

OM HOLDINGS LIMITED  
(ARBN 081 028 337)



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No. of Pages Lodged: 89

16 January 2009

Company Announcements Office  
ASX Limited  
4<sup>th</sup> Floor  
20 Bridge Street  
SYDNEY NSW 2000

Dear Sir/Madam

**BYE-LAWS**

Please find attached a copy of the Company's Bye-laws (incorporating the Takeover Protection Provisions outlined in the Notice of Special General Meeting dated 18 December 2008) which were tabled and approved by Shareholders at the Special General Meeting held on 15 January 2009.

Yours faithfully

**OM HOLDINGS LIMITED**

A handwritten signature in black ink, appearing to read 'Heng Siow Kwee' followed by a flourish.

Heng Siow Kwee/Julie Wolseley  
**Company Secretary**

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## **BACKGROUND PROFILE OF OM HOLDINGS LIMITED**

*OMH listed on the ASX in March 1998 and has its foundations in metals trading – incorporating the sourcing and distribution of manganese ore products and subsequently in processing ores into ferro-manganese intermediate products. The OMH Group now operates commercial mining operations – leading to a fully integrated operation covering Australia, China and Singapore.*

*Through its wholly owned subsidiary, OM (Manganese) Ltd, OMH controls 100% of the Bootu Creek Manganese Mine (“Bootu Creek”) located 110 km north of Tennant Creek in the Northern Territory.*

*Bootu Creek has the capacity to produce up to 700,000 tonnes of manganese product annually. Bootu Creek has further exploration potential given that its tenement holdings extend over 3,364 km<sup>2</sup>.*

*Bootu Creek’s manganese product is exclusively marketed by the OMH Group’s own trading division with a proportion of the product consumed by the OMH Group’s wholly-owned Qinzhou smelter located in south west China.*

*Through its Singapore based commodity trading activities, OMH has established itself as a significant manganese supplier to the Chinese market. Product from Bootu Creek has strengthened OMH’s position in this market.*

*OMH also holds a 11% shareholding in Territory Resources Ltd, a company presently operating the Frances Creek iron ore project in the Northern Territory.*



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I LOW NGEETONG certify this is  
a true and correct copy of the Bye-laws  
as approved by shareholders on 15 January 2009

AMENDED AND RESTATED

BYE-LAWS

OF

OM HOLDINGS LIMITED

ARBN 081 028 337

(Adopted at the Annual General Meeting held on 30 May 2008 and amended at the General Meeting held on 23 September 2008 and 15 January 2009)

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INTERPRETATION

1. In these Bye-laws, unless the context otherwise requires, the words standing in the first column of the following table shall bear the meaning set opposite them respectively in the second column.

<u>WORD</u>	<u>MEANING</u>
"Act"	the Companies Act 1981 of Bermuda.
"Applicable Law"	means the Act, the Corporations Act (only as it relates to foreign incorporated companies), the rules of the Designated Stock Exchange and the ASTC Settlement Rules.
"associate"	the meaning attributed to it in the Corporations Act.
"ASTC"	the ASX Settlement and Transfer Corporation Pty Ltd.
"ASTC Settlement Rules"	the operating rules of ASTC for the purposes of the Corporations Act.
"Auditor"	any person appointed to perform the duties of auditor of the Company from time to time.
"Bye-laws"	these Bye-laws in their present form or as supplemented or amended or substituted from time to time.
"Board" or "Directors"	the directors of the Company from time to time.
"Business Day"	has the meaning which it bears in the rules of the Designated Stock Exchange.
"capital"	the share capital from time to time of the Company.
"CHESS"	the Clearing House Electronic Subregister System operated by the ASTC or such other securities clearing house as is approved pursuant to the Corporations Act from time to time and to which the rules of the Designated Stock Exchange apply.

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"CHESS Approved Securities"	securities of the Company for which CHESS approval has been given in accordance with the ASTC Settlement Rules.
"clear days"	in relation to the period of a notice that period excluding the day when the Notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
"clearing house"	a clearing house recognised by the laws of the jurisdiction in which the shares of the Company are listed or quoted on a stock exchange in such jurisdiction.
"Company"	OM Holdings Limited (ARBN 081 028 337).
"competent regulatory authority"	a competent regulatory authority in the territory where the shares of the Company are listed or quoted on a stock exchange in such territory.
"Corporations Act"	means the Corporations Act 2001 (Cth) of Australia and associated regulations, as may be in force in Australia from time to time.
"debenture" and "debenture holder"	include debenture stock and debenture stockholder respectively.
"Designated Stock Exchange"	The ASX Limited for so long as the Company is admitted to the official list of that exchange or such other stock exchange which is an appointed stock exchange for the purposes of the Act in respect of which the securities of the Company are listed or quoted and where such appointed stock exchange deems such listing or quotation to be the primary listing or quotation of the securities of the Company.
"dollars" and "\$"	dollars, the legal currency of Australia.
"Escrow Period"	has the meaning given in the rules of the Designated Stock Exchange.
"head office"	such office of the Company as the Directors may from time to time determine to be the principal office of the Company.

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"Instantaneous Communication Device"	includes telephone, television, fax, electronic mail, videoconference or any other audio, visual or data device which permits instantaneous communication.
"Marketable Parcel"	has the meaning which it bears under the rules of the Designated Stock Exchange.
"Member"	a duly registered holder from time to time of the shares in the capital of the Company.
"month"	a calendar month.
"Notice"	written notice unless otherwise specifically stated and as further defined in these Bye-laws.
"Office"	the registered office of the Company for the time being.
"paid up"	paid up or credited as paid up.
"Proper ASTC Transfer"	has the same meaning as in the regulations under the Corporations Act.
"Register"	the principal register and where applicable, any branch register of Members to be kept pursuant to the provisions of the Act.
"Registration Office"	in respect of any class of share capital such place as the Board may from time to time determine to keep a branch register of Members in respect of that class of share capital and where (except in cases where the Board otherwise directs) the transfers or other documents of title for such class of share capital are to be lodged for registration and are to be registered.
"Representative"	any person authorised to act as a representative of a body corporate pursuant to the Corporations Act.
"Restricted Securities"	has the meaning given in the rules of the Designated Stock Exchange.

"Restriction Agreement"	means, in relation to a Restricted Security, the restriction agreement entered into by the Company under the rules of the Designated Stock Exchange in respect of that Restricted Security.
"Seal"	common seal or any one or more duplicate seals of the Company (including a securities seal) for use in Bermuda or in any place outside Bermuda.
"Secondary Stock Exchange"	The Stock Exchange of Hong Kong Limited.
"Secretary"	any person, firm or corporation appointed by the Board to perform any of the duties of secretary of the Company and includes any assistant, deputy, temporary or acting secretary.
"Security"	has the meaning given in the rules of the Designated Stock Exchange.
"Statutes"	the Act and every other act of the Legislature of Bermuda for the time being in force applying to or affecting the Company, its memorandum of association and/or these Bye-laws.
"year"	a calendar year.

2. In these Bye-laws, unless there be something within the subject or context inconsistent with such construction:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include both gender and the neuter;
- (c) words importing persons include companies, associations and bodies of persons whether corporate or not;
- (d) the words:
  - (i) "may" shall be construed as permissive;
  - (ii) "shall" or "will" shall be construed as imperative;
- (e) expressions referring to writing shall, unless the contrary intention appears, be construed as including printing, lithography, photography and other modes of representing words or figures in a visible form, and including where the representation takes the form of electronic display, provided that both the mode of service of the relevant document or

notice and the Member's election comply with all applicable Statutes, rules and regulations;

- (f) references to any act, ordinance, statute or statutory provision shall be interpreted as relating to any statutory modification or re-enactment thereof for the time being in force;
- (g) save as aforesaid words and expressions defined in the Statutes shall bear the same meanings in these Bye-laws if not inconsistent with the subject in the context;
- (h) a resolution shall be a special resolution when it has been passed by a majority of not less than three-fourths of votes cast by such Members as, being entitled so to do, vote in person or, in the case of such Members as are corporations, by their respective duly authorised Representative or, where proxies are allowed, by proxy at a general meeting of which not less than twenty-one (21) clear days' Notice, specifying (without prejudice to the power contained in these Bye-laws to amend the same) the intention to propose the resolution as a special resolution, has been duly given. Provided that, except in the case of an annual general meeting, if it is so agreed by a majority in number of the Members having the right to attend and vote at any such meeting, being a majority together holding not less than ninety-five (95) per cent. in nominal value of the shares giving that right and in the case of an annual general meeting, if it so agreed by all Members entitled to attend and vote thereat, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one (21) clear days' Notice has been given;
- (i) a resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such Members as, being entitled so to do, vote in person or, in the case of any Member being a corporation, by its duly authorised Representative or, where proxies are allowed, by proxy at a general meeting of which not less than fourteen (14) clear days' Notice has been duly given;
- (j) a special resolution shall be effective for any purpose for which an ordinary resolution is expressed to be required under any provision of these Bye-laws or the Statutes;
- (k) references to a document being executed include references to it being executed under hand or under seal or by electronic signature or by any other method and references to a notice or document include a notice or document recorded or stored in any digital, electronic, electrical, magnetic or other retrievable form or medium and information in visible form whether having physical substance or not.

### SHARE CAPITAL

3. (1) The share capital of the Company at the date on which these Bye-laws come into effect shall be divided into shares of \$0.05 each.

App3 9

(2) Subject to the Act, the Company's memorandum of association and, where applicable, the rules of any Designated Stock Exchange and/or Secondary Stock Exchange and/or any competent regulatory authority, any power of the Company to purchase or otherwise acquire its own shares shall be exercisable by the Board upon such terms and subject to such conditions as it thinks fit.

(3) Neither the Company nor any of its subsidiaries shall directly or indirectly give financial assistance to a person who is acquiring or proposing to acquire shares in the Company for the purpose of that acquisition whether before or at the same time as the acquisition takes place or afterwards PROVIDED that nothing in this Bye-law shall prohibit transactions permitted by the Act.

