of Ordinary Shares to:
- (a) receive notices, reports and Financial Statements; and
 - (b) attend Meetings of the Company.
- 5.3 Preference Members shall have no voting rights at any Meeting of the Company other than:
- (a) during a period when all or part of a Dividend in respect of the preference Share is in arrears;

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- (b) on a proposal to reduce the Capital of the Company;
- (c) on a resolution to approve the terms of a buy-back agreement;
- (d) on a proposal that affects rights attaching to preference Shares;
- (e) on a proposal to wind up the Company;
- (f) on a proposal sanctioning a sale of the undertaking of the Company; or
- (g) during the winding up of the Company.

5.4 Preference Members shall also be entitled to a return of Capital in preference to the holders of Ordinary Shares in the Company when the Company is wound up.

6. Convertible Securities

Without prejudice to any of the powers of the Directors conferred by Rule 4, the Directors may create and issue any Equity Securities or Debt Securities (**Convertible Securities**) on the following terms:

- (a) they are or may become convertible into Ordinary Shares;
- (b) the Directors may issue Ordinary Shares to the holders of Convertible Securities under the terms of issue; and
- (c) such other terms as the Directors may decide.

7. Acceptance of Constitution by Member

A person who becomes a Member agrees to observe and perform the provisions of the Constitution and any regulations or by-laws which may be made under the Constitution.

8. Variation of rights

8.1 If at any time the share Capital is divided into different classes of Shares, preference Capital (other than redeemable preference Capital) shall not be repaid, and the rights attached to any class of Shares (unless otherwise provided by the terms of issue of the Shares of that class) shall not at any time, be varied without:

- (a) the consent in writing of the holders of 75% of the issued Shares of that class; or
- (b) the sanction of a special resolution (as defined in the Act), passed at a separate Meeting of the holders of the Shares of that class (**Class Meeting**).

8.2 At any Class Meeting:

- (a) the quorum shall be persons holding or representing by proxy 25% of the nominal amount of the varied issued Shares of the class;
- (b) Any holders of Shares of that class present in person or by proxy at a Class Meeting may demand a poll,

but otherwise the provisions of this Constitution dealing with Meetings shall apply.

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- 8.3 The rights conferred on the holders of the Shares of any class issued with preferred or other rights shall not unless expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking equally with those Shares.
- 8.4 The issue of Securities ranking in priority to, or any conversion of existing Securities to Securities ranking equally or in priority to an existing class of preference Shares shall be deemed a variation of the rights attached to that existing class of preference Shares.
- 8.5 The rights conferred on the holders of the Shares of any class shall be deemed to be varied by any special resolution to alter Rule 8.

9. Shares held on trust

- 9.1 The Company will recognise the rights of the registered holder of any Share.
- 9.2 Even where the Company has notice of equitable, contingent, future, or partial interest in any Share or unit of a Share (**Beneficial Interest**), no person will be recognised by the Company as holding any Beneficial Interest and the Company will not be bound by or be compelled in any way to recognise any Beneficial Interest except as required by:
- (a) law;
 - (b) this Constitution; or
 - (c) an order of a court of competent jurisdiction.

10. Shareholding statements and certificates

- 10.1 Subject to Rules 10.3 and 10.6, the Company will issue to every person whose name is entered as a Member in the Register either a holding statement or share certificate (as the case may be) issued in accordance with the Act
- 10.2 Where a Share or Shares are held jointly by several persons the Company will only be required to issue one holding statement or share certificate or DRS Certificate, and delivery of any one of these to one of several Joint Holders shall be sufficient delivery to all Joint Holders.
- 10.3 The Company shall renew any share certificate which becomes worn out, defaced, lost or destroyed at the time and in the manner required by the provisions of the Act.
- 10.4 The Company shall issue within five Business Days a certificate in replacement of a certificate already issued only if:
- (a) the certificate to be replaced is received by the Company for cancellation and is cancelled; or
 - (b) subject to Rule 10.3, satisfactory evidence has been received by the Company that the certificate previously issued has been lost or destroyed and has not been pledged, sold or otherwise disposed of.
- 10.5 A certificate issued to replace a certificate which has been lost or destroyed shall be clearly endorsed "issued in lieu of lost or destroyed certificate".
- 10.6 Despite the provisions of this Rule 10, the Company shall not be required to issue a certificate for Shares held by a Member and may cancel a certificate without issuing a replacement certificate where this is permitted by the Act.

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11. Transfer of Shares

- 11.1 Subject to this Constitution and the Act, a member's shares may be transferred by instrument in writing in the usual or common form or in such other form as the Directors may from time to time approve. Where a member's shares are transferred by instrument in writing the instrument must be executed by both the transferor and the transferee.
- (a) In order to enable an instrument of transfer of shares to be registered the following documents must be lodged for registration at the Office:
- (b) the instrument of transfer, duly stamped in accordance with any relevant law;
- (c) the certificate (if any) for the shares or satisfactory evidence of the loss or destruction of the certificate as the Directors are entitled to require under this Constitution; and
- (d) any other information that the Directors may require to establish the transferor's rights to transfer the shares and the beneficial ownership of the shares.
- 11.2 No fee may be charged by the Company on the transfer of any shares.
- 11.3 The transferor of a share will remain the holder of the share until the name of the transferee is entered in the Register in respect of the share.
- 11.4 All instruments of transfer which are registered will be retained by the Company but any instrument of transfer which the Directors may decline to register must (except in case of fraud) be returned on demand in writing to the person who lodged it with the Company.
- 11.5 The registration of transfers of shares may be suspended and the Register closed at such times and for such periods as the Directors think fit not exceeding an aggregate of 30 days in each calendar year.
- 11.6 The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Act, the Securities Law and the requirements of any Exchange.
- 11.7 Subject to the provisions of this Rule and the Act, Securities in the Company may be transferred in the following form, or in common form (or in any form approved by the Directors) or as near to the form as circumstances will permit:

First Growth Funds Limited ACN 006 648 835

I,

of

in consideration of the sum of

paid to me by

(Purchaser)

of

transfer to the Purchaser the shares numbered to
.....inclusive standing in my name in the Register of Members to hold the
same unto the Purchaser absolutely subject to the conditions on which I held the same
immediately before the execution of this form. And I, the Purchaser, agree to take the said
shares subject to such conditions.

Signed the day of

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.....
(Signatures of transferor and transferee)

- 11.8 Except as required by law and subject to Rule 11.9, the Company shall not refuse to register or fail to register or give effect to any transfer of Shares in registrable form lodged with the Company.
- 11.9 If, when permitted to do so, the Directors refuse to register a transfer of Shares or apply a holding lock, the Company shall give to the lodging party written notice of the refusal and the precise reasons for such action within five Business Days after the date on which the transfer was lodged with the Company.

12. Transmission of Shares

- 12.1 In the case of the death of a Member, the survivor or survivors where the deceased was a Joint Holder and the legal personal representatives of the deceased where the Member was a sole holder, shall be the only persons recognised by the Company as having any title to the Member's interest in the Shares but nothing in these Rules shall release the estate of a deceased Joint Holder from any liability in respect of any Share which had been jointly held by the Member with other persons.
- 12.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy or liquidation of a Member may, on such evidence being produced as may from time to time properly be required by the Directors and subject to these Rules, elect either:
- (a) to be registered as holder of the Share; or
 - (b) subject to the provisions of this Constitution and the Act with respect to the transfer of Shares, effect a transfer of the Shares,
- but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by that Member before the death, bankruptcy or liquidation of the Member.
- 12.3 Any person lawfully administering the estate of a Member under the provisions of any law relating to mental health or any law relating to the administration of estates of patients or infirm persons shall, subject to the provisions set out in Rule 12.2, have the same rights as are set out in Rule 12.2.
- 12.4 If, under Rule 12.2 or Rule 12.3, a person elects to be registered as the holder of any Share that person shall deliver or send to the Company a notice in writing signed by that person and confirming the election.
- 12.5 If, under Rule 12.2 or Rule 12.3, a person elects to transfer the Share to another person, that person shall testify its election by executing in favour of that person a transfer of the Share or effecting a regulated transfer of the Share to that person (as the case may be).
- 12.6 All limitations, restrictions and provisions of this Constitution relating to the right to transfer and the registration of transfers of Shares shall be applicable to any notice of transfer referred to in Rule 12.4 or Rule 12.5 respectively as if the Member who has died or has become bankrupt or has gone into liquidation or whose estate is being administered as set out in Rule 12.3 has signed such notice of transfer.
- 12.7 Where the registered holder of any Share dies or becomes bankrupt its personal representative or the assignee of its estate, as the case may be, shall on the production of such evidence as may from time to time be properly required by the Directors in that behalf, be entitled to the same Dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if the registered holder had not died or become bankrupt and where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder they shall, for the purposes of this Constitution, be deemed to be Joint Holders of the Share.

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- 12.8 Until a person entitled by transmission to any Shares has proved its title to the satisfaction of the Directors, the Company may retain any Dividend or bonus declared on such Shares.

13. Register of Members

- 13.1 As required by and subject to the Act, the Company must maintain a central securities register and may appoint an agent to maintain such register in the State, and where it is a Reporting Issuer in any jurisdiction required by the Securities Laws. The directors may appoint one or more agents, including the agent appointed to keep the central securities register, as transfer agent for shares or any class or series of shares and the same or another agent as registrar for shares or such class or series of shares, as the case may be. The directors may terminate such appointment of any agent at any time and may appoint another agent in its place.
- 13.2 In the event of there being at any one time more than three persons jointly holding Securities in the Company, the Directors may only record the first three persons in the register and the names of all other holders shall be disregarded for the purposes of registration.

14. Alteration of Capital

- 14.1 The Company in Meeting may from time to time by ordinary resolution:
- (a) subject to this Constitution and the Act, create one or more classes or series of shares or, if none of the shares of a class or series of shares are allotted or issued, eliminate that class or series of shares;
 - (b) subdivide or consolidate all or any of its Share Capital;
 - (c) alter the identifying name of any of its Shares.