### ALTERATION OF CAPITAL

4. The Company may from time to time by ordinary resolution in accordance with Section 45 of the Act:

- (a) increase its capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;
- (b) consolidate and divide all or any of its capital into shares of larger or smaller amount than its existing shares;
- (c) divide its shares into several classes and without prejudice to any special rights previously conferred on the holders of existing shares attach thereto respectively any preferential, deferred, qualified or special rights, privileges, conditions or such restrictions which in the absence of any such determination by the Company in general meeting, as the Directors may determine provided always that where the Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares and where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting";
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association (subject, nevertheless, to the Act), and may by such resolution determine that, as between the

App3 10(1)  
(2)

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holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred rights or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares;

- (e) change the currency denomination of its share capital;
  - (f) make provision for the issue and allotment of shares which do not carry any voting rights; and
  - (g) cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled.
5. The Board may settle as it considers expedient any difficulty which arises in relation to any consolidation and division under the last preceding Bye-law and in particular but without prejudice to the generality of the foregoing may issue certificates in respect of fractions of shares or arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale (after deduction of the expenses of such sale) in due proportion amongst the Members who would have been entitled to the fractions, and for this purpose the Board may authorise some person to transfer the shares representing fractions to their purchaser or resolve that such net proceeds be paid to the Company for the Company's benefit. Such purchaser will not be bound to see to the application of the purchase money nor will his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

6. The Company may from time to time by special resolution, subject to any confirmation or consent required by law, reduce its authorised or issued share capital or, save for the use of share premium as expressly permitted by the Act, any share premium account or other undistributable reserve.

6A. Subject to the Act, the memorandum of association of the Company and other Bye-laws herein, the Company may:

- (i) reduce its share capital; and
- (ii) repurchase its shares, on any terms and at any time.

The distribution made from any reduction or repurchase in respect of the share capital of the Company may include any or all of the payment of cash, the issue of shares or other securities, the grant of options and the transfer of assets. If the distribution of any reduction or repurchase in respect of the share capital of the Company includes an issue or transfer of shares in a body corporate, each Member:

- (a) agrees to become a member of that body corporate; and
- (b) in the case of a transfer, appoints the Company and each Director as its agent to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.

7. Except so far as otherwise provided by the conditions of issue, or by these Bye-laws, any capital raised by the creation of new shares shall be treated as if it formed part of the original capital of the Company, and such shares shall be subject to the provisions contained in these Bye-laws with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, cancellation, surrender, voting and otherwise.

8. [DELETED]

### SHARE RIGHTS

9. Subject to any special rights conferred on the holders of any shares or class of shares, any share in the Company (whether forming part of the present capital or not) may be issued with or have attached thereto such rights or restrictions whether in regard to dividend, voting, return of capital or otherwise as the Company may by ordinary resolution determine or, if there has not been any such determination or so far as the same shall not make specific provision, as the Board may determine.

App3 6(1)

10. [DELETED]

11. Subject to Sections 42 and 43 of the Act, these Bye-laws, and to any special rights conferred on the holders of any shares or attaching to any class of shares, any preference shares (including redeemable preference shares) may be issued or converted into shares that, at a determinable date or at the option of the Company or the holder if so authorised by its memorandum of association, are liable to be redeemed on such terms and in such manner as the Company before the issue or conversion may by ordinary resolution of the Members determine. Where the Company purchases for redemption redeemable shares, purchases not made through the market or by tender shall be limited to a maximum price as may from time to time be determined by the Company in general meeting, either generally or with regard to specific purchases. If the purchases are by tenders, they shall be available to all Members alike.

App3 8(1)  
(2)

### VARIATION OF RIGHTS

12. Subject to the Act and without prejudice to Bye-law 9, all or any of the special rights for the time being attached to the shares or any class of shares may, unless otherwise provided by the terms of issue of the shares of that class, from time to time (whether or not the Company is being wound up) be varied, modified or abrogated either with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. To every such separate general meeting all the provisions of these Bye-laws relating to general meetings of the Company shall, mutatis mutandis, apply, but so that:

App13A 2(1)

- (a) the necessary quorum (other than at an adjourned meeting) shall be two persons (or in the case of a Member being a corporation, its duly

App3 6(2)

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authorised Representative) holding or representing by proxy not less than one-third in nominal value of the issued shares of that class and at any adjourned meeting of such holders, two holders present in person (or in the case of a Member being a corporation, its duly authorised Representative) or by proxy (whatever the number of shares held by them) shall be a quorum;

- (b) every holder of shares of the class shall be entitled on a poll to one vote for every such share held by him; and
- (c) any holder of shares of the class present in person or by proxy may demand a poll.

13. The special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be varied, modified or abrogated by the creation or issue of further shares ranking pari passu therewith.

#### SHARES

14. (1) Subject to the Act, these Bye-laws, any direction that may be given by the Company in general meeting and, where applicable, the rules of any Designated Stock Exchange and where applicable Secondary Stock Exchange and without prejudice to any special rights or restrictions for the time being attached to any shares or any class of shares, the unissued shares of the Company (whether forming part of the original or any increased capital) shall be at the disposal of the Board, which may offer, allot, grant options over or otherwise dispose of them to such persons, at such times and for such consideration and upon such terms and conditions as the Board may in its absolute discretion determine but so that no shares shall be issued at a discount. Neither the Company nor the Board shall be obliged, when making or granting any allotment of, offer of, option over or disposal of shares, to make, or make available, any such offer, option or shares to Members or others with registered addresses in any particular territory or territories being a territory or territories where, in the absence of a registration statement or other special formalities, this would or might, in the opinion of the Board, be unlawful or impracticable. Members affected as a result of the foregoing sentence shall not be, or be deemed to be, a separate class of members for any purpose whatsoever.

(2) The Board may issue warrants conferring the right upon the holders thereof to subscribe for any class of shares or securities in the capital of the Company on such terms as it may from time to time determine.

15. The Company may in connection with the issue of any shares exercise all powers of paying commission and brokerage conferred or permitted by the Act. Subject to the Act, the commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one and partly in the other.

16. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and the Company shall not be bound by or required in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any fractional part of a share or (except only as otherwise provided by these Bye-laws or by law) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

17. Subject to the Act and these Bye-laws, the Board may at any time after the allotment of shares but before any person has been entered in the Register as the holder, recognise a renunciation thereof by the allottee in favour of some other person and may accord to any allottee of a share a right to effect such renunciation upon and subject to such terms and conditions as the Board considers fit to impose.

17A Nothing in these Bye-laws shall have the effect of limiting or restricting the ownership of any securities of the Company by foreign persons except where such limits or restrictions are prescribed by the Applicable Law.

#### SHARE CERTIFICATES

18. Every share certificate shall be issued under the Seal or a facsimile thereof and shall specify the number and class and distinguishing numbers (if any) of the shares to which it relates, and the amount paid up thereon and may otherwise be in such form as the Directors may from time to time determine. No certificate shall be issued representing shares of more than one class. The Board may by resolution determine, either generally or in any particular case or cases, that any signatures on any such certificates (or certificates in respect of other securities) need not be autographic but may be affixed to such certificates by some mechanical means or may be printed thereon or that such certificates need not be signed by any person.

App3 2(1)

19. (1) In the case of a share held jointly by several persons, the Company shall not be bound to issue more than one certificate therefore and delivery of a certificate to one of several joint holders shall be sufficient delivery to all such holders.

(2) Where a share stands in the names of two or more persons, the person first named in the Register shall as regards service of Notices and, subject to the provisions of these Bye-laws, all or any other matters connected with the Company, except the transfer of the shares, be deemed the sole holder thereof.

20. Every person whose name is entered, upon an allotment of shares, as a Member in the Register shall be entitled, without payment, to receive one certificate for all such shares of any one class or several certificates each for one or more of such shares of such class upon payment for every certificate after the first of such reasonable out-of-pocket expenses as the Board from time to time determines.

21. Share certificates shall be issued within the relevant time limit as prescribed in the

Act or as the rules of the Designated Stock Exchange and the Secondary Stock Exchange may from time to time determine, whichever is the shorter, after allotment or, except in the case of a transfer which the Company is for the time being entitled to refuse to register and does not register, after lodgment of a transfer with the Company.

22. (1) Upon every transfer of shares the certificate held by the transferor shall be given up to be cancelled, and shall forthwith be cancelled accordingly, and a new certificate shall be issued to the transferee in respect of the shares transferred to him at such fee as is provided in paragraph (2) of this Bye-law. If any of the shares included in the certificate so given up shall be retained by the transferor a new certificate for the balance shall be issued to him at the aforesaid fee payable by the transferor to the Company in respect thereof.

(2) The fee referred to in paragraph (1) above shall be an amount not exceeding the relevant maximum amount prescribed by the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange may from time to time determine provided that the Board may at any time determine a lower amount for such fee.

23. If a share certificate shall be damaged or defaced or alleged to have been lost, stolen or destroyed a new certificate representing the same shares may be issued to the relevant Member upon request and on payment of such fee as the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange may determine to be the maximum fee payable or such lesser sum as the Board may determine and, subject to compliance with such terms (if any) as to evidence and indemnity and to payment of the costs and reasonable out-of-pocket expenses of the Company in investigating such evidence and preparing such indemnity as the Board may think fit and, in case of damage or defacement, on delivery of the old certificate to the Company provided always that where share warrants have been issued, no new share warrant shall be issued to replace one that has been lost unless the Directors are satisfied beyond reasonable doubt that the original has been destroyed.

23A. Where certificates for shares are not issued, the Company shall issue, or cause to be issued, to each Member, in accordance with the rules of the Designated Stock Exchange and the ASTC Settlement Rules, statements of the holdings of shares registered in the Member's name.

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### LIEN

24. The Company shall have a first ranking and paramount lien on every share (not being a fully paid share) registered in the name of a Member (whether or not jointly with other Members) for all amounts of money presently payable by such Member or his estate to the Company whether the same shall have been incurred before or after Notice to the Company of any equitable or other interest of any person other than such Member, and whether the period for the payment or discharge of the same shall have actually arrived or not, and notwithstanding that the same are joint debts or liabilities of such Member or his estate and any other person, whether a Member or not. The Company's lien on a share shall extend to all dividends or other moneys payable thereon or in respect thereof. Subject to the Applicable Law, the Company may do all things necessary or appropriate for it to do under the ASTC Settlement Rules to protect any lien or other right to which it may be entitled under any law or these Bye-laws. The Board may at any time, generally or in any particular case, waive any lien that has arisen or declare any share exempt in whole or in part, from the provisions of this Bye-law.

25. Subject to these Bye-laws, the Company may sell in such manner as the Board determines any share on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, or the liability or engagement in respect of which such lien exists is liable to be presently fulfilled or discharged nor until the expiration of fourteen clear days after a Notice in writing, stating and demanding payment of the sum presently payable, or specifying the liability or engagement and demanding fulfilment or discharge thereof and giving Notice of the intention to sell in default, has been served on the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy.

26. The net proceeds of the sale shall be received by the Company and applied in or towards payment or discharge of the debt or liability in respect of which the lien exists, so far as the same is presently payable, and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the share prior to the sale) be paid to the person entitled to the share at the time of the sale. To give effect to any such sale the Board may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares so transferred and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

### CALLS ON SHARES

27. Subject to these Bye-laws and to the terms of allotment, the Board may from time to time make calls upon the Members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium), and each Member shall (subject to being given at least fourteen (14) clear days' Notice specifying the time and place of payment) pay to the Company as required by such Notice the amount called on his shares. A call may be extended, postponed or revoked in whole or in part as the

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Board determines but no Member shall be entitled to any such extension, postponement or revocation except as a matter of grace and favour.

28. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be made payable either in one lump sum or by instalments.

29. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made. The joint holders of a share shall be jointly and severally liable to pay all calls and instalments due in respect thereof or other moneys due in respect thereof.

30. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the amount unpaid from the day appointed for payment thereof to the time of actual payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board may determine, but the Board may in its absolute discretion waive payment of such interest wholly or in part.

31. No Member shall be entitled to receive any dividend or bonus or to be present and vote (save as proxy for another Member) at any general meeting either personally or by proxy, or be reckoned in a quorum, or exercise any other privilege as a Member until all calls or instalments due by him to the Company, whether alone or jointly with any other person, together with interest and expenses (if any) shall have been paid.

32. On the trial or hearing of any action or other proceedings for the recovery of any money due for any call, it shall be sufficient to prove that the name of the Member sued is entered in the Register as the holder, or one of the holders, of the shares in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book, and that Notice of such call was duly given to the Member sued, in pursuance of these Bye-laws; and it shall not be necessary to prove the appointment of the Directors who made such call, nor any other matters whatsoever, but the proof of the matters aforesaid shall be conclusive evidence of the debt.

32A. Any amount payable in respect of a share upon allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and payable on the date fixed for payment and if it is not paid the provisions of these Bye-laws shall apply as if that amount had become due and payable by virtue of a call duly made and notified.

33. On the issue of shares the Board may differentiate between the allottees or holders as to the amount of calls to be paid and the times of payment.

34. The Board may, if it thinks fit, receive from any Member willing to advance the same, and either in money or money's worth, all or any part of the moneys uncalled and unpaid or instalments payable upon any shares held by him and upon all or any of the moneys so advanced (until the same would, but for such advance, become presently payable) pay interest at such rate (if any) as the Board may decide. The Board may at any time repay

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the amount so advanced upon giving to such Member not less than one month's Notice of its intention in that behalf, unless before the expiration of such Notice the amount so advanced shall have been called up on the shares in respect of which it was advanced. Such payment in advance shall not entitle the holder of such share or shares to participate in respect thereof in a dividend subsequently declared.

#### FORFEITURE OF SHARES

35. (1) If a call remains unpaid after it has become due and payable the Board may give to the person from whom it is due not less than fourteen (14) clear days' Notice:

- (a) requiring payment of the amount unpaid together with any interest which may have accrued and which may still accrue up to the date of actual payment; and
- (b) stating that if the Notice is not complied with the shares on which the call was made will be liable to be forfeited.

(2) If the requirements of any such Notice are not complied with, any share in respect of which such Notice has been given may at any time thereafter, before payment of all calls and interest due in respect thereof has been made, be forfeited by a resolution of the Board to that effect, and such forfeiture shall include all dividends and bonuses declared in respect of the forfeited share but not actually paid before the forfeiture.

36. When any share has been forfeited, notice of the forfeiture shall be served upon the person who was before forfeiture the holder of the share. No forfeiture shall be invalidated by any omission or neglect to give such Notice.

37. The Board may accept the surrender of any share liable to be forfeited hereunder and, in such case, references in these Bye-laws to forfeiture will include surrender.

38. Until cancelled in accordance with the requirements of the Act, a forfeited share shall be the property of the Company and may be sold, re-allotted or otherwise disposed of to such person, upon such terms and in such manner as the Board determines, and at any time before a sale, re-allotment or disposition the forfeiture may be annulled by the Board on such terms as the Board determines.

39. A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares but nevertheless shall remain liable to pay the Company all moneys which at the date of forfeiture were presently payable by him to the Company in respect of the shares, with (if the Directors shall in their discretion so require) interest thereon from the date of forfeiture until payment at such rate (not exceeding twenty per cent. (20%) per annum) as the Board determines. The Board may enforce payment thereof if it thinks fit, and without any deduction or allowance for the value of the forfeited shares, at the date of forfeiture, but his liability shall cease if and when the Company shall have received payment in full of all such moneys in respect of the shares. For the purposes of this Bye-law any sum

which, by the terms of issue of a share, is payable thereon at a fixed time which is subsequent to the date of forfeiture, whether on account of the nominal value of the share or by way of premium, shall notwithstanding that time has not yet arrived be deemed to be payable at the date of forfeiture, and the same shall become due and payable immediately upon the forfeiture, but interest thereon shall only be payable in respect of any period between the said fixed time and the date of actual payment.

40. A declaration by a Director or the Secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and such declaration shall (subject to the execution of an instrument of transfer by the Company if necessary) constitute a good title to the share, and the person to whom the share is disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the consideration (if any), nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture, sale or disposal of the share. When any share shall have been forfeited, Notice of the declaration shall be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register, but no forfeiture shall be in any manner invalidated by any omission or neglect to give such Notice or make any such entry.

41. Notwithstanding any such forfeiture as aforesaid the Board may at any time, before any shares so forfeited shall have been sold, re-allotted or otherwise disposed of, permit the shares forfeited to be bought back upon the terms of payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as it thinks fit.

42. The forfeiture of a share shall not prejudice the right of the Company to any call already made or instalment payable thereon.

43. The provisions of these Bye-laws as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

44. [DELETED]

#### REGISTER OF MEMBERS

45. (1) The Company shall keep in one or more books a Register of its Members and shall enter therein the following particulars, that is to say:

- (a) the name and address of each Member, the number and class of shares held by him and, in respect of any shares that are not fully paid, the amount paid or agreed to be considered as paid on such shares;
- (b) the date on which each person was entered in the Register; and

(c) the date on which any person ceased to be a Member.

(2) Subject to the Act, the Company may keep an overseas or local or other branch register of Members resident in any place, and the Board may make and vary such regulations as it determines in respect of the keeping of any such register and maintaining a Registration Office in connection therewith.

46. The Register and branch register of Members, as the case may be, shall be open to inspection between 10 a.m. and 12 noon on every Business Day by Members without charge or by any other person, upon a maximum payment of five Bermuda dollars, at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or, if appropriate, upon a maximum payment of ten dollars at the Registration Office. The Register including any overseas or local or other branch register of Members may, after Notice has been given by advertisement in an appointed newspaper and where applicable, any other newspapers in accordance with the requirements of any Designated Stock Exchange and where applicable the Secondary Stock Exchange or by any means in such manner as may be accepted by the Designated Stock Exchange and where applicable the Secondary Stock Exchange to that effect, be closed at such times or for such periods not exceeding in the whole thirty (30) days in each year as the Board may determine and either generally or in respect of any class of shares.

#### RECORD DATES

47. Notwithstanding any other provision of these Bye-laws the Company or the Directors may fix any date as the record date for:

- (a) determining the Members entitled to receive any dividend, distribution, allotment or issue and such record date may be on, or at any time not more than thirty (30) days before or after, any date on which such dividend, distribution, allotment or issue is declared, paid or made;
- (b) determining the Members entitled to receive Notice of and to vote at any general meeting of the Company.

#### TRANSFER OF SHARES

48. Subject to these Bye-laws, any Member may transfer all or any of his shares by an instrument of transfer in the usual or common form or in a form prescribed by the Designated Stock Exchange and where applicable the Secondary Stock Exchange or in any other form approved by the Board and may be under hand or, if the transferor or transferee is a clearing house or its nominee(s), by hand or by machine imprinted signature or by such other manner of execution as the Board may approve from time to time. Subject to the Applicable Law, the Board may do anything they consider necessary or desirable to facilitate participation by the Company in CHESSE or any other computerised or electronic share transfer registration or stock market settlement system

introduced by, or acceptable to, the Designated Stock Exchange and where applicable the Secondary Stock Exchange in respect of transfers of, or dealings in, marketable securities.

48A. (1) The Company must comply with all obligations imposed on it under the Applicable Law in respect of a Proper ASTC Transfer or any other transfer of fully paid shares.

- (2) If permitted to do so by the rules of the Designated Stock Exchange or the ASTC Settlement Rules, the Directors may:
- (i) request ASTC to apply a holding lock to prevent a transfer of CHES Approved Securities; or
  - (ii) decline to register a transfer of shares in the Company.
- (3) The Directors must:
- (i) request ASTC to apply a holding lock to prevent a transfer of CHES Approved Securities; or
  - (ii) decline to register any transfer of other shares;
- if:
- (iii) the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange require the Company to do so; or
  - (iv) the transfer is in breach of the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange or a Restriction Agreement.
- (4) If in the exercise of their powers under Bye-laws 48A(2) or (3), the Directors request the application of a holding lock to prevent a transfer of CHES Approved Securities or refuse to register a transfer of a security, they must give written Notice to the holder of the security and the broker lodging the transfer, if any, of the refusal to transfer. Failure to give such Notice does not invalidate the decision of the Directors.
- (5) Subject to Bye-laws 48A (2) to (4), the Company must not prevent, delay or interfere with the registration of a Proper ASTC Transfer or any other transfer of shares.