15. Reduction of Capital

- 15.1 Subject to Rule 8, the Company may, in accordance with the Act, reduce its Share Capital or any Capital account in any manner and with, and subject to, any incident, authority or consent required by law.
- 15.2 The Directors may do all the things necessary and expedient to obtain the confirmation of any reduction of Capital which the Company desires to effect.

16. Meetings

- 16.1 An annual general meeting of the Company shall be held in accordance with the provisions of the Act and any applicable Securities Law.
- 16.2 The Directors shall convene a Meeting of the Company:
- (a) on the requisition of a majority of Directors;
 - (b) on the requisition of such other person as shall be entitled to requisition such Meeting under the law; or
 - (c) on the Board so resolving,

and the Directors shall comply with any provisions of the Act and Securities Laws with respect to the convening of such Meetings.

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- 16.3 Subject to the provisions of the Act relating to special resolutions and any applicable Securities Law, special notice and agreements for shorter notice, 28 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) shall be given to such persons as are entitled to receive such notices from the Company under this Constitution which notice shall specify the place, the day and the hour of the Meeting and, except as provided by Rule 16.4, the general nature of the business to be transacted at the Meeting.
- 16.4 It is not necessary for a notice of annual general meeting to state that the business to be transacted at the Meeting includes the declaring of a Dividend, the consideration of Financial Statements and the reports of the Directors and Auditors, the election of Directors in the place of those retiring by rotation or otherwise or the appointment and fixing of the remuneration of the Auditors.
- 16.5 The accidental omission to give the notice required by this Constitution to any of the Members or the non-receipt of such notice by any Member shall not invalidate any resolution passed at a Meeting or adjournment of the Meeting.
- 16.6 Every notice given to such persons as are entitled to receive such notices from the Company under the provisions of this Constitution shall be accompanied by a form of proxy in a form substantially in accordance with the form set out in this Constitution or as otherwise approved by the Board, subject to the requirements of applicable Securities Laws. The form of proxy shall be blank as far as the person primarily to be appointed as proxy is concerned.

17. Quorum at Meetings

- 17.1 No business shall be transacted at any Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- 17.2 The Company may hold a Meeting at two or more venues in Australia or at such other place as may be determined by the Directors using any form of technology which gives the Members a reasonable opportunity to participate.
- 17.3 Subject to Rule 17.4, three Members present in person shall be a quorum.
- 17.4 If within fifteen minutes from the time appointed for the Meeting a quorum is not present, the Meeting:
- (a) if convened on the requisition of Members, shall be dissolved; and
 - (b) in any other case, it shall stand adjourned to the same day in the next week at the same time and place, but no notice of such adjournment shall be required to be given to the Members. If at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting shall proceed with whatever may be the number of Members present, and those Members present shall be deemed to constitute a quorum.
- 17.5 In this Rule, **Member** includes a person attending as a proxy, attorney, or as a Corporate Representative of a corporation which is a Member.

18. Chairman at Meetings

- 18.1 The Chairman of Directors or, in the absence of the Chairman of Directors, the Deputy Chairman (if any) shall be entitled to take the chair at every Meeting.
- 18.2 The Directors shall be entitled to elect a Director or any other person as Chairman for all or part of any Meeting.
- 18.3 If at any Meeting:

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- (a) the Company has no Chairman of Directors, Deputy Chairman or Chairman appointed in accordance with Rule 18.2;
- (b) neither the Chairman of Directors, the Deputy Chairman nor the Chairman appointed in accordance with Rule 18.2 is present within 15 minutes after the time appointed for holding the Meeting; or
- (c) neither the Chairman of Directors, the Deputy Chairman nor the Chairman appointed in accordance with Rule 18.2 is willing to act as Chairman,

the Members present shall choose another Director as Chairman and if no other Director is present, or if all the Directors present decline to act, then the Members shall choose one of their number to be Chairman.

19. Conduct of general Meetings

19.1 The Chairman shall at any time prior to, at or during a Meeting determine;

- (a) the conduct of the Meeting;
- (b) the security arrangements to apply to the Meeting; and
- (c) the procedures to be adopted at the Meeting.

19.2 The Chairman or any person acting with the Chairman's authority may at any meeting:

- (a) require any person wishing to attend to comply with any search or other security arrangements;
- (b) refuse access to the Meeting to any person who does not comply with the security arrangements;
- (c) refuse access to the Meeting to any person who possesses a recording or broadcasting device; or
- (d) refuse access to the Meeting to any person who possesses any item or chattel considered to be dangerous, offensive or disruptive to the Meeting.

19.3 At any Meeting, the Chairman may, if it is considered necessary or desirable for the proper and orderly conduct of the Meeting:

- (a) stop debate or discussion on any business, resolution, motion or question; and
- (b) if appropriate, require the business, resolution, motion or question to be voted on by the Members.

19.4 A Director shall be entitled to attend and speak at any Meeting.

20. Adjournments and postponement of Meetings

20.1 Subject to Rule 20.2, the Chairman may:

- (a) with the consent of any Meeting at which a quorum is present, adjourn the Meeting from time to time and from place to place; and
- (b) without the consent of any Meeting, adjourn the Meeting from time to time and from place to place where it appears the facilities are inadequate to enable all persons to attend and be heard

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at the Meeting or it is impossible for the Chairman to maintain order or to enable the conduct of a poll.

- 20.2 Any poll duly demanded on the election of a Chairman of a Meeting, or on any question of adjournment, shall be taken at the Meeting without adjournment.
- 20.3 No business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.
- 20.4 When a Meeting is adjourned for 14 days or more, seven days' notice shall be given of the place, date and time of the adjourned Meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at such adjourned Meeting.
- 20.5 Save as provided in Rule 20.4, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Meeting.
- 20.6 The Directors may postpone any Meeting from time to time by giving notice to all Members of the place, date and time of the postponed Meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the postponed Meeting.

21. Voting Rights of Members

- 21.1 Subject to any special rights or restrictions attached to any Shares and to the restrictions imposed on joint members under Rule 21.2:
 - (a) on a vote by show of hands, every person present who is a Member or proxy holder and entitled to vote on the matter has one vote; and
 - (b) on a poll, every Member entitled to vote on the matter has one vote in respect of each Share entitled to be voted on the matter and held by that Member and may exercise that vote either in person or by proxy.
- 21.2 If there are joint Members registered in respect of any Share:
 - (a) any one of the joint Members may vote at any meeting of Members, personally or by proxy, in respect of the Share as if that joint Member were solely entitled to it; or
 - (b) if more than one of the joint Members is present at any meeting of Members, personally or by proxy, and more than one of them votes in respect of that Share, then only the vote of the joint Member present whose name stands first on the central securities register in respect of the Share will be counted.
- 21.3 If a corporation is a Member, that corporation may appoint a person to act as its Corporate Representative at any meeting of Members of the Company, and:
 - (a) for that purpose, the instrument appointing a Corporate Representative must be received:
 - (1) at the registered office of the Company or at any other place specified, in the notice calling the meeting, for the receipt of proxies, at least the number of business days specified in the notice for the receipt of proxies, or if no number of days is specified, 48 hours before the time set for the holding of the meeting or any adjourned meeting; or
 - (2) at the meeting or any adjourned meeting, by the chair of the meeting or adjourned meeting or by a person designated by the chair of the meeting or adjourned meeting;
 - (b) if a Corporate Representative is appointed under this Rule 21.3:

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- (1) the Corporate Representative is entitled to exercise in respect of and at that meeting the same rights on behalf of the corporation that the representative represents as that corporation could exercise if it were a Member who is an individual, including, without limitation, the right to appoint a proxy holder; and
 - (2) the Corporate Representative, if present at the meeting, is to be counted for the purpose of forming a quorum and is deemed to be a Member present in person at the meeting.
- 21.4 Evidence of the appointment of any such Corporate Representative may be sent to the Company by written instrument, fax or any other method of transmitting legibly recorded messages.
- 21.5 Despite anything else in this Constitution, where a Corporate Representative is appointed and:
 - (a) the appointment is a standing one, the certificate appointing a Corporate Representative is not required to be produced to the Company prior to the commencement of a Meeting at which a Corporate Representative proposes to attend where:
 - (1) the certificate appointing the Corporate Representative has been previously produced to the Company;
 - (2) the Corporate Representative is entitled to attend the Meeting on the basis of the same certificate (without amendment or extension) as the certificate referred to in Rule 21.3; and
 - (3) the certificate referred to in Rule 21.3 is otherwise valid; or
 - (b) otherwise, a certificate appointing a Corporate Representative must be produced to the Company prior to the commencement of a Meeting at which a Corporate Representative proposes to attend.
- 21.6 Every Member of the Company entitled to vote at a meeting of Members may, by proxy, appoint one or more (but not more than two) proxy holders to attend and act at the meeting in the manner, to the extent and with the powers conferred by the proxy.
- 21.7 Where a Member appoints two proxies:
 - (a) the appointment may specify the proportion or number of votes that the proxy may exercise; and
 - (b) otherwise, each proxy may exercise half of the votes.
- 21.8 Despite anything to the contrary contained in this Constitution, if a Member appoints one proxy only, that proxy shall be entitled to vote on a show of hands, but if a Member appoints two proxies, neither proxy shall be entitled to vote on a show of hands.
- 21.9 If a Member appoints:
 - (a) one proxy only, that proxy shall be entitled on a poll to one vote for each Share held by the appointor Member; or
 - (b) two proxies, each proxy shall be entitled on a poll to that number of votes determined in accordance with Rule 21.7.
- 21.10 Where a proxy and a Member who appointed such proxy both attend at the Meeting or adjourned Meeting, or on the taking of a poll:
 - (a) where the proxy is appointed to represent the whole of a Member's voting rights, the Member shall not be entitled to vote at the Meeting or adjourned Meeting or to vote on the poll, as the case may be, unless notice in writing of the revocation of the instrument appointing such proxy

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shall have been received at the place for deposit of proxies or by the Chairman before the Meeting or adjourned Meeting or the poll is taken; and

- (b) where the proxy is appointed for a specified portion of that Member's voting rights only, the Member shall be entitled to vote at the Meeting or adjourned Meeting or to vote on the poll as if the Shares or the portion of Shares in respect of which the Member has not appointed a proxy were the only Shares held by the Member provided that in this case the proxy shall not be entitled to vote on a show of hands.
- 21.11 The instrument appointing a proxy shall be in writing under the hand of the appointor or the appointor's attorney duly authorised in writing or if such appointor is a corporation, properly executed by the corporation under the Corporations Act.
- 21.12 A Member may appoint one or more alternate proxy holders to act in the place of an absent proxy holder.
- 21.13 A proxy holder need not be a Member of the Company.
- 21.14 A proxy for a meeting of Members must be received at the registered office of the Company or at any other place specified, in the notice calling the meeting, for the receipt of proxies, at least 48 hours before the time set for the holding of the meeting or any adjourned meeting.
- 21.15 A proxy may be sent to the Company by written instrument, fax or any other method of transmitting legibly recorded messages, including through Internet or telephone voting or by email, if permitted by the notice calling the meeting or the information circular for the meeting.
- 21.16 A proxy, whether for a specified meeting or otherwise, must be either in the following form or in any other form approved by the directors or the chair of the meeting:

[name of company]
(the Company)

The undersigned, being a Member of the Company, hereby appoints [name] or, failing that person, [name], as proxy holder for the undersigned to attend, act and vote for and on behalf of the undersigned at the meeting of Members of the Company to be held on [month, day, year] and at any adjournment of that meeting.