49. The instrument of transfer shall be executed by or on behalf of the transferor and the transferee provided that the Board may dispense with the execution of the instrument of transfer by the transferee in any case which it thinks fit in its discretion to do so. Without

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prejudice to Bye-law 48, the Board may also resolve, either generally or in any particular case, upon request by either the transferor or transferee, to accept mechanically executed transfers. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. Nothing in these Bye-laws shall preclude the Board from recognising a renunciation of the allotment or provisional allotment of any share by the allottee in favour of some other person.

50.

(1) No transfer shall be made to an infant or to a person of unsound mind or under other legal disability. The Board may refuse to register a transfer of any share to more than four (4) joint holders.

App3 1(3)

(2) The Board in so far as permitted by any Applicable Law may, in its absolute discretion, at any time and from time to time transfer any share upon the Register to any branch register or any share on any branch register to the Register or any other branch register. In the event of any such transfer, the Member requesting such transfer shall bear the cost of effecting the transfer unless the Board otherwise determines.

(3) Unless the Board otherwise agrees (which agreement may be on such terms and subject to such conditions as the Board in its absolute discretion may from time to time determine, and which agreement the Board shall, without giving any reason therefore, be entitled in its absolute discretion to give or withhold), no shares upon the Register shall be transferred to any branch register nor shall shares on any branch register be transferred to the Register or any other branch register and all transfers and other documents of title shall be lodged for registration, and registered, in the case of any shares on a branch register, at the relevant Registration Office, and, in the case of any shares on the Register, at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act.

50A. Without limiting the generality of the Bye-laws 48A, 49 and 50, the Board may decline to recognise any instrument of transfer unless: -

- (a) a fee of such maximum sum as the Designated Stock Exchange and where applicable the Secondary Stock Exchange may determine to be payable or such lesser sum as the Board may from time to time require is paid to the Company in respect thereof;
- (b) the instrument of transfer is in respect of only one class of share;
- (c) the instrument of transfer is lodged at the Office or such other place in Bermuda at which the Register is kept in accordance with the Act or the Registration Office (as the case may be) accompanied by the relevant share certificate(s) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer (and, if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do); and
- (d) if applicable, the instrument of transfer is duly and properly stamped.

App3 1(1)

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50B. Notwithstanding any other provision of these Bye-laws, the Company must not prevent or interfere with the registration of a transfer of shares in a manner which is contrary to the rules of the Designated Stock Exchange or the ASTC Settlement Rules and where applicable the Secondary Stock Exchange.

51. If the Board refuses to register a transfer of any share, it shall, within two (2) months after the date on which the transfer was lodged with the Company, send to each of the transferor and transferee Notice of the refusal.

52. The registration of transfers of shares or of any class of shares may, after Notice has been given by advertisement in an appointed newspaper and, where applicable, any other newspapers in accordance with the requirements of any Designated Stock Exchange and the ASTC Settlement Rules and where applicable the Secondary Stock Exchange or by any means in such manner as may be accepted by the Designated Stock Exchange and where applicable the Secondary Stock Exchange to that effect be suspended at such times and for such periods (not exceeding in the whole thirty (30) days in any year or any one period of more than 5 consecutive Business Days) as the Board may determine.

#### RESTRICTED SECURITIES

52A. Except as permitted by the rules of the Designated Stock Exchange or where applicable the Secondary Stock Exchange:

- (a) the registered holder of a Restricted Security will not dispose of such a Restricted Security during the Escrow Period; and
- (b) the Company will refuse to acknowledge an assignment or disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange; and
- (c) during a breach of the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange relating to Restricted Securities or a breach of any Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

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## 52AA PROPORTIONAL TAKEOVER BIDS

### 52AA.1 In this Bye-law:

- (1) proportional takeover bid or bid means a proportional takeover bid as defined in section 9 of the Corporations Act;
- (2) relevant day in relation to a proportional takeover bid means the day that is the fourteenth day before the end of the period during which the offers under the bid remain open; and
- (3) a reference to a person associated with another person has the meaning given to that expression by Division 2 of Part 1.2 of the Corporations Act.

### 52AA.2 Where offers have been made under a proportional takeover bid in respect of shares included in a class of shares in the Company:

- (1) other than where a transfer is effected in accordance with the takeover provisions (if any) under the ASTC Settlement Rules, the registration of a transfer giving effect to a contract resulting from the acceptance of one of those offers is prohibited unless and until a resolution (in this Bye-law referred to as an approving resolution) to approve the proportional takeover bid is passed in accordance with this Bye-law;
- (2) a person (other than the bidder or a person associated with the bidder) who, as at the end of the day on which the first offer under the bid was made, held shares in that class is entitled to vote on an approving resolution and, for the purpose of so voting, is entitled to one vote for each of the shares;
- (3) an approving resolution must be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; and
- (4) an approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one-half, and otherwise is taken to have been rejected.

### 52AA.3 The provisions of these Bye-laws that apply in relation to a general meeting of the Company apply with any modifications the circumstances require, in relation to a meeting that is convened pursuant to this Bye-law as if the last-mentioned meeting were a general meeting of the Company.

### 52AA.4 Where offers have been made under a proportional takeover bid, then the Directors must ensure that a resolution to approve the bid is voted on in accordance with this Bye-law before the relevant day

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in relation to the bid.

52AA.5 Where a resolution to approve a proportional takeover bid is voted on in accordance with this Bye-law, the Company must, on or before the relevant day in relation to the bid:

- (1) give to the bidder; and
- (2) serve on the Designated Stock Exchange,

a notice in writing stating that a resolution to approve the bid has been voted on and that the resolution has been passed, or has been rejected, as the case requires.

52AA.6 Where, at the end of the day before the relevant day in relation to a proportional takeover bid, no resolution to approve the bid has been voted on in accordance with this Bye-law, a resolution to approve the bid must, for the purposes of this Bye-law, be treated as having been passed in accordance with this Bye-law.

52AA.7 Where a resolution to approve a proportional takeover bid is voted on in accordance with this Bye-law before the relevant day in relation to the bid and is rejected, then:

- (1) all offers under the bid that have not, as at the end of the relevant day, been accepted, and all offers under the bid that have been accepted and from whose acceptance binding contracts have not, at the end of the relevant day, resulted, must be treated as withdrawn at the end of the relevant day; and
- (2) a person who has accepted an offer made under the bid is entitled to rescind the contract (if any) resulting from that acceptance.

52AA.8 Nothing in this Bye-law authorises the Company to interfere with any takeover transfer procedures contained in the ASTC Settlement Rules.

52AA.9 This Bye-law ceases to have effect on the third anniversary of the date of its adoption or of its most recent renewal".

#### 52AAA TAKEOVER PROVISIONS

52AAA.1 In this Bye-law 52AAA, capitalised terms not previously defined shall have the following meaning:

- (1) "Affiliated Companies" means:
  - (a) a Parent Company of the Person;
  - (b) a Subsidiary Company of the Person; and/or
  - (c) another company where the Person and that company are both Subsidiary Companies of the same Parent Company;

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- (2) “ASIC” means the Australian Securities and Investment Commission;
- (3) “Associate” means:
- (a) an Affiliated Company of the Person; and/or
  - (b) another Person with whom such Person has entered into an agreement, arrangement or understanding (whether formal or informal, whether written or oral and irrespective of whether it has legal or equitable force or effect) for the purpose of holding or acquiring a Relevant Interest or controlling or influencing the composition of the board of the Company or the conduct of the Company’s affairs.
- (4) “ASX” means the Australian Securities Exchange;
- (5) “Australian Law and Policy means:
- (a) decisions of an Australian court;
  - (b) published policy statements, practice notes and other guidelines and public releases issued by ASIC; and
  - (c) published decisions, rules, policies and other guidelines and public releases issued by the Panel,
- each in relation to the provisions in the Corporations Act (including predecessors of that legislation) similar in nature to this Bye-Law 52AAA;
- (6) “Bid Securities” means the Shares being bid for under a Takeover Bid;
- (7) “Control” means
- (a) the ability to exercise, directly or Indirectly:
    - (i) more than twenty percent (20%) of the voting rights in a general meeting of such Person; or
    - (ii) the right to dismiss or appoint more than fifty percent (50%) of the members of the Board; or
  - (b) in respect of a Person that is not a legal entity: being liable (whether actually or contingently) – alone or together with one or more Affiliated Companies – for such Person’s debts vis-à-vis third parties;
- (8) “Corporations Act Bid” means a bid for Shares made in compliance, so far as possible, with Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act in respect of off-market bids (as that term is defined in the Corporations Act) as if the Company were incorporated in Australia and were the “target” as defined in those Parts, subject to:
- (a) any requirement under those provisions for a document to be lodged with ASIC being taken to be satisfied if the document is given to ASX instead; and
  - (b) any other modifications or exemptions agreed between the Person

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making the bid and the Board in accordance with Bye-law 52AAA.29;

- (9) “Foreign Holder” means a Shareholder whose address, as shown in the register in which details of their holding is recorded, is a place outside Australia and the external territories;
- (10) “Indirectly” means by, through or in concert with:
- (a) one or more Affiliated Companies of such Person;
  - (b) a nominee or trustee for the Person; or
  - (c) another Person with whom such Person has entered into an agreement for the purpose of holding or acquiring a Relevant Interest;
- (11) “On Market Transaction” means a transaction that is effected on ASX and is:
- (a) an on-market transaction as defined in the rules governing the operation of ASX; or
  - (b) if those rules do not define on-market transactions – effected in the ordinary course of trading on ASX;
- (12) “Panel” means the Takeovers Panel established under the *Australian Securities and Investments Commission Act (2001)* or any successor or replacement entity;
- (13) “Parent Company” means of a Person, one or more companies exercising Control over such Person;
- (14) “Person” means a natural person, a legal entity or any other legal form that under applicable law has the power to hold a Relevant Interest;
- (15) “Relevant Interest” means any interest in Shares that causes or permits a Person to:
- (a) exercise or to influence (or restrain) the exercise of voting rights on Shares (whether through the giving of voting instructions or as a proxy or otherwise); or
  - (b) dispose or to influence (or restrain) the disposal of Shares, including *inter alia* the legal or beneficial ownership of a Share and an interest under an option agreement to acquire a Share, and irrespective of whether that power or influence is direct or Indirect;
- (16) “Senior Counsel” means an Australian legal practitioner practicing in the Western Australian bar who has been appointed by the Attorney General of Western Australia as a senior counsel or queen’s counsel;
- (17) “Share” means a share in the capital of the Company;