Number of shares in respect of which this proxy is given (if no number is specified, then this proxy is given in respect of all shares registered in the name of the undersigned): _____

Signed [month, day, year]

[Signature of Member]

[Name of Member—printed]

- 21.17 Subject to Rule 21.18, every proxy may be revoked by an instrument in writing that is received:
- (a) at the registered office of the Company at any time up to and including the last business day before the day set for the holding of the meeting or any adjourned meeting at which the proxy is to be used; or
 - (b) at the meeting or any adjourned meeting, by the chair of the meeting or adjourned meeting, before any vote in respect of which the proxy has been given has been taken.
- 21.18 An instrument referred to in Rule 21.17 must be signed as follows:

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- (a) if the Member for whom the proxy holder is appointed is an individual, the instrument must be signed by the Member or the Member's legal personal representative or trustee in bankruptcy;
- (b) if the Member for whom the proxy holder is appointed is a corporation, the instrument must be signed by the corporation or by a Corporate Representative appointed for the corporation under Rule 21.3.

21.19 The chair of any meeting of Members may, but need not, inquire into the authority of any person to vote at the meeting and may, but need not, demand from that person production of evidence as to the existence of the authority to vote.

22. Powers of attorney

22.1 Any Member may by power of attorney appoint an attorney to attend and act and vote at any Meetings of the Company on behalf of such Member and as his or its proxy without any special appointment other than such power of attorney (**Attorney**).

22.2 An Attorney shall be appointed in writing under the hand and seal of the Member and attested by one witness, or if the appointor is a corporation, properly executed by the corporation under the Act.

22.3 An Attorney appointed in accordance with this Rule may, within the limits of the relevant power of attorney and whether the Attorney is a Member of the Company or not, appoint in writing as proxy on behalf of the appointor, a person (whether a Member of the Company or not) who shall be deemed to be the proxy of such appointor.

22.4 An Attorney appointed in accordance with this Rule, whether the Attorney is a Member of the Company or not, may on behalf of the Attorney's appointor, within the limits of the relevant power of attorney, sign any consent which the appointor would under this Constitution be required or entitled to sign.

22.5 Any Attorney appointed in accordance with this Rule and any substitute Attorney or proxy appointed may attend and take part in the proceedings of and vote at all Meetings of the Company (or any Meeting of any class of Members in the Company of which such Member is a Member) so long as the power of attorney shall remain in force in the same manner as the Member could do if the Member was personally present. If the power of attorney is expressed to be given for value, the votes of the Attorney or substitute Attorney or proxy shall take precedence over the votes of the Member or of any other proxy appointed by or claiming under the Member.

23. Revocation and invalidity of instruments

A vote given in accordance with the terms of the instrument appointing a proxy, attorney or Corporate Representative shall be valid:

- (a) the death of the principal;
- (b) the unsoundness of mind of the principal;
- (c) the winding up or dissolution of the principal, if a corporate body; or
- (d) the revocation of the instrument or the power of attorney under which the instrument was executed,

so long as no intimation in writing of any such event is received at the place for deposit of proxies or by the Chairman before the Meeting or the adjourned Meeting takes place, or the poll is taken.

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24. Directors

- 24.1 The Company may from time to time by resolution passed at a Meeting increase or reduce the number of Directors
- 24.2 Subject to Rules 25.1 and 25.3, the number of Directors shall be:
- (a) not less than three; and
 - (b) no more than nine.
- 24.3 In the event the Company is a Reporting Issuer, the minimum number of directors is three.
- 24.4 An act or proceeding of the directors:
- (a) is not invalid merely because fewer than the number of directors set or otherwise required under this Constitution is in office; and
 - (b) shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director, regardless as to whether it is afterwards discovered that there was some defect in the appointment or continuance in office of any of such Directors or persons acting or that any of them were disqualified or had vacated office.
- 24.5 A director is not required to hold a share as qualification for his or her office but must be qualified as required by the Act to become, act or continue to act as a director.
- 24.6 The directors are entitled to the remuneration for acting as directors, if any, as the directors may from time to time determine.
- 24.7 The Company must reimburse each director for the reasonable expenses that he or she may incur in and about the business of the Company.
- 24.8 If any director performs any professional or other services for the Company that in the opinion of the directors are outside the ordinary duties of a director, he or she may be paid remuneration fixed by the directors, or at the option of the directors, fixed by ordinary resolution, and such remuneration will be in addition to any other remuneration that he or she may be entitled to receive.
- 24.9 Unless otherwise determined by ordinary resolution, subject to the Act, the directors on behalf of the Company may pay a gratuity or pension or allowance on retirement to any director who has held any salaried office or place of profit with the Company or to his or her spouse or dependants and may make contributions to any fund and pay premiums for the purchase or provision of any such gratuity, pension or allowance.
- 24.10 Subject to the provisions of the Corporations Act, any Director may hold any other office or place of profit under the Company or in connection with the Company's business other than that of Auditor.
- 24.11 No person being a partner or employer, or employee of any Auditor of the Company shall be eligible to be appointed or elected as Director or Alternate Director of the Company.

25. Election and Removal of Directors

- 25.1 At every annual general meeting:
- (a) the shareholders entitled to vote at the annual general meeting for the election of directors must elect, or in the unanimous resolution appoint, a board of directors consisting of the number of directors for the time being set under this Constitution; and

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- (b) all the directors cease to hold office at the conclusion of the Meeting at which the retiring Director's successor is elected.
- 25.2 No election, appointment or designation of an individual as a director is valid unless:
 - (a) that individual consents to be a director in the manner provided for in the Act;
 - (b) that individual is elected or appointed at a meeting at which the individual is present and the individual does not refuse, at the meeting, to be a director; or
 - (c) with respect to first directors, the designation is otherwise valid under the Act.
- 25.3 If:
 - (a) the Company fails to hold an annual general meeting on or before the date by which the annual general meeting is required to be held under the Act; or
 - (b) the shareholders fail, at the annual general meeting to elect or appoint any directors;then each director then in office continues to hold office until the earlier of:
 - (c) when his or her successor is elected or appointed; and
 - (d) when he or she otherwise ceases to hold office under the Act or this Constitution.
- 25.4 If, at any meeting of shareholders at which there should be an election of directors, the places of any of the retiring directors are not filled by that election, those retiring directors who are not re-elected and who are asked by the newly elected directors to continue in office will, if willing to do so, continue in office to complete the number of directors for the time being set pursuant to this Constitution but their term of office shall expire when new directors are elected at a meeting of shareholders convened for that purpose.
- 25.5 Any casual vacancy occurring in the board of directors may be filled by the directors.
- 25.6 The directors may act notwithstanding any vacancy in the board of directors, but if the Company has fewer directors in office than the number set pursuant to this Constitution as the quorum of directors, the directors may only act for the purpose of appointing directors up to that number or of calling a meeting of shareholders for the purpose of filling any vacancies on the board of directors or, subject to the Act, for any other purpose.
- 25.7 If the Company has no directors or fewer directors in office than the number set pursuant to the Act or this Constitution as the quorum of directors, the shareholders may elect or appoint directors to fill any vacancies on the board of directors.
- 25.8 Notwithstanding anything to the contrary in this Constitution, between annual general meetings, the directors may appoint one or more additional directors, but the number of additional directors appointed under this Rule 25.8 must not at any time exceed:
 - (a) one-third of the number of first directors, if, at the time of the appointments, one or more of the first directors have not yet completed their first term of office; or
 - (b) in any other case, one-third of the number of the current directors who were elected or appointed as directors other than under this Rule 25.8 .
 - (c) Any director so appointed ceases to hold office immediately before the next election or appointment of directors under 25.1(a), but is eligible for re-election or re-appointment.

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25.9 A director ceases to be a director when:

- (a) the term of office of the director expires;
- (b) the director dies;
- (c) the director resigns as a director by notice in writing provided to the Company or a lawyer for the Company;
- (d) ceases to be a Director by virtue of the Corporations Act or by order of any court of competent jurisdiction;
- (e) becomes prohibited from being a Director by reason of any order made under the Corporations Act;
- (f) becomes bankrupt or suspends payment or makes any arrangement or composition with his creditors generally;
- (g) 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;
- (h) for a continuous period of more than six Months is absent without the permission of the Directors from meetings of the Directors held during that period, provided that attendance by the Alternate for the Director shall be deemed to be attendance by the Director for the purposes of this paragraph; or
- (i) the director is removed from office pursuant to Rule 25.10.

25.10 The Company may remove any director before the expiration of his or her term of office by special resolution. In that event, the shareholders may elect, or appoint by ordinary resolution, a director to fill the resulting vacancy. If the shareholders do not elect or appoint a director to fill the resulting vacancy contemporaneously with the removal, then the directors may appoint or the shareholders may elect, or appoint by ordinary resolution, a director to fill that vacancy.

25.11 Subject to Rule 25.12, a Director may be or become a director of any other company and no Director who is or becomes a director in another company shall be accountable for any benefits received as a director or Member of such other company.

25.12 A Director shall not, without the approval of the other Directors accept, hold or retain the office of director of any other company which in the opinion of the other Directors is for the time being in active competition with the Company.

26. Alternate Directors

26.1 Any director (an **appointor**) may by notice in writing received by the Company appoint any person (an **appointee**) who is qualified to act as a director to be his or her alternate to act in his or her place at meetings of the directors or committees of the directors at which the appointor is not present unless (in the case of an appointee who is not a director) the directors have reasonably disapproved the appointment of such person as an alternate director and have given notice to that effect to his or her appointor within a reasonable time after the notice of appointment is received by the Company.

26.2 Every alternate director so appointed is entitled to notice of meetings of the directors and of committees of the directors of which his or her appointor is a member and to attend and vote as a director at any such meetings at which his or her appointor is not present.

26.3 A person may be appointed as an alternate director by more than one director, and an alternate director:

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- (a) will be counted in determining the quorum for a meeting of directors once for each of his or her appointors and, in the case of an appointee who is also a director, once more in that capacity;
 - (b) has a separate vote at a meeting of directors for each of his or her appointors and, in the case of an appointee who is also a director, an additional vote in that capacity;
 - (c) will be counted in determining the quorum for a meeting of a committee of directors once for each of his or her appointors who is a member of that committee and, in the case of an appointee who is also a member of that committee as a directors, once more in that capacity; and
 - (d) has a separate vote at a meeting of a committee of directors for each of his or her appointors who is a member of that committee and, in the case of an appointee who is also a member of that committee as a director, an additional vote in that capacity.
- 26.4 Every alternate director, if authorised by the notice appointing him or her, may sign in place of his or her appointor any resolutions to be consented to in writing.
- 26.5 Every alternate director is deemed to be the agent of his or her appointor.
- 26.6 An appointor may at any time, by notice in writing received by the Company, revoke or amend the terms of the appointment of an alternate director appointed by him or her.
- 26.7 The appointment of an alternate director ceases when:
- (a) his or her appointor ceases to be a director and is not promptly re-elected or reappointed;
 - (b) the alternate director dies;
 - (c) the alternate director resigns as an alternate director by notice in writing provided to the Company or a lawyer for the Company;
 - (d) the alternate director ceases to be qualified to act as a director; or
 - (e) the term of his appointment expires, or his or her appointor revokes the appointment of the alternate directors.
- 26.8 The Company may reimburse an alternate director for the reasonable expenses that would be properly reimbursed if he or she were a director, and the alternate director is entitled to receive from the Company such proportion, if any, of the remuneration otherwise payable to the appointor as the appointor may from time to time direct.

27. Powers and Duties of Directors

- 27.1 The directors must, subject to the Act and this Constitution, manage or supervise the management of the business and affairs of the Company and have the authority to exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the shareholders of the Company. Notwithstanding the generality of the foregoing, the directors may set the remuneration of the auditor of the Company.
- 27.2 The directors may from time to time, by power of attorney or other instrument, under seal if so required by law, appoint any person to be the attorney of the Company for such purposes, and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution and excepting the power to fill vacancies in the board of directors, to remove a director, to change the membership of, or fill vacancies in, any committee of the directors, to appoint or remove officers appointed by the directors and to declare dividends) and for such period, and with such remuneration and subject to such conditions as the directors may think fit. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney as

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the directors think fit. Any such attorney may be authorized by the directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in him or her.

28. Proceedings of Directors

- 28.1 The directors may meet together for the conduct of business, adjourn and otherwise regulate their meetings as they think fit, and meetings of the directors held at regular intervals may be held at the place, at the time and on the notice, if any, as the directors may from time to time determine.
- 28.2 Questions arising at any meeting of directors are to be decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting has a second or casting vote.
- 28.3 The following individual is entitled to preside as chair at a meeting of directors:
- (a) the chair of the board, if any;
 - (b) in the absence of the chair of the board, the CEO or president in that order, if any, if the CEO or president is a director; or
 - (c) any other director chosen by the directors if:
 - (1) neither the chair of the board nor the president, if a director, is present at the meeting within 15 minutes after the time set for holding the meeting;
 - (2) neither the chair of the board nor the president, if a director, is willing to chair the meeting; or
 - (3) the chair of the board and the president, if a director, have advised the secretary, if any, or any other director, that they will not be present at the meeting.
- 28.4 A director may participate in a meeting of the directors or of any committee of the directors:
- (a) in person; or
 - (b) by telephone or by other communications medium if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other.
- 28.5 A director who participates in a meeting in a manner contemplated by this Rule 28 is deemed for all purposes of the Act and this Constitution to be present at the meeting and to have agreed to participate in that manner.
- 28.6 A director may, and the secretary or an assistant secretary of the Company, if any, on the request of a director must, call a meeting of the directors at any time.
- 28.7 Other than for meetings held at regular intervals as determined by the directors pursuant to Rule 28.1, 48 hours' notice or such lesser notice as the Chairman in his discretion determines, acting reasonably, is appropriate in any unusual circumstances of each meeting of the directors, specifying the place, day and time of that meeting must be given to each of the directors by any method set out in Rule 61 or orally or by telephone.
- 28.8 It is not necessary to give notice of a meeting of the directors to a director if:
- (a) the meeting is to be held immediately following a meeting of shareholders at which that director was elected or appointed, or is the meeting of the directors at which that director is appointed; or

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- (b) the director has waived notice of the meeting.
- 28.9 The accidental omission to give notice of any meeting of directors to, or the non-receipt of any notice by, any director, does not invalidate any proceedings at that meeting.
- 28.10 Any director may send to the Company a document signed by him or her waiving notice of any past, present or future meeting or meetings of the directors and may at any time withdraw that waiver with respect to meetings held after that withdrawal. After sending a waiver with respect to all future meetings and until that waiver is withdrawn, no notice of any meeting of the directors need be given to that director and all meetings of the directors so held are deemed not to be improperly called or constituted by reason of notice not having been given to such director. Attendance of a director or alternate director at a meeting of the directors is a waiver of notice of the meeting unless that director or alternate director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
- 28.11 The quorum necessary for the transaction of the business of the directors may be set by the directors and, if not so set, is deemed to be a majority of the directors.
- 28.12 Subject to the Act, an act of a director or officer is not invalid merely because of an irregularity in the election or appointment or a defect in the qualification of that director or officer.
- 28.13 A resolution of the directors or of any committee of the directors may be passed without a meeting:
 - (a) in all cases, if each of the directors entitled to vote on the resolution consents to it in writing; or
 - (b) in the case of a resolution to approve a contract or transaction in respect of which a director has disclosed that he or she has or may have a disclosable interest, if each of the other directors who have not made such a disclosure consents in writing to the resolution.
- 28.14 A consent in writing under Rule 28.13 may be by signed document, fax, email or any other method of transmitting legibly recorded messages. A consent in writing may be in two or more counterparts which together are deemed to constitute one consent in writing. A resolution of the directors or of any committee of the directors passed in accordance with this Rule 28.13 is effective on the date stated in the consent in writing or on the latest date stated on any counterpart and is deemed to be a proceeding at a meeting of directors or of the committee of the directors and to be as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors that satisfies all the requirements of the Act and all the requirements of this Constitution relating to meetings of the directors or of a committee of the directors.

29. Executive and other Committees

- 29.1 The directors may, by resolution, appoint an executive committee consisting of the director or directors that they consider appropriate, and this committee has, during the intervals between meetings of the board of directors, all of the directors' powers, except:
 - (a) the power to fill vacancies in the board of directors;
 - (b) the power to remove a director;
 - (c) the power to change the membership of, or fill vacancies in, any committee of the directors; and
 - (d) such other powers, if any, as may be set out in the resolution or any subsequent directors' resolution.

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29.2 The directors may, by resolution:

- (a) appoint one or more committees (other than the executive committee) consisting of the director or directors that they consider appropriate;
- (b) delegate to a committee appointed under Rule 29.2(a) any of the directors' powers, except:
 - (1) the power to fill vacancies in the board of directors;
 - (2) the power to remove a director;
 - (3) the power to change the membership of, or fill vacancies in, any committee of the directors; and
 - (4) the power to appoint or remove officers appointed by the directors; and
- (c) make any delegation referred to in Rule 29.2(b) subject to the conditions set out in the resolution or any subsequent directors' resolution.

29.3 Any committee appointed under Rule 29.1 or 29.2, in the exercise of the powers delegated to it, must:

- (a) conform to any rules that may from time to time be imposed on it by the directors;
- (b) report every act or thing done in exercise of those powers at such times as the directors may require.

29.4 The directors may, at any time, with respect to a committee appointed Rule 29.1 or 29.2:

- (a) revoke or alter the authority given to the committee, or override a decision made by the committee, except as to acts done before such revocation, alteration or overriding;
- (b) terminate the appointment of, or change the membership of, the committee; and
- (c) fill vacancies in the committee.

29.5 Subject to Rule 29.3(a) and unless the directors otherwise provide in the resolution appointing the committee or in any subsequent resolution, with respect to a committee appointed under Rule 29.1 or 29.2:

- (a) the committee may meet and adjourn as it thinks proper;
- (b) the committee may elect a chair of its meetings but, if no chair of a meeting is elected, or if at a meeting the chair of the meeting is not present within 15 minutes after the time set for holding the meeting, the directors present who are members of the committee may choose one of their number to chair the meeting;
- (c) a majority of the members of the committee constitutes a quorum of the committee; and
- (d) questions arising at any meeting of the committee are determined by a majority of votes of the members present, and in case of an equality of votes, the chair of the meeting does not have a second or casting vote.

30. Officers

30.1 The directors may, from time to time, appoint such officers, if any, as the directors determine and the directors may, at any time, terminate any such appointment.