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- (18) “Shareholder” means a holder of Shares;
- (19) “Subsidiary Company” means of a Person, one or more companies over which Control is exercised by such Person;
- (20) “Substantial Holder” means a Person who has a Substantial Holding;
- (21) A Person has a “Substantial Holding” in the Company if the total votes attached to Shares in which they or their Associates:
- (a) directly or Indirectly have a Relevant Interest; or
  - (b) would directly or Indirectly have a Relevant Interest but for the operation of Bye-law 52AAA.8(6) or Bye-law 52AAA.8(7), is 5% or more of the total number of votes attached to Shares;
- (22) “Takeover Bid” means a bid for Shares that at all relevant times fulfils the purposes set out in Bye-law 52AAA.2 and complies with the principles in Bye-law 52AAA.28;
- (23) “Voting Power” means a Person’s voting power in the Company that is calculated in accordance with the following formula:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in the Company}} \times 100$$

where:

“Person’s and associates’ votes” is the total number of votes attached to all the Shares (if any) in which that Person or an Associate directly or Indirectly has a Relevant Interest in; and

“Total votes in the Company” is the total number of votes attached to all Shares.

52AAA.2 The purpose of this Bye-law 52AAA is to ensure that:

- (1) the acquisition of Control over Shares takes place in an efficient, competitive and informed market; and
- (2) each Shareholder as well as the Company and the Board:
  - (a) knows the identity of any Person who proposes to acquire a Substantial Holding in the Company; and
  - (b) is given reasonable time to consider a proposal to acquire a Substantial Holding in the Company; and
  - (c) is given enough information to assess the merits of a proposal to acquire a Substantial Holding in the Company; and
- (3) as far as practicable, the Shareholders all have a reasonable and equal

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opportunity to participate in any benefits accruing to the Shareholders through any proposal under which a Person would acquire a Substantial Holding in the Company.

- 52AAA.3 In the interpretation this Bye-law, a construction that would promote the purpose or object underlying these Bye-laws is to be preferred to a construction that would not promote that purpose or object.
- 52AAA.4 Subject to the exceptions outlined at Bye-law 52AAA.10, a Person must not acquire a Relevant Interest if, because of the acquisition, that Person's or someone else's Voting Power in the Company increases:
- (1) from twenty percent (20%) or below to more than twenty percent (20%); or
  - (2) from a starting point that is above twenty percent (20%) and below ninety percent (90%).
- 52AAA.5 Any holding of a Share or acquisition of a Relevant Interest in breach of Bye-law 52AAA.4 does not cause such acquisition or holding to be invalid.
- 52AAA.6 A Person holding or acquiring a Relevant Interest shall, together with his Affiliated Companies, be considered as one Person in respect of such Relevant Interest or exercise of Voting Power, and each of them, to the extent that they hold one or more Shares shall be jointly and severally liable for each other's obligations under these Bye-laws. In addition, there may be imposed on each of them the other remedies referred to in Bye-law 52AAA.16(1).
- 52AAA.7 If one or more Persons pursuant to an agreement or a nominee or trustee arrangement act together for the purpose of:
- (1) holding or acquiring a Relevant Interest; or
  - (2) exercising its Voting Power at a general meeting; or
  - (3) circumventing the prohibition as referred to in Bye-law 52AAA.4 or the obligation in Bye-law 52AAA.11 to 52AAA.13 or 52AAA.33,
- all of them shall be considered as one Person in respect of such Relevant Interest, exercise of Voting Power or circumvention of the prohibition or obligation. Each of them, to the extent that they hold one or more Shares shall be jointly and severally liable for each other's obligations under these Bye-laws. In addition, there may be imposed on each of them the other remedies referred to in Bye-law 52AAA.16(1).
- 52AAA.8 A Person does not have a Relevant Interest, if the Relevant Interest arises merely because:
- (1) of a mortgage, charge or other security taken for the purpose of a transaction entered into by the Person if:
    - (a) the mortgage, charge or security is taken or acquired in the ordinary course of the Person's business of providing financial services and on ordinary commercial terms; and
    - (b) the Person whose property is subject to the charge or security is not

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an Associate of the Person;

- (2) that Person acquires a Relevant Interest solely as a nominee or trustee for a Person who may direct the nominee or trustee as to the exercise of any power relating to the Relevant Interest;
- (3) that Person is a person licensed to conduct a financial services business and holds Shares on behalf of someone else in the ordinary course of that financial services business;
- (4) the Company has entered into an agreement to buy back the Person's Shares;
- (5) the Person has been appointed to vote as a proxy or representative on Shares if:
  - (a) the appointment is for one meeting of the Company only; and
  - (b) neither the Person nor any Associate gives valuable consideration for such appointment;
- (6) of:
  - (a) a market traded option (as that term is defined in the Corporations Act) over the Shares; or
  - (b) a right to acquire a Relevant Interest given by a (futures) agreement,  
(this clause (6) stops applying to any Relevant Interest when the obligation to make or take delivery of the Shares arises);
- (7) of an agreement if the agreement:
  - (a) is conditional on a resolution referred to in Bye-law 52AAA.10(5); and
  - (b) does not confer any control over, or power to substantially influence, the exercise of Voting Power attached to the Shares; and
  - (c) does not restrict the disposal of the Shares for more than three (3) months from the date when the agreement was entered into;
- (8) these Bye-laws or other applicable law gives all Shareholders pre-emptive rights on the transfer of Shares provided that all Shareholders of the Company have pre-emptive rights on the same terms;
- (9) the Person is a director of a legal entity having a Relevant Interest; or
- (10) that Person holds Shares as a custodian or depository in order to enable the Shares of the Company to be traded on a stock market of a securities exchange, provided such Person is licensed to provide such custodian or depository services under the applicable law.

52AAA.9 When a Person's Relevant Interest in a Share is disregarded pursuant to Bye-

law 52AAA.8, the Person shall for the purposes of Bye-law 52AAA.4 be taken not to be entitled to exercise, directly or Indirectly, its Voting Power.

52AAA.10 The prohibition as referred to in Bye-law 52AAA.4 shall not apply to the extent that:

- (1) the holding or acquisition of a Relevant Interest results from the acceptance of offers under a Takeover Bid;
- (2) the holding or acquisition of a Relevant Interest is the result of an On-Market Transaction if:
  - (a) the acquisition is by or on behalf of the bidder under a Takeover Bid; and
  - (b) the acquisition occurs during the bid period in respect of the Takeover Bid; and
  - (c) the Takeover Bid is for all the Bid Securities; and
  - (d) the Takeover Bid is unconditional;
- (3) the holding or acquisition of a Relevant Interest arises in the following circumstances:
  - (a) throughout the six (6) months before the acquisition a Person has had Voting Power in the Company of at least nineteen percent (19%); and
  - (b) as a result of the acquisition, directly, or Indirectly, the Person would have Voting Power in the Company not more than three (3) percentage points higher than they had six (6) months before the acquisition;
- (4) the holding or acquisition of a Relevant Interest:
  - (a) is consistent with the purposes set out at Bye-law 52AAA.2; and
  - (b) conforms to the principles in Bye-law 52AAA.28 as they apply to the acquisition or holding, adjusting those principles as appropriate to meet the particular circumstances of the acquisition or holding but without derogating from the purposes in Bye-law 52AAA.2; and
  - (c) has received the prior approval of the Board;
- (5) the holding or acquisition of a Relevant Interest has been approved previously by a general meeting if:
  - (a) no votes are cast in favour of the resolution by:
    - (i) the Person proposing to make the acquisition and its Associates; or
    - (ii) the Person (if any) from whom the acquisition is to be made and its Associates; and
  - (b) the Shareholders were given all information known to the Person proposing to make the acquisition or its Associates, or known to the Company, that was material to the decision on how to vote on

the resolution, including:

- (i) the identity of the Person proposing to make the acquisition and its Associates; and
  - (ii) the maximum extent of the increase in that Person's Relevant Interest in the Company that would result from the acquisition; and
  - (iii) the Relevant Interest that Person would have as a result of the acquisition; and
  - (iv) the maximum extent of the increase in the Relevant Interest of each of that Person's Associates that would result from the acquisition; and
  - (v) the Relevant Interest that each of that Person's Associates would have as a result of the acquisition;
- (6) the holding or acquisition of a Relevant Interest results from the acceptance of offers made by the Company for the securities of another body corporate listed on the stock market of a securities exchange, which offers are made in accordance with applicable securities law regulating the conduct of takeovers of bodies corporate of that kind, where Shares or securities convertible into Shares are included in the consideration for the acquisition of securities under those offers;
- (7) the holding or acquisition of a Relevant Interest results from the exercise of rights of conversion attaching to securities convertible into Shares issued in accordance with Bye-law 52AAA.10(6);
- (8) the holding or acquisition of a Relevant Interest results from an issue by the Company under a prospectus to a Person as underwriter or sub-underwriter to the issue where the prospectus disclosed the effect or range of possible effects that the issue would have on the number of Shares in which that Person would have a Relevant Interest and on the Voting Power of that Person;
- (9) the holding or acquisition of the Relevant Interest results from the exercise by a Person of a power, or appointment as a receiver, or receiver and manager, under a mortgage, charge or other security if:
- (a) the Person's ordinary business includes the provision of financial accommodation by any means; and
  - (b) the Person took or acquired the security in the ordinary course of business of the provision of financial accommodation by any means and on ordinary commercial terms;
- (10) the holding or acquisition of the Relevant Interest results from a compromise, arrangement or amalgamation pursuant to the Act;
- (11) the holding or acquisition of a Relevant Interest results from a buy-back that is authorised under the Act; or

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(12) the holding or acquisition of a Relevant Interest results from an issue that satisfies all of the following conditions:

- (a) the Company offers to issue Shares to a particular class;
- (b) offers are made to every person who holds Shares in that class to issue them with the percentage of Shares to be issued that is the same as the percentage of the Shares in that class that they hold before the issue;
- (c) all of those persons have a reasonable opportunity to accept the offers made to them;
- (d) agreements to issue are not entered into until a specified time for acceptance of offers has closed; and
- (e) the terms of all the offers are the same.