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30.2 The directors may, for each officer:

- (a) determine the functions and duties of the officer;
- (b) entrust to and confer on the officer any of the powers exercisable by the directors on such terms and conditions and with such restrictions as the directors think fit; and
- (c) revoke, withdraw, alter or vary all or any of the functions, duties and powers of the officer.

30.3 No person may be appointed as an officer unless that person is qualified in accordance with the Act. One person may hold more than one position as an officer of the Company. Any person appointed as the chair of the board or as a managing director must be a director. Any other officer need not be a director.

30.4 All appointments of officers are to be made on the terms and conditions and at the remuneration (whether by way of salary, fee, commission, participation in profits or otherwise) that the directors thinks fit and are subject to termination at the pleasure of the directors, and an officer may in addition to such remuneration be entitled to receive, after he or she ceases to hold such office or leaves the employment of the Company, a pension or gratuity.

31. Managing Director

31.1 The Directors may from time to time appoint one or more of the Directors to the position of Managing Director or Assistant Managing Director on such terms as they think fit and may from time to time remove any Director so appointed from office and appoint another Director in place of the Director removed from that position.

31.2 A Managing Director or Assistant Managing Director shall be subject to the same provisions as to resignation and removal as the other Directors of the Company and shall immediately cease to be a Managing Director or Assistant Managing Director on ceasing to hold the office of Director from any cause, provided that:

- (a) where there is only one Managing Director, the Managing Director shall not be subject to the provisions of this Constitution as regards retirement by rotation, and the Managing Director shall not be taken into account in determining the rotation or retirement of Directors;
- (b) where there is more than one Managing Director, only one Managing Director shall be entitled not to be subject to the provisions of this Constitution as regards retirement by rotation and shall not be taken into account in determining the retirement by rotation of Directors and as between any two or more Managing Directors, in the absence of agreement between them, the Managing Director to whom the exemption in this Rule 31.2 applies shall be determined by lot;
- (c) after a determination has been made under Rule 31.2(b), the exemption referred to in that Rule will not apply to any other Managing Director until the Managing Director first determined to have the benefit of the exemption ceases to be a Managing Director; and
- (d) if, at the time a Managing Director ceases to have the benefit of the exemption referred to in Rule 31.2(b), that Managing Director has not submitted to re-election for a period longer than that provided in Rule 25.1, the Managing Director shall submit to re-election at the next annual general meeting of the Company.

31.3 Despite Rule 25, the remuneration of a Managing Director or Assistant Managing Director shall be fixed by the Directors from time to time and may be by way of fixed salary or commission on profits of the Company or of any other company in which the Company is interested or by participation in any such profits or by any or all of these modes, but shall not be by way of commission on or percentage of operating revenue.

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31.4 The Directors may from time to time:

- (a) entrust to and confer on a Managing Director or Assistant Managing Director for the time being such of the powers exercisable under this Constitution by the Directors as they think fit;
- (b) confer such powers for such time and to be exercised for such objects and purposes and on such terms and conditions and with such restrictions as they think expedient; and
- (c) confer such powers collaterally with, but not to the exclusion of or in substitution for, all or any of the powers of the Directors in that behalf and may from time to time revoke withdraw alter or vary all or any of such powers.

31.5 This Rule 31 is subject to the provisions of any contract between the Managing Director or Assistant Managing Director and the Company so long as the terms of any contract between the Managing Director or Assistant Managing Director and the Company which are inconsistent with this Constitution, have been first approved of by the Company in general Meeting.

32. Chairman of Directors

- 32.1 The Directors may from time to time appoint a Chairman of Directors or Chairman and may entrust to and confer on such Chairman of Directors or Chairman all or any of the powers of the Directors (excepting the powers to make calls, forfeit Shares, borrow or otherwise raise money or issue Debentures) that they may think fit.
- 32.2 The exercise of all powers by such Chairman of Directors or Chairman shall be subject to such regulations and restrictions as the Directors may from time to time make and impose and the said powers may at any time be withdrawn, revoked or varied.
- 32.3 The Chairman of Directors shall be entitled if present to take the chair at meetings of the Directors. If the Chairman of Directors is not present within ten minutes after the time appointed for the meeting, the Directors shall choose one of their number to be chairman of the meeting.
- 32.4 The Chairman may be removed at any time by resolution of the Directors of which reasonable notice shall have been given to all Directors before the meeting of Directors at which the resolution is proposed.

33. Minutes of Meetings

- 33.1 The Directors shall cause minutes to be made of all proceedings all Meetings of Directors and of all meetings of Directors and committees of Directors.
- 33.2 The minutes shall contain details of all proceedings including:
- (a) of all appointments of officers; and
 - (b) of names of Directors present at all Meetings and meetings of the Directors and of any committee of the Directors,
- and shall be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.
- 33.3 The minutes of a meeting signed by the Chairman of that meeting as provided in Rule 33.2 shall be sufficient evidence without further proof of the facts stated in the minutes.

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34. Borrowing powers of Directors

- 34.1 The Directors may, at their discretion, raise or borrow money or other financial accommodation of any kind whatever on behalf of the Company and do not require the consent of the Members to exercise these powers (**Borrowing Powers**).
- 34.2 The Borrowing Powers of the Directors include power to:
- (a) raise or borrow any money in any manner whatever, either alone or jointly with another or others (including but without limitation by way of overdraft account, letters of credit or bill acceptance and discounting facility); and
 - (b) to secure the payment or repayment of such money in such manner and on such terms and conditions in all respects as they may think fit and, in particular, by the issue or sale of Debt Securities, bonds or other obligations of the Company whether:
 - (1) perpetual or otherwise;
 - (2) payable to bearer or otherwise; and
 - (3) either:
 - (A) without security;
 - (B) secured by deposit or pledge of the Securities;
 - (C) secured by properties of the Company;
 - (D) secured by mortgages bills of exchange or promissory notes or other instruments; or
 - (E) secured in any other manner.
- 34.3 The Directors may offer as security, in any manner whatever, any part of the Company's property and assets including its future property and uncalled Capital for the time being.
- 34.4 Any Debentures, Debt Securities, and other Securities or obligations issued by the Company may be made assignable free from any equities between the Company and the person who was granted or issued the same.
- 34.5 Any Debentures, Debt Securities and other Securities or obligations may be issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, attending and voting at general Meetings of the Company, appointment of Directors, making calls on Members for any uncalled Capital included in such Securities and otherwise.
- 34.6 The Directors shall establish and maintain all proper registers required by law to be kept of all Debentures, Debt Securities and other Securities, mortgages and charges specifically affecting the property of the Company.

35. Interested Directors

- 35.1 A Director shall be entitled to acquire or have the following interests:
- (a) a Material Personal Interest;
 - (b) a Financial Benefit; and

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- (c) an interest of any other kind whatever permitted or authorised by law.

36. Directors' material personal interests

- 36.1 A Director shall only be entitled to acquire, receive and have a Material Personal Interest in the manner and to the extent permitted by law.
- 36.2 A Director holding a Material Personal Interest shall comply with all obligations required by law including any disclosure obligations under the Act in respect of the same.

37. Directors' financial benefits

- 37.1 A Director shall only be entitled to be given a Financial Benefit in the manner and to the extent permitted by law.
- 37.2 A Director given or to be given a Financial Benefit shall comply with all obligations required by law including any disclosure obligations under the Act in respect of the Financial Benefit.

38. Local management

- 38.1 The Directors may provide for the management and transaction of the business and affairs of the Company in any place in Australia or elsewhere to the extent permitted by law.
- 38.2 The Directors may from time to time establish any local boards of directors, managers, branch offices or agencies for managing the affairs of the Company in any locality and may:
 - (a) appoint any persons to be Members of such local boards of directors or managers or agents; and
 - (b) fix their remuneration.
- 38.3 The Directors may at their discretion make regulations for the management of any local board, branch office or agency from time to time. The Directors may pay the expenses occasioned by any of the matters in this Rule out of the funds of the Company and may at their discretion from time to time discontinue all or any of such local boards of directors, branch offices or agencies.
- 38.4 All local boards of directors, branch offices, agencies, local directors, agents, officers, clerks, servants and workmen wherever located shall at all times be under the control of the Directors.
- 38.5 Except for the power of making calls which cannot be delegated, the Directors may from time to time delegate to any person appointed under Rule 38.2 any of the powers, authorities and discretions for the time being vested in the Directors other than and may authorise the Members for the time being of any local board of directors or any of them to fill any vacancies therein and to act notwithstanding such vacancies.
- 38.6 Any appointment made under Rules 38.2 and 38.5 shall be made on such terms and conditions as the Directors determine at their discretion.
- 38.7 The Directors may at any time:
 - (a) remove any person appointed under Rules 38.2 and 38.5; and
 - (b) annul or vary any delegation of their powers to persons so appointed.
- 38.8 Any person appointed under Rules 38.2 and 38.5 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in that person.

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- 38.9 Where permitted or authorised by law, the Directors may cause to be kept in any other State or Territory of Australia, or other country in which it transacts business a branch register of Members. The Directors may, at their discretion, make provisions with respect to the keeping of such branch register, and may do whatever they consider necessary to comply with any local law.
- 38.10 If a Director is in any place where there is a local board of directors, the Director shall be entitled to act and vote at all meetings of the local directors.

39. Attorneys for Company

- 39.1 The Directors may, in any manner permitted and effective by law, appoint any corporation, firm, or person or body of persons to be the attorney or agent of the Company for such purposes and with such powers, authorities and discretions and for such period and subject to such conditions as they may think fit so long as the powers do not exceed those vested in or exercisable by the Directors under this Constitution.
- 39.2 An appointment under Rule 39.1 may contain such provisions for the protection and convenience of persons dealing with any such attorney or agent as the Directors may think fit and may authorise any such attorney or agent to delegate all or any of the powers, authorities, and discretions vested in the attorney or agent.
- 39.3 The Directors may appoint local directors or agents by facsimile, email or other form of visible communication in cases of urgency to act for and on behalf of the Company.

40. Execution of documentation by Company

- 40.1 The Company shall not be required to have a common seal.
- 40.2 If the Company has a common seal it shall contain:
- (a) the name of the Company; and
 - (b) its Australian Company Number or Australian Business Number.
- 40.3 The Directors shall provide for the safe custody of any common seal and any duplicate of the Company as they shall think fit. No document, writing or other material shall be executed by the Company except by the authority of the Board of Directors or of a committee of the Directors duly authorised or as otherwise permitted under the Act.
- 40.4 A Company may execute any agreement, deed, share certificate (if any) or other document in any manner permitted by law including with or without the use of a common seal. Every document which is executed shall be signed by either:
- (a) two Directors;
 - (b) a Director and the Secretary; or
 - (c) a Director and another authorised signatory appointed for that purpose by the Directors.
- 40.5 The Directors may, by resolution, determine either generally or in any particular case that the signature of any Director, Secretary or other person appointed by the Directors for the purpose of signing any instruments or documents which may need to be executed by the Company is affixed by some mechanical means (to be specified in the resolution of the Directors) provided that the use of such means is by such resolution restricted to instruments and documents which bear evidence of examination by the Company's Auditors.

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41. Bills of Exchange

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

42. Secretary

42.1 The Secretary:

- (a) shall be appointed by the Directors for such term, at such remuneration, and on such conditions as they may think fit in any manner permitted by law; and
- (b) may be removed by the Directors in any manner permitted by law.

42.2 The Directors may appoint an acting Secretary as temporary substitute for the Secretary who while exercising such office shall be deemed to be the Secretary for the purpose of this Constitution.

42.3 The Directors may also appoint Assistant Secretaries.

43. Public officer

The Directors may appoint a public officer to the Company and may, if they think fit, remove such person from office and appoint another in place of the person removed from office.

44. Reserves

44.1 The Directors may set aside out of the profits or other surplus assets such sums as they may think fit as reserves.

44.2 Subject to the provisions of the Act, all sums set aside as reserves may be applied from time to time in the discretion of the Directors for:

- (a) meeting depreciation;
- (b) meeting contingencies;
- (c) repairing, improving or maintaining the property of the Company;
- (d) special Dividends;
- (e) bonuses;
- (f) equalising Dividends;
- (g) paying Dividends; or
- (h) such other purposes as the Directors in their absolute discretion think proper and conducive to the interest of the Company or which may be required by law.

44.3 The Directors may divide such reserves into separate funds as they shall think fit.

44.4 The Directors may, pending any application of reserve sums as provided in Rule 44.2:

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- (a) invest such reserve sums on such investments and Securities (other than Shares of the Company or of its holding company) as they may think fit;
 - (b) place such reserve sums or part thereof either on deposit or at call at interest with any bank or banking institution or with any corporation receiving money on deposit;
 - (c) from time to time deal with and vary any such investments and Securities and dispose of all or any part of the investments for the benefit of the Company; or
 - (d) divide the reserve fund into such special funds as they may think fit.
- 44.5 The Directors may employ any asset or assets constituting the reserves of the Company or any part of the asset or assets in the business of the Company without being bound to keep same separate from the other assets of the Company.
- 44.6 Any interest or other income derived from or accretions to such investments or Securities shall be dealt with as profits arising from the business of the Company.
- 44.7 The Directors may re-value any assets of the Company.
- 44.8 The Directors may carry forward so much of the profits as the Directors consider appropriate or necessary without transferring same to a reserve.

45. Dividends

- 45.1 Subject to:
- (a) the provisions of Rule 44;
 - (b) this Constitution;
 - (c) the Act in relation to when a company may pay a Dividend; and
 - (d) the special conditions or rights (if any) as to Dividends attaching to any Shares,
- the Directors shall be entitled to distribute the Equity of the Company by way of Dividend and payment of Dividends on the Shares.
- 45.2 Subject to this Constitution and the Act, the Directors may from time to time declare and pay to the Members such final Dividends as appear to the Directors to be justified by the Equity of the Company.
- 45.3 Subject to this Constitution and the Act, the Directors may from time to time declare and pay to the Members such interim Dividends as appear to the Directors to be justified by the Equity of the Company.
- 45.4 No Dividend shall be paid otherwise than out of the Equity or shall bear interest against the Company.
- 45.5 A declaration by the Directors as to the amount of Equity available for Dividend shall be conclusive and binding on all Members of the Company.
- 45.6 Subject to this Constitution and the Act, the Directors may determine that any Dividend declared or recommended by them shall be made payable out of any particular profits (whether current, past or reserved profits) or otherwise as they in their discretion shall think fit, subject however to any requirements of law in relation to amounts held in share premium reserves, Capital redemption accounts or other special funds.

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- 45.7 A transfer of Shares shall not pass the right to any Dividend declared after such transfer and before the registration of the transfer.
- 45.8 All Dividends and interest shall belong and be paid (subject to any lien or charge) to those Members who are on the Register at the date on which the Dividend is declared payable, or at the date on which interest is payable respectively, despite any subsequent transfer or transmission of Shares, provided that the Directors may retain any Dividend payable on a Share in respect of which any person is entitled under Rule 12 to become a Member or which any person is entitled to transfer under that Rule, until such person shall become a Member in respect of such Share or shall duly transfer the same as the case may be.
- 45.9 The Directors may deduct from any Dividend payable to any Member all sums of money, if any, presently payable by the Member to the Company on account of calls or otherwise in relation to the Shares of the Company.
- 45.10 Any one of the several persons who are registered as the Joint Holders of a Share may give an effectual receipt for any Dividends, payments on account of Dividend, bonuses or other money payable in respect of the Share so held.
- 45.11 Any Dividend, interest, or other money payable in cash in respect of Shares or Debt Securities may be paid by:
- (a) cheque or warrant sent through the post directed to the registered address of the holder or, in the case of Joint Holders, to the registered address of that one of the Joint Holders who is first named on the Register or to such person and to such address as the holder or Joint Holders may in writing direct and every such cheque or warrant shall be made payable to the order of the person to whom it is sent;
 - (b) electronic funds transfer to an account nominated by the holder to the Company for the purpose of receiving such payments, or in the case of Joint Holders, to the account nominated to the Company by that Joint Holder who is first named in the Register for the purpose of receiving such payments; or
 - (c) in such other manner as the Directors determine from time to time.
- 45.12 Notice of declaration of Dividend whether interim or otherwise shall be given in the manner specified in Rule 61 to the persons entitled to share in the Dividend.
- 45.13 All Dividends unclaimed after having been declared may be invested and otherwise made use of by the Directors for the benefit of the Company until claimed and the Company shall not be constituted a trustee in respect of those funds. This paragraph is subject to the provisions of section 544 of the Act and the *Public Trustee Act 1978* (Qld).

46. Election to forego cash Dividends

- 46.1 The Board may, at its discretion and subject to the provisions of this Rule, adopt a Dividend reinvestment plan (**DRP**) under which the Board may decide (at the same time as it resolves to pay or to recommend any Dividend on the Ordinary Shares) that each holder of Ordinary Shares shall have the option to:
- (a) elect to forego the holder's right to share in such Dividend; and
 - (b) to receive instead an issue of Ordinary Shares credited as fully paid to the extent and within the limits and on the terms and conditions in the **DRP** and as set out in this Rule.
- 46.2 The Board shall provide a copy of the **DRP** and a summary of its terms and conditions to all holders of Ordinary Shares from time to time.

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- 46.3 If the Board resolves to allow such option in relation to any Dividend, each holder of Ordinary Shares conferring a right to share in such Dividend may, by notice in writing to the Company (**Notice of Election**) given in such form and within such period as the Board may from time to time decide, elect to forego (subject to the provisions of Rule 46.4) the Dividend which otherwise would have been paid to the holder on such of the holder's Ordinary Shares conferring a right to share in such Dividend as the holder shall specify in the Notice of Election and to receive in lieu Ordinary Shares, to be allotted and issued credited as fully paid in the manner and on the terms determined by the Board under the DRP.
- 46.4 A Member entitled to make an election under Rule 46.3 shall not be permitted to forego under the provisions of Rule 46.3 such amount of Dividend per Share as the Board in its sole discretion may resolve shall not be foregone.
- 46.5 Following the receipt of a duly completed Notice or Notices of Election under Rule 46.3, the Board shall appropriate from such other reserve or account which may be conducted by a company and from which bonus Shares may be distributed, an amount equal to the aggregate nominal amount of the Ordinary Shares to be allotted and credited as fully paid to those holders of Ordinary Shares who have given Notices of Election and shall apply the same in paying up in full the number of Ordinary Shares required to be so allotted. The Ordinary Shares so allotted and issued will rank pari passu with the existing Ordinary Shares and will rank for all Dividends on Ordinary Shares declared after the date of such allotment.
- 46.6 The Board shall not exercise the power conferred on them by Rule 46.1 unless the Company shall then have sufficient reserves to give effect to any elections which could be made under the terms of this Rule.
- 46.7 The powers given to the Board by this Rule are additional to the provisions for Capitalisation of profits provided for by this Constitution.
- 46.8 The Board shall not adopt a DRP or exercise the power conferred on them by Rule 46.1 under the DRP in respect of any Dividend payment which they resolve to make or recommend unless the Company shall, by ordinary resolution passed at a Meeting, have approved the adoption of the DRP and the use of that power in respect of any such payment or recommendation by the Board under the DRP.

47. Dividends in specie

- 47.1 Any Meeting declaring a Dividend or bonus may direct payment of such Dividend or bonus wholly or partly by the distribution of specific assets, and in particular of paid up Shares, Debentures or debenture stock of the Company or of any other company or in any one or more of such ways and the Directors shall give effect to such resolution.
- 47.2 Where any difficulty arises in relation to the distribution of assets as provided in Rule 47.1, the Directors may settle such difficulty in such manner as they think fit and may:
- (a) fix the value for distribution of all or part of the assets;
 - (b) determine that cash payments shall be made to any Members on the basis of the value so fixed or that fractions of less than \$1 may be disregarded in order to adjust the rights of all parties; and
 - (c) vest any such specific assets in trustees on such trusts for the persons entitled to the Dividend as determined by the Directors at their discretion.