This Bye-law 52AAA.10(12) includes the holding or acquisition of a Relevant Interest by a Person as an underwriter to the issue or a sub-underwriter. This exception will apply even if the conditions set out above are not satisfied in respect of Foreign Holders of Shares if, under the terms of the offers:

- (f) the Company must appoint a nominee (being a person that holds a financial services license permitting them to act as a nominee to sell Shares on behalf of, and distribute the proceeds to, the Foreign Holders) for Foreign Holders of Shares;
- (g) the Company must transfer to that nominee:
  - (i) the Shares that would otherwise be issued to the Foreign Holders who accept the offer; or
  - (ii) the right to acquire those Shares; and
- (h) the nominee must sell those Shares, or those rights, and distribute to each of those Foreign Holders their proportion of the proceeds of the sale net of expenses.

52AAA.11 A Person must give the information referred to in Bye-law 52AAA.12 to the Company and to the ASX if:

- (1) that Person begins to have, or ceases to have, a Substantial Holding in the Company; or
- (2) that Person has a Substantial Holding in the Company and there is a movement of at least one percent (1%) in their holding; or
- (3) that Person makes a Takeover Bid for securities of the Company.

For the purposes of Bye-law 52AAA.11(2), there is a movement of at least one percent (1%) in a Person's holding of Shares if the Person's Voting Power increases or decreases by one (1) or more percentage points from the percentage they last disclosed under this Bye-law 52AAA.11 in relation to the Company.

52AAA.12 The information to be given in accordance with Bye-law 52AAA.11 includes:

- (1) the Person's name and address;
- (2) details of their Relevant Interest in Shares;

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- (3) details of any relevant agreement through which the Person would have a Relevant Interest in Shares in the Company;
- (4) the name of each Associate who has a Relevant Interest in Shares in the Company, together with details of:
  - (a) the nature of their association with the Associate;
  - (b) the Relevant Interest of the Associate; and
  - (c) any relevant agreement through which the Associate has the Relevant Interest;
- (5) if the information is being given because of a movement in their holding – the size and date of that movement; and
- (6) any other information that the Person or Company may deem relevant.

52AAA.13 The information referred to in Bye-law 52AAA.12 must be given in the form prescribed by the Company (if the Company has prescribed a form) and must be accompanied by:

- (1) a copy of any document including any relevant agreement (endorsed with a statement that the copy is a true copy) that:
  - (a) contributed to the situation giving rise to the Shareholder needing to provide the information; and
  - (b) is in writing and readily available to the Substantial Holder or Shareholder; or
- (2) a statement by the Substantial Holder or Shareholder giving full and accurate details of any contract, scheme or arrangement that:
  - (a) contributed to the situation giving rise to the Shareholder needing to provide the information; and
  - (b) is not both in writing and readily available to the Substantial Holder or Shareholder.

52AAA.14 The information referred to in Bye-law 52AAA.12 does not need to be accompanied by the documents referred to in Bye-law 52AAA.13 if the transaction that gives rise to the Shareholder needing to provide the information takes place on the ASX.

52AAA.15 The Shareholder must give the information referred to in Bye-laws 52AAA.12 and 52AAA.13:

- (1) within two (2) Business Days after they become aware of the circumstances referred to in Bye-laws 52AAA.11(1) or Bye-law 52AAA.11(2); or
- (2) by nine-thirty (9.30am) on the next trading day of the ASX after they become aware of the circumstances referred to in Bye-law 52AAA.11(3).

52AAA.16 Subject to Bye-laws 52AAA.17 and 52AAA.18, if a breach by a Person of the provisions of Bye-law 52AAA.4, 52AAA.11 to 52AAA.13, and/or 52AAA.33 has occurred or is continuing, the Board may cause the Company to exercise any one or more of the following remedies:

- (1) require, by notice in writing, the Shareholder to dispose all or part of the

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Shares so held in breach of Bye-law 52AAA.4, 52AAA.11 and/or 52AAA.33 within the time specified in the notice;

- (2) disregard the exercise by such Person of all or part of its Voting Power; or
- (3) suspend such Person from the right to receive all or part of the dividends or other distributions arising from the Shares so held in breach of Bye-law 52AAA.4, 52AAA.11 and/or 52AAA.33.

52AAA.17 The Company may exercise the remedies referred to in Bye-law 52AAA.16 if it first obtains a judgment from a court of competent jurisdiction in Western Australia, that a breach of the prohibition of Bye-law 52AAA.4 or the obligation in Bye-laws 52AAA.11 or 52AAA.33 has occurred and is continuing, and the Company acts in accordance with such judgment.

52AAA.18 Subject to any necessary approvals, consents or waivers required under the ASX Listing Rules, in addition to exercising its rights under Bye-laws 52AAA.17 and 52AAA.22, the Company may exercise the remedies referred to in Bye-law 52AAA.16 if it first obtains advice from, and acts in accordance with the advice of:

- (1) Senior Counsel in the commercial field of at least five (5) years standing as a Senior Counsel; or
  - (2) a senior partner experienced in Australian mergers and acquisitions of a major Australian commercial law firm; and
- in either case, being independent of (and not associated with) the Company or any other interested party and without a material personal interest in the matter.

52AAA.19 The advisor referred to in Bye-law 52AAA.18 shall be appointed by the Company, but must be nominated by:

- (1) the president of the Panel; or
- (2) if such Person is unwilling or unable to make the nomination, the director of the Panel; or
- (3) if such Person is unwilling or unable to make the nomination, the President for the time being of the National Alternative Dispute Resolution Advisory Council.

52AAA.20 The advisor referred to in Bye-law 52AAA.18 must *inter alia* be instructed to:

- (1) advise whether any breach of Bye-law 52AAA.4, 52AAA.11 or 52AAA.33 (as applicable) has occurred;
- (2) have regard to the purposes under Bye-law 52AAA.2 and to the extent applicable, the principles in Bye-law 52AAA.28 and Australian Law and Policy in interpreting these provisions and giving this advice;
- (3) in determining whether the exception under Bye-law 52AAA.10(1) applies to an acquisition or holding of a Relevant Interest pursuant to a Takeover Bid that is not a Corporations Act Bid, have regard to the manner in which a bid for Shares would have been conducted under a Corporations Act Bid, including the information which would have

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- provided to Shareholders in connection with such bid;
- (4) give the Company and any Person that would be aggrieved by the exercise of the Company's powers under Bye-law 52AAA.16 the opportunity, with their legal advisors, to make submissions to the advisor, prior to the advisor providing the advice; and
  - (5) provide his or her advice as soon as possible.

52AAA.21 The Company shall:

- (1) provide any assistance or information it may possess, which is reasonably required by the advisor to give this advice;
- (2) be responsible for paying the advisors' fees and expenses;
- (3) include in the terms of the advisor's appointment an indemnity by the Company in favour of the advisor for any loss or liability he or she may incur in connection with providing this advice, except as a result of his or her negligence or wilful default;
- (4) provide a copy of the advice to the Person who has breached or is alleged to have breached Bye-law 52AAA.4, 52AAA.11 and/or 52AAA.33; and
- (5) include any other terms and conditions in the appointment of the advisor which the Person nominating the advisor specifies.

52AAA.22 Subject to any necessary approvals, consents or waivers required under the ASX Listing Rules, where the Company is seeking but has not received a judgement or advice under Bye-law 52AAA.17 or Bye-law 52AAA.18 (respectively), the Company may also exercise any of the remedies described in Bye-law 52AAA.16 (other than that as described under (a)) by notice in writing to the Shareholder but so that they have effect for the period commencing on the date the notice is given and ending on the earlier of:

- (1) twenty one (21) days after the notice has been given; and
- (2) one (1) day after the judgment or advice under Bye-law 52AAA.17 or Bye-law 52AAA.18 (respectively) Bye-law 52AAA.20(5) has been given or provided to the Company.

52AAA.23 If there are reasonable grounds to believe that a breach of Bye-law 52AAA.4, 52AAA.11 and/or 52AAA.33 has occurred, the Board must consider whether to exercise the remedies under Bye-law 52AAA.16 and take advice as to whether it should exercise those remedies. For that purpose, the Board must give proper consideration to (and include within any brief for advice) any submission that a breach has occurred from any Shareholders or any other interested Person or officer of the Company aggrieved by the alleged breach.

52AAA.24 If the requirements of any notice pursuant to Bye-law 52AAA.16(1) are not complied with by the Person within the time specified in the notice, the Company may, as an irrevocable proxy of the Shareholder, without any further instrument, cause the Shares referred to in the notice to be sold on any relevant securities exchange on which they are quoted. In such circumstances, the Company may:

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- (1) appoint a Person as transferor to effect a transfer in respect of any Shares sold in accordance with this Bye-law 52AAA.24 and to receive and give good discharge of the purchase money for them;
- (2) acknowledge the transfer despite the fact that the Share certificates (if any) may not have been delivered to the Company;
- (3) issue a new Share certificate (if required) in which event the previous certificate(s) (if any) are deemed to have been cancelled;
- (4) if the Person delivers the relevant Share certificates (if any) to the Company for cancellation, the purchase money less the expenses of any sale made in accordance with paragraph (2) above must be paid to the Person whose Shares were sold; and
- (5) if the Person does not deliver the relevant Share certificates (if any) to the Company, the Company may sue the Person in detinue for recovery of the Share certificates (if any), and the Person is not entitled to deny or dispute the Company's ownership and right to possession of any Share certificate in any legal action.

52AAA.25 The Company may, by notice in writing, at any time require any Shareholder to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may consider likely to be of assistance in determining whether or not that Person is eligible to remain a Shareholder with respect to all his Shares.

52AAA.26 Despite anything in Bye-laws 52AAA.24 and 52AAA.25, the Company has no liability arising from any Person holding Shares in circumstances which would result in or have the effect of causing an infringement or contravention of Bye-law 52AAA.4, 52AAA.11 and/or 52AAA.33.

52AAA.27 Neither the Company, nor the Board, will have any liability whatsoever to any Person arising from any action taken by the Company under the Bye-laws 52AAA.16, 52AAA.17, 52AAA.18, 52AAA.19, 52AAA.20, 52AAA.21, 52AAA.22, 52AAA.23, 52AAA.24, 52AAA.25, 52AAA.26 and/or 52AAA.27, provided that such action was taken in good faith.

52AAA.28 In addition to fulfilling the purposes in Bye-law 52AAA.2, a Takeover Bid must comply with the following principles:

- (1) An offer for Bid Securities must be an offer to buy all of the securities in the same class as the Bid Securities or a specified proportion of the securities in the same class as the Bid Securities. The proportion specified must be the same for all holders of the Bid Securities.
- (2) A Person who holds one (1) or more parcels of those securities as trustee or nominee for, or otherwise on account of, another Person may accept the offer as if a separate offer had been made in relation to:
  - (a) each of those parcels; and
  - (b) any parcel they hold in its own right;

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- (3) All the offers made must be the same. In applying this Bye-law 52AAA.28, the following shall be disregarded:
- (a) any differences in the offers attributable to the fact that the number of Bid Securities that may be acquired under each offer is limited by the number of Bid Securities held by the holder;
  - (b) any differences in the offers attributable to the fact that the offers relate to Bid Securities having different accrued dividend or distribution entitlements;
  - (c) any differences in the offers attributable to the fact that the offers relate to Bid Securities on which different amounts are paid up or remain unpaid;
  - (d) any differences in the offers attributable to the fact that the Person making the offer may issue or transfer only whole numbers of securities as consideration for the acquisition; and
  - (e) any additional cash amount offered to holders instead of the fraction of a security that would otherwise be offered.

However, if the consideration offered under the Takeover Bid includes an offer of securities, the securities do not need to be offered to Foreign Holders of Shares if under the terms of the Takeover Bid:

- (f) the offeror under the Takeover Bid must appoint a nominee (being a person that holds a financial services license permitting them to act as a nominee to sell Shares on behalf of, and distribute the proceeds to, the Foreign Holders) for Foreign Holders of Shares who is approved by the Company (such approval not to be unreasonably withheld or delayed);
  - (g) the offeror under the Takeover Bid must transfer to that nominee:
    - (i) the securities that would otherwise be transferred to the Foreign Holders who accept the Takeover Bid for that consideration; or
    - (ii) the right to acquire those securities; and
  - (h) the nominee must sell the securities, or those rights, and distribute to each of those Foreign Holders their proportion of the proceeds of the sale net of expenses.
- (4) The consideration offered for Bid Securities must equal or exceed the maximum consideration that the Person making the offer (or any of its Associates) directly or Indirectly provided, or agreed to provide, for Shares under any purchase or agreement during the four (4) months before the first day of the period of the offer.

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- (5) A Person making an offer for Bid Securities must not directly or Indirectly, during the period of the offer, give, offer to give or agree to give a benefit to a Person if:
- (a) the benefit is likely to induce the Person directly or Indirectly to:
    - (i) accept the offer; or
    - (ii) dispose of Shares; and
  - (b) the benefit is not offered to all holders of Bid Securities.
- (6) The period of the offer must:
- (a) start on the date the first offer is made; and
  - (b) last for at least one (1) month, and not more than twelve (12) months.
- (7) If, within the last seven (7) days of the period of the offer:
- (a) the offers are varied to improve the consideration offered (including by offering an alternative form of consideration); or
  - (b) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, increases to more than fifty percent (50%) of the issued and outstanding Share capital of the Company,
- the period of the offer is extended so that it ends fourteen (14) days after the event referred to in paragraph (a) or (b) above.
- (8) Offers must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the offers will terminate, or the maximum consideration offered will be reduced, if effectively one or more of the following occurs:
- (a) the number of Bid Securities for which the Person making the offer receives acceptances reaches or exceeds a particular number; or
  - (b) the number of Shares in which the Person making the offer directly or Indirectly holds a Relevant Interest, or both, reaches or exceeds a particular percentage of the issued and outstanding Share capital of the Company; or
  - (c) the percentage of Bid Securities the Person making the offer has a Relevant Interest in reaches or exceeds a particular percentage of Bid Securities in that class.
- (9) Offers must not be subject to a discriminatory condition. A discriminatory condition is a condition that allows the Person making the offer to acquire, or may result in that Person acquiring, Bid Securities from some but not all of the people who accept the offers.
- (10) Offers must not be subject to a condition if the fulfilment of the condition depends on:
- (a) the opinion, belief or other state of mind of the Person making the offer or an Affiliated Company; or
  - (b) the happening of an event that is within the sole control of, or is a

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direct result of action by, any of the following:

- (i) the Person making the offer (acting alone or together with an Associate); or
  - (ii) an Associate (acting alone or together with the Person making the offer or another Associate of that Person).
- (11) The Person making the offer may only vary the offer made by:
- (a) improving the consideration offered (including by offering an additional form of consideration); or
  - (b) extending the period of the offer.
- (12) The terms of unaccepted offers must be varied in the same way. Any person who has already accepted an offer must be entitled to the improved consideration and, in the case of an addition of a new form of consideration, be entitled to make a fresh election.
- (13) A Person making an offer that is unconditional may extend the period of the offer at any time before the end of the offer. A Person making an offer that is still subject to conditions may only extend the period of the offer at least seven (7) days before the end of the period of the offer unless during that seven (7) day period another Person announces a bid for Bid Securities or improves the consideration offered under another bid for Bid Securities.
- (14) Each offer must be in writing and have the same date. This date is the day the first offer is made.
- (15) The Person making the offer must, at the same time it gives its offer to holders of Bid Securities, also give a document to those holders setting out:
- (a) all information known to the Person that is material to the making of the decision by a holder of Bid Securities whether or not to accept the offer; and
  - (b) any areas in which the disclosure provided with its offer departs from the disclosure which would have otherwise been required to be provided to holders of Bid Securities if the Takeover Bid was an Corporations Act Bid.
- (16) This document referred to in Bye-law 52AAA.28(15) must be given to the Company and ASX at least fourteen (14) days before it is given to these holders and must be dated. The date is the date on which the document is given to ASX. If the Person making the offer becomes aware of:
- (a) a misleading or deceptive statement in the document; or
  - (b) an omission from the document of information required by Bye-laws 52AAA.11 or this Bye-law 52AAA.28; or
  - (c) a new circumstance that:

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- (i) has arisen since the document was given to the Company; and
- (ii) would have been required by Bye-law 52AAA.11 or this Bye-law 52AAA.28 to be included in the document if it had arisen before the document was given to the Company, that is material from the point of view of a holder of Bid Securities, the Person making the offer must prepare a supplementary document that remedies this defect. The Person making the offer must give the supplementary document to the Company and give a copy with ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX.

52AAA.29 A bid for Shares is taken to comply with the principles in Bye-law 52AAA.28 if it is a Corporations Act Bid at all relevant times. The Board must act reasonably and in a timely manner in agreeing with a Person making a Corporations Act Bid to any modifications or exemptions to the application of Parts 6.4, 6.5, 6.6 and 6.8 of the Corporations Act to a Corporations Act Bid having regard to the purposes in Bye-law 52AAA.2, the principles in Bye-law 52AAA.28 and to Australian Law and Policy.

52AAA.30 If a Takeover Bid is made, the Company must:

- (1) give to all holders of Bid Securities, ASX and the Person making the Takeover Bid a document in a timely manner setting out all information that the Shareholders and their professional advisers would reasonably require to make an informed assessment whether to accept an offer under the Takeover Bid. The document must contain information:
  - (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to see the information in the document; and
  - (b) only if the information is known to the Company; and the document must also contain a statement by each member of the Board:
  - (c) recommending that offers under the Takeover Bid be accepted or not accepted, and giving reasons for the recommendation; or
  - (d) giving reasons why a recommendation is not made.The document must be dated. The date is the date on which the document is given to ASX.
- (2) If the Company becomes aware of:
  - (a) a misleading or deceptive statement in the document; or
  - (b) an omission from the document of information required by paragraph (1) above; or
  - (c) a new circumstance that:
    - (i) has arisen since the document was given to the Person making the offer; and

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- (ii) would have been required by paragraph (1) above to be included if it had arisen before the document was given to the Person making the offer,

that is material from the point of view of a holder of Bid Securities, the Company must prepare a supplementary document that remedies this defect and give it to the Person making the offer and ASX. The supplementary document must be dated. The date is the date on which the supplementary document is given to ASX.

- (3) If it has been given a document in accordance with Bye-law 52AAA.28(16) and the Person making the offer makes a request for information under this Bye-law 52AAA.30(3) for the purposes of fulfilling the purposes under Bye-law 52AAA.2 and complying with the principles under Bye-law 52AAA.28, the Company must inform the Person of the name and address of each Person who held Bid Securities and that Person's holding, at the specified time by the Person making the Offer. The Company must give the information to the Person making the offer in a timely manner and:
  - (a) in the form that the Person requests; or
  - (b) if the Company is unable to comply with the request - in writing.
- (4) If the Company must give the information specified in this Bye-law to the Person in electronic form, the information must be readable but the information need not be formatted for the preferred operating system of the Person making the offer.

52AAA.31 The Company may charge a fee in relation to the provision of the register referred to in Bye-law 52AAA.30(3) above.

52AAA.32 So long as Shares are quoted on ASX, if the Company becomes subject to the law of any jurisdiction which applies so as to regulate the acquisition of Control, and the conduct of any Takeover, of the Company, the Company shall consult promptly with ASX to determine whether, in the light of the application of such law:

- (1) ASX requires amendment to this Bye-law 52AAA in order for these Bye-Laws to comply with the Listing Rules as then in force; or
- (2) any waiver of the Listing Rules permitting the inclusion of all or part of these Bye-laws has ceased to have effect.