48. Employee bonuses and employee scheme

- 48.1 The Directors may from time to time reserve out of the profits of the Company in any year a sum or sums of money, and distribute all or any part of the amount as a bonus or bonuses among the employees of the Company and the subsidiaries of the Company or any of them at such time and in such amounts and on such terms and conditions as the Directors may determine.

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- 48.2 The Directors may at their discretion introduce an employee scheme under which the Company may issue Securities in the Company to employees of the Company in any manner permitted by this Constitution, the Act and the law.

49. Capitalisation of profits

- 49.1 The Company at a Meeting may, on the recommendation of the Directors, resolve:
- (a) that any part of the undivided profits of the Company which are available for distribution (including profits standing to the credit of any reserve other than the Capital redemption reserve or of the profit and loss account and profits arising from accretion in value as disclosed on revaluation of fixed assets) shall be divided or distributed as Capital among such of the Members as would be entitled to receive the same if distributed as Dividends and in the same proportions; and
 - (b) that all or any part of the profits referred to in Rule 49.1(a) be appropriated in or towards payment of the uncalled liability of such Members on issued Shares or Debentures held by them, or be applied in paying up in full previously unissued Shares or Debentures all of which shall be distributed to the Members entitled according to their respective rights, or partly in one way and partly in the other.
- 49.2 A Capital redemption reserve fund may for the purposes of this Rule be applied only in the paying up of unissued Shares to be issued to Members of the Company as fully paid bonus Shares.
- 49.3 Whenever a resolution has been passed under the provisions of Rule 49.1, the Directors must in accordance with such resolution:
- (a) make all appropriations and applications of the undivided profits resolved to be capitalised;
 - (b) make all allotments and issues of fully paid Shares or Debentures, if any; and
 - (c) do all acts and things required to give effect to the resolution.
- 49.4 In carrying out their duties under Rule 49.3, the Directors have full power to make such provision by payment in cash or otherwise as they think fit, for the case of Shares or Debentures becoming distributable in fractions.
- 49.5 Any payment or distribution of or in relation to capitalised profits to any Members made under this Rule is binding on and accepted by such Members in full satisfaction of their respective interests in such profits.

50. Accounts

- 50.1 The Directors shall cause the Company to:
- (a) keep such accounting records as correctly record and explain the transactions (including any transactions as trustee) and financial position of the Company;
 - (b) keep its accounting records in such a manner as will enable true and fair accounts of the Company to be prepared from time to time; and
 - (c) keep its accounting records in such manner as will enable the accounts of the Company to be conveniently and properly audited in accordance with the Act.

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- 50.2 Subject to any law to the contrary, the Directors shall lay before each annual general meeting of the Company the Financial Statements and Financial Report made up to the end of the Company's financial year giving a true and fair view of the state of affairs of the Company as at the end of that financial year.

51. Directors' report

The Directors of the Company shall cause to be attached to every Financial Report, a report made in accordance with a resolution of the Directors and signed by not less than two of the Directors with respect to the profit and loss of the Company for that financial year and the state of the Company's affairs as at the end of that financial year, stating the matters required by the Act.

52. Distribution of accounts

- 52.1 The Financial Report together with such other material as is required to be sent by section 314 of the Act (**Annual Report**) shall be sent direct to every person entitled to receive notice of Meetings of the Company by the earlier of:
- (a) 21 days before the next annual general meeting after the end of the relevant financial year to which the reporting under section 314 of the Act relates (**Relevant Financial Year**); or
 - (b) four Months after the end of the Relevant Financial Year.
- 52.2 The Company may provide the Annual Report in any manner permitted by the Act including, without limitation, section 314.
- 52.3 Notwithstanding any other Rule of this Constitution, the Annual Report to be sent to a Member in accordance with this Constitution shall be deemed to have been given to that Member:
- (a) where the Annual Report is sent by post, on the day following that on which the letter envelope or wrapper containing the same was posted;
 - (b) where the Annual Report is sent or notified by facsimile, service shall be deemed to have been given at the time when a transmission of the facsimile is completed by the Company and a report is generated stating that the transmission has been sent to the facsimile number; or
 - (c) where the Annual Report is sent or notified by electronic transmission or other electronic means, service shall be deemed to have been given when the Company receives a report confirming the transmission has been received, or if no such report is received, on the day following that which it was sent.

53. Inspection of books of account

- 53.1 The books of account and records shall be kept at the Office of the Company or at such other place or places as the Directors think fit and shall at all times be open to inspection by the Directors of the Company or of any holding company of the Company.
- 53.2 Subject to the provisions of the Act, the Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the books of account and records of the Company or any of them shall be open to the inspection of the Members.
- 53.3 A Member shall only be entitled to inspect any accounts, records, books or documents of the Company:
- (a) if that Member also a Director;
 - (b) as provided by the Act;

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- (c) as authorised by the Directors under Rule 53.2; or
- (d) by a resolution of the Company at a Meeting.

54. Accounts conclusive

Every account of the Company (including any consolidated accounts of the Company and its subsidiaries or holding company if any) when audited and approved by a Meeting shall be conclusive.

55. Audit

- 55.1 An Auditor or Auditors shall be appointed and his or their duties shall be regulated in accordance with the Act.
- 55.2 The Auditor shall report to the Members on the Financial Statements to be laid before the Company at a Meeting and on the Company's accounting records relating to those Financial Statements and, if the Company is a holding company for which group accounts are required by the Act, the Auditor of the Company shall also report to the Members on the group accounts.
- 55.3 Any person who is:
 - (a) a Director of the Company;
 - (b) an Officer of the Company;
 - (c) a partner, employer or employee of a Director or Officer of the Company;
 - (d) a partner, employer or employee of an employee of a Director or Officer of the Company;
 - (e) not a registered company auditor; or
 - (f) indebted in any amount exceeding \$5,000 to the Company or to a Related Body Corporate,shall not be capable of being appointed or of acting as Auditor of the Company.
- 55.4 The Company's Share Register and branch registers (if any) shall be audited at such times as are required by any relevant law (if any).

56. Buy-back arrangements

The Company may buy Securities in itself from time to time and shall be entitled to give financial assistance to any entity for the purpose of the same to the extent and in the manner permitted by the Act or by law.

57. Fractional entitlements and difficulties

The Board may determine, as it thinks fit, the manner in which fractional entitlements or any difficulties relating to distribution and adjustment of the rights of the Members themselves are to be dealt with and, without limitation, may:

- (a) specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number;

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- (b) make cash payments in lieu of fractional entitlements or sell Shares not divisible by reason of fractional entitlements and account for the net proceeds of sale to Members entitled to such fractions proportionately;
- (c) fix the value for distribution of any specific assets or any part of those assets;
- (d) vest any such cash Shares or specific assets in trustees on trusts for the persons entitled to the Dividend or capitalised sum; or
- (e) appoint a person to sign a contract, on behalf of the Members entitled to any further Shares or Debentures on the capitalisation, with the Company providing for the issue to them, credited as fully paid up, of any such further Shares or Debentures by the application of their respective proportions of the sum resolved to be capitalised.

58. Takeover approval provisions

Subject to the provisions of the Act, where offers have been made for Shares in the Company under a Takeover Bid and each such offer relates to a proportion of these Shares in the Company included in a class of Shares being a proportion that is the same in respect of each offer, the Directors shall refuse to register a transfer giving effect to a contract resulting from the acceptance of any offer under the Takeover Bid unless the following provisions have been complied with:

- (a) the Directors shall convene a Meeting of the Company to be held in accordance with this Constitution on a day which is not less than 15 days prior to the end of the period during which the offers made under the Takeover Bid remain open;
- (b) at the Meeting referred to the Members entitled to vote in accordance with Rule 58(c) shall consider and vote on a resolution approving the Takeover Bid which resolution shall be taken to have been passed if the votes cast in favour of the resolution exceed 50% of all votes validly passed in respect of the resolution; and
- (c) for the purposes of the resolution referred to in Rule 58(b), a person (other than the offerer under the Takeover Bid or a person associated within the meaning of the Act with the bidder) who, as at 5.00pm on the day on which the first offer under the Takeover Bid was made, held Shares included in the class of Shares the subject of the Takeover Bid is entitled to vote and despite anything contained in this Constitution shall have one vote for each such Share held.

59. Notice to holders

- 59.1 Despite any other provision of this Constitution to the contrary, a Member shall not be entitled to receive Notices in respect of a holding in the event that the Member has returned to the Company a duly completed Request for Suspension of Full Notice Rights as described in Rule 59.2(d) (**Request for Suspension of Full Notice Rights**).
- 59.2 The Company shall at any time be entitled to give to a Member (in the manner prescribed for the giving of notice of general meetings) the documents referred to below:
 - (a) a written invitation to complete and return to the Company a Request for Suspension of Full Notice Rights;
 - (b) an explanation that, in the event of that Member returning to the Company a duly completed Request for Suspension of Full Notice Rights, the Member will not be entitled to receive Notices in respect of that holding and that such entitlement will be restored to the Member on return to the Company of a duly completed Request for Full Notice Rights as described in Rule 59.3 (**Request for Full Notice Rights**) at any time during which the Member is a Member;

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- (c) an envelope, pre-printed with the address of the Registered Office of the Company, in which the Request for Suspension of Full Notice Rights may, should the Member so desire, be mailed to the Company free of postage cost to the Member; and
- (d) a form of Request for Suspension of Full Notice Rights as nearly as practicable in the following form:

First Growth Funds Limited ACN 006 648 835

Request for Suspension of Full Notice Rights

I/We

(Full Name(s))

of

(Address(es))

being a Member, advise under Rule 59.2 of the Constitution of the Company that I/we wish to cease to receive all Notices to which I/we would be entitled were it not for the operation of Rule 59.2.

(Signature of Member(s))

(Date)

- 59.3 A Member who, by returning to the Company a duly completed Request for Suspension of Full Notice Rights, has ceased to be entitled to receive Notices shall have that right restored forthwith on the Company receiving from that Member a duly completed Request for Full Notice Rights at any time, and which Request for Full Notice Rights shall as nearly as practicable be in the following form:

First Growth Funds Limited ACN 006 648 835

Request for Full Notice Rights

I/We

(Full Name(s))

of

(Address(es))

being a Member, advise under Rule 59.3 of the Constitution of the Company that I/we wish to receive all Notices to which I/we would be entitled were it not for the operation of Rule 59.2.

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(Date) (Signature of Member(s))

- 59.4 On being requested to do so by a Member, the Company shall forward a Request for Full Notice Rights to the Member in an envelope, pre-printed with the address of the Registered Office of the Company, in which the Request for Suspension of Full Notice Rights may, should the Member so desire, be mailed to the Company free of postage cost to the Member.
- 59.5 By execution of a Request for Suspension of Full Notice Rights a Member for the duration of any requested suspension shall not be entitled to make any Claim against the Company in respect of non receipt of a Notice.

60. Confidential information

- 60.1 No Member, not being a Director, shall be entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.
- 60.2 Every Director, manager, trustee or Member of a committee of the Company may be required by the Directors to sign a declaration pledging to observe strict secrecy respecting all transactions of the Company. Such a declaration may require the person so signing to pledge not to reveal any of the matters which may come to the person's knowledge in the discharge of the person's duties except when required to do so by the Directors or a Member of a local board or by any Meeting of Members or by a court of law and except so far as may be necessary in order to comply with any of the provisions in this Constitution.
- 60.3 A person who ceases to be a Director of the Company shall, within a period of seven years from the date of cessation from office, be given access by the Company to materials referred to in Rule 60.1 (which came into existence during the Director's term of office or arose from conduct during that term) on the following terms and conditions:
- (a) a written request is made to the Company for access by the former Director (or that person's duly authorised representative) stating a reasonable and lawful purpose for the access as well as particulars of the documentation that the former Director is wishing to obtain access to;
 - (b) the notice in Rule 60.3(a) gives the Company a reasonable period of time prior to when access is requested;
 - (c) the Company shall be entitled (acting at all times reasonably) to reject or postpone (as the case may be) any request for access on the basis that to provide access would impose an unreasonable burden on the Company's resources, having regard to the circumstances of the Company at the time;
 - (d) the former Director provides the Company with an undertaking to meet all reasonable costs to be incurred by the Company in providing access; and
 - (e) the former Director signs a declaration along similar terms to that contemplated by Rule 60.2.

61. Notices

- 61.1 Any notice or document to be given by the Company under this Constitution may be served on the person to be notified either personally, by sending it through the post in a prepaid letter envelope or wrapper to the person to be notified at his registered place of address or by sending it to any facsimile number or electronic address notified by that person to the Company for the purposes of the Company giving notices or documents to that person.

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- 61.2 Notwithstanding Rule 61.1, written notice of a meeting of the Company and all associated documents may be given to a Member in any manner permitted by the Act including, without limitation, sections 249J(3) and 249J(3A).
- 61.3 Notwithstanding any other Rule of this Constitution, a notice of meeting and all associated documents provided by the Company to a Member in accordance with this Constitution shall be deemed to have been given to that Member:
- (a) where served personally, on the date of service;
 - (b) where the notice of meeting is sent by post, on the day following that on which the letter envelope or wrapper containing the same was posted;
 - (c) where the notice of meeting is sent or notified by facsimile, service shall be deemed to have been given at the time when a transmission of the facsimile is completed by the Company and a report is generated stating that the transmission has been sent to the facsimile number; or
 - (d) where the notice of meeting is sent or notified by electronic transmission or other electronic means, service shall be deemed to have been given when the Company receives a report confirming the transmission has been received, or if no such report is received, on the day following that which it was sent.
- 61.4 The signature to any notice to be given by the Company may be written, typewritten or printed.
- 61.5 Where a non-resident Member has supplied an overseas facsimile or other electronic address to the Secretary, the Secretary may endeavour to send by facsimile or other means of electronic communication to the facsimile or electronic address (as the case may be) a copy of any notice given to Members but a failure to do so shall not affect the validity of any Meeting.
- 61.6 A notice may be given by the Company to the Joint Holders of a Share by giving the notice to the Joint Holder first named in the Register in respect of the Share and notice so given shall be sufficient notice to all the holders of such Share.
- 61.7 Every person who becomes entitled to any Share shall be bound by every notice in respect of such Share which, prior to that person's name and address being entered on the Register, has been duly given to the Member from whom the person derives title to such Share.
- 61.8 Any notice or document delivered, sent or notified to a Member under this Constitution shall, despite that such Member is then deceased and whether or not the Company has notice of the Member's decease, be deemed to have been duly served in respect of any Share whether held by the Member solely or jointly with other persons, until some other person be registered in the Member's stead as the holder or Joint Holder and such service shall for all purposes of this Constitution be deemed a sufficient service of such notice or document on the Member's legal personal representatives and on all persons, if any, jointly interested with the Member in the Share.
- 61.9 Any notice served personally on a person shall be deemed to have been given on the day of service.
- 61.10 Any notice sent by post shall be deemed to have been given on the day following that on which the letter envelope or wrapper containing the same was posted.
- 61.11 Any notice sent by facsimile shall be deemed to have been given at the time when a transmission of the facsimile is completed by the Company and a report is generated stating that the transmission has been sent to the facsimile number.
- 61.12 Any notice sent by electronic transmission or other electronic means, service shall be deemed to have been given when the Company receives a report confirming the transmission has been received, or if no such report is received, on the day following that which it was sent.

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- 61.13 In proving service of a notice by post it shall be sufficient to prove that the letter envelope or wrapper containing the notice was properly addressed stamped and posted. A certificate in writing signed by any manager Secretary or other officer of the Company that the letter envelope or wrapper containing the notice was so addressed and posted shall in the absence of evidence to the contrary be conclusive evidence.
- 61.14 Subject to Rule 61.15, any notices to be given under or in reference to this Constitution by the Company to any Director or vice versa may be given in accordance with Rule 61.1 and, if so given, shall be deemed to have been given in accordance with rules 61.9, 61.10, 61.11 and 61.12. Where a given number of days' notice or notice extending over any period is required to be given, the day on which the notice is deemed to be served shall be excluded but the day for which the notice is given shall be included in calculating the number of days or other period.
- 61.15 Subject to any provisions with respect to service in the Act or in the rules of any court in which proceedings are brought by the Company or its liquidator against any Director or Member, all summonses, notices, process, orders and judgments in relation to any such proceedings may be served on such Director or Member by registered post and the provisions contained in the foregoing paragraphs of this Rule shall apply mutatis mutandis and such service shall be deemed for all purposes to be personal service.
- 61.16 Subject to Rule 61.1, notice of every Meeting or, if required, any adjournments shall be given in any manner authorised under this Rule to:
- (a) every Member;
 - (b) every person entitled by transmission to vote under this Constitution; and
 - (c) the Auditor for the time being of the Company.

62. Overseas Members

- 62.1 On an issue of Equity Securities, the Directors may take such steps as they shall think fit to provide equitably in all the circumstances for the rights and interests of any Overseas Member.
- 62.2 Documents for Overseas Members shall be forwarded by air, by facsimile, by electronic transmission or in another way that ensures they will be received quickly.
- 62.3 In this Rule 62, **Overseas Member** means a Member of the Company who has not supplied to the Company an address within Australia under Rule 61.1 and:
- (a) being an individual, the Directors have reason to believe is not resident in Australia; or
 - (b) being a company, the Directors have ascertained that it is not registered in Australia.

63. Indemnity and liability of directors and other officers

- 63.1 To the extent permitted by law, the Company shall:
- (a) indemnify a person who is or has been an Officer of the Company against liability incurred by the person as such an Officer to another person (other than the Company or a Related Body Corporate); and
 - (b) indemnify a person who is or has been an Officer or Auditor of the Company against liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted

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or in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Act.

- 63.2 The Company may pay, or agree to pay, at the discretion of the Directors, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against the liability incurred by the person as such an Officer, except for a liability arising out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act. In the case of a Director, any such premium shall be paid in addition to any remuneration paid to that Director by the Company in accordance with the Constitution.

64. Winding up

- 64.1 In this Rule, **Surplus Assets** means those assets of the Company which, on the winding up of the Company, remain after the payment of debts and liabilities of the Company and of the costs of winding up.
- 64.2 Subject to Rule 64.3, and the terms and conditions on which any Shares have been issued, the Surplus Assets shall be distributed as follows:
- (a) first, in repayment of paid-up Capital in accordance with the respective rights of the Members; and
 - (b) second, the balance then remaining shall be distributed among the ordinary Members.
- 64.3 Subject to the provisions of Rule 64.4, if the Surplus Assets shall be insufficient to repay the whole of the paid up Capital, such assets shall be distributed, so that the losses shall be borne by the Members in proportion to the Capital paid .
- 64.4 If the Company is wound up in any way, then, subject to the rights of holders of Shares issued on special conditions, the liquidator, with the sanction of a special resolution, may:
- (a) divide in specie among the contributories of the Company any part of the Surplus Assets; and
 - (b) vest any part of the Surplus Assets in trustees on such trusts for the benefit of the contributories or any of them as the liquidator shall think fit.
- 64.5 Any division by a liquidator under Rule 64.4 may be otherwise than in accordance with the legal rights of the contributories of the Company and in particular any class may be given preference or special rights or may be excluded altogether or in part provided that if any division otherwise than in accordance with the legal rights of the contributories shall be decided on, any contributory who would be prejudiced thereby shall have a right of dissent and ancillary rights as if such determination were a special resolution passed under the Act.
- 64.6 Remuneration may only be paid by the Company to any Director or liquidator on any sale or realisation of any part of the Company's undertaking or assets except with the prior sanction of a Meeting convened by at least seven days' notice specifying the remuneration proposed to be paid.

65. Sale of main undertaking

Any sale or disposal of the Company's main undertaking shall be conditional on approval by Members at a Meeting who are permitted to vote on the resolution.

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66. Foreign listing

If the Company is admitted to quotation on a foreign stock exchange (**Foreign Exchange**) so long as the Company is listed on the Foreign Exchange it shall comply with the rules and regulations of the Foreign Exchange (**Foreign Listing Rules**).