52AAA.33 The Company may, by giving notice in writing, require the Shareholder to give to the Company, within two (2) Business Days after receiving the notice, a statement in writing setting out:

- (1) full details of the Shareholder's Relevant Interest and of the circumstances giving rise to that Relevant Interest; and
- (2) the name and address of each other Person who has a Relevant Interest together with full details of:
  - (a) the nature and extent of the Relevant Interest; and

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- (b) the circumstances that give rise to the Person's Relevant Interest; and
- (3) the name and address of each Person who has given the Shareholder or the Person as referred to in paragraph (2) above instructions about:
  - (a) the acquisition or disposal of a Relevant Interest; or
  - (b) the exercise of any Voting Power or other rights attached to a Relevant Interest;
  - (c) any other matter relating to a Relevant Interest, together with full details of those instructions (including the date or dates on which those relevant instructions were given).

52AAA.34 A matter referred to in Bye-law 52AAA.33(2) or (3) need only be disclosed to the extent to which it is known to the Person making the disclosure.

52AAA.35 Where a statement is delivered to the Company containing any details as referred to in Bye-law 52AAA.33(2) or (3), the Company may, by giving notice in writing, require a Shareholder to give to the Company to procure that any other Persons as referred to in Bye-law 52AAA.33(2) or (3) to give to the Company, within two (2) days after receiving the notice, a statement in writing setting out the details as referred to in Bye-law 52AAA.33(1), (2) and/or (3) above.

#### TRANSMISSION OF SHARES

53. If a Member dies, the survivor or survivors where the deceased was a joint holder, and his legal personal representatives where he was a sole or only surviving holder, will be the only persons recognised by the Company as having any title to his interest in the shares; but nothing in this Bye-law will release the estate of a deceased Member (whether sole or joint) from any liability in respect of any share which had been solely or jointly held by him.

54. Subject to Section 52 of the Act, any person becoming entitled to a share in consequence of the death or bankruptcy or winding-up of a Member or that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law relating to mental health may, upon such evidence as to his title being produced as may be required by the Board, elect either to become the holder of the share or to have some person nominated by him registered as the transferee thereof. If he elects to become the holder he shall notify the Company in writing either at the Registration Office or Office, as the case may be, to that effect. If he elects to have another person registered he shall execute a transfer of the share in favour of that person. The provisions of these Bye-laws relating to the transfer and registration of transfers of shares shall apply to such Notice or transfer as aforesaid as if the death or bankruptcy of the Member had not occurred and the Notice or transfer were a transfer signed by such Member.

55. A person becoming entitled to a share by reason of the death or bankruptcy or winding-up of a Member shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share. However, the Board

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may, if it thinks fit, withhold the payment of any dividend payable or other advantages in respect of such share until such person shall become the registered holder of the share or shall have effectually transferred such share, but, subject to the requirements of Bye-law 77(2) being met, such a person may vote at meetings.

### UNTRACEABLE MEMBERS

55A. (1) Without prejudice to the rights of the Company under paragraph (2) of this Bye-law, the Company may cease sending cheques for dividend entitlements or dividend warrants by post if such cheques or warrants have been left uncashed on two consecutive occasions. However, the Company may exercise the power to cease sending cheques for dividend entitlements or dividend warrants after the first occasion on which such a cheque or warrant is returned undelivered.

App3 13(1)

(2) The Company shall have the power to sell, in such manner as the Board thinks fit, any shares of a Member who is untraceable, but no such sale shall be made unless:

App3  
13(2)(a)(b)

- (a) all cheques or warrants in respect of dividends of the shares in question, being not less than three in total number, for any sum payable in cash to the holder of such shares in respect of them sent during the relevant period in the manner authorised by the Bye-laws of the Company have remained uncashed;
- (b) so far as it is aware at the end of the relevant period, the Company has not at any time during the relevant period received any indication of the existence of the Member who is the holder of such shares or of a person entitled to such shares by death, bankruptcy or operation of law; and
- (c) the Company, if so required by the rules governing the listing of shares on the Designated Stock Exchange and where applicable the Secondary Stock Exchange, has given Notice to, and caused advertisement in newspapers in accordance with the requirements of, the Designated Stock Exchange and where applicable the Secondary Stock Exchange to be made of its intention to sell such shares in the manner required by the Designated Stock Exchange and where applicable the Secondary Stock Exchange, and a period of three (3) months or such shorter period as may be allowed by the Designated Stock Exchange and where applicable the Secondary Stock Exchange has elapsed since the date of such advertisement.

For the purpose of the foregoing, the “relevant period” means the period commencing twelve years before the date of publication of the advertisement referred to in paragraph (c) of this Bye-law and ending at the expiry of the period referred to in that paragraph.

(3) To give effect to any such sale the Board may authorise some person to transfer the said shares and an instrument of transfer signed or otherwise executed by or on behalf of such person shall be as effective as if it had been executed by the registered holder

or the person entitled by transmission to such shares, and the purchaser shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The net proceeds of the sale will belong to the Company and upon receipt by the Company of such net proceeds it shall become indebted to the former Member for an amount equal to such net proceeds. No trust shall be created in respect of such debt and no interest shall be payable in respect of it and the Company shall not be required to account for any money earned from the net proceeds which may be employed in the business of the Company or as it thinks fit. Any sale under this Bye-law shall be valid and effective notwithstanding that the Member holding the shares sold is dead, bankrupt or otherwise under any legal disability or incapacity.

### GENERAL MEETINGS

56. An annual general meeting of the Company shall be held in each year other than the year in which its statutory meeting is convened at such time (within a period of not more than fifteen (15) months after the holding of the last preceding annual general meeting unless a longer period would not infringe the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, (if any) and place as may be determined by the Board.

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57. Each general meeting, other than an annual general meeting, shall be called a special general meeting. General meetings may be held in any part of the world as may be determined by the Board.

58. The Board may whenever it thinks fit call special general meetings, and Members holding at the date of deposit of the requisition not less than one-tenth of the paid up capital of the Company carrying the right of voting at general meetings of the Company shall at all times have the right, by written requisition to the Board or the Secretary of the Company, to require a special general meeting to be called by the Board for the transaction of any business specified in such requisition; and such meeting shall be held within two (2) months after the deposit of such requisition. If within twenty-one (21) days of such deposit the Board fails to proceed to convene such meeting the requisitionists themselves may do so in accordance with the provisions of Section 74(3) of the Act.

59. (1) The Company shall notify the Designated Stock Exchange and where applicable the Secondary Stock Exchange of any meeting at which Directors are to be elected at least five (5) Business Days before the closing day for receipt of nominations for Directors, and in any other case, on the Business Day that the Notice of general meeting is dispatched to Members.

(2) As soon as is practicable the Company shall notify the Designated Stock Exchange and where applicable the Secondary Stock Exchange after any general meeting in the case of special business as to whether or not the resolutions were carried and in the case of ordinary business as to which of those resolutions were not carried or were amended or were withdrawn.

### NOTICE OF GENERAL MEETINGS

60. (1) An annual general meeting and any special general meeting at which the passing of a special resolution is to be considered shall be called by not less than twenty-one (21) clear days' Notice. All other special general meetings may be called by not less than fourteen (14) clear days' Notice but a general meeting may be called by shorter notice if it is so agreed:

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- (a) in the case of a meeting called as an annual general meeting, by all the Members entitled to attend and vote thereat; and
- (b) in the case of any other meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety-five per cent. (95%) in nominal value of the issued shares giving that right.

(2) The Notice shall specify the date, time and place of the meeting and, in the case of special business, the general nature of the business to be transacted at the meeting. The Notice convening an annual general meeting shall specify the meeting as such. Notice of every general meeting shall be given to all Members other than to such Members as, under the provisions of these Bye-laws or the terms of issue of the shares they hold, are not entitled to receive such Notices from the Company, to all persons entitled to a share in consequence of the death or bankruptcy or winding-up of a Member and to each of the Directors and the Auditors and if the Company has issued and there are currently any listed securities, the home branch of the Designated Stock Exchange and where applicable the Secondary Stock Exchange. If the Company is included in the official list of the Designated Stock Exchange and where applicable the Secondary Stock Exchange the Notice must specify a place and fax number for the purpose of receipt of proxy appointments (and may specify an electronic address for such purposes) and comply with the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange.

61. The accidental omission to give Notice of a meeting or (in cases where instruments of proxy are sent out with the Notice) to send such instrument of proxy to, or the non-receipt of such Notice or such instrument of proxy by, any person entitled to receive such Notice shall not invalidate any resolution passed or the proceedings at that meeting.

### PROCEEDINGS AT GENERAL MEETINGS

62. (1) All business shall be deemed special that is transacted at a special general meeting, and also all business that is transacted at an annual general meeting, with the exception of sanctioning dividends, the reading, considering and adopting of the accounts and balance sheet and the reports of the Directors and Auditors and other documents required to be annexed to the balance sheet, the election of Directors and appointment of Auditors and other officers in the place of those retiring, the fixing of the remuneration of the Auditors,

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and the voting of remuneration or extra remuneration to the Directors.

(2) No business other than the appointment of a chairman of a meeting shall be transacted at any general meeting unless a quorum is present at the commencement of the business. A total of three (3) Members entitled to vote and present in person (or in the case of a Member being a corporation by its duly authorised Representative) or by proxy shall form a quorum for all purposes.

62A. (1) Subject to Bye-law 62A (2), the following persons are entitled to attend a meeting of Members:

- (i) each Member, in person or by proxy, attorney or Representative;
- (ii) each Director;
- (iii) each alternate director (if any);
- (iv) the Auditor; and
- (v) any other person or persons as the chairperson may approve from time to time.

(2) The chairman of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:

- (i) in the opinion of the chairman, is not complying with the reasonable directions of the chairman;
- (ii) has any audio or visual recording device;
- (iii) has a placard or banner;
- (iv) has an article the chairman considers to be dangerous, offensive or liable to cause disruption;
- (v) refuses to produce, or to permit examination of, any article, or the contents of any article, in the person's possession;
- (vi) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (vii) is not:-
  - (a) a Member;
  - (b) a proxy, attorney or Representative of a Member; or
  - (c) the Auditor.

63. If within thirty (30) minutes (or such longer time not exceeding one hour as the chairman of the meeting may determine to wait) after the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board may determine. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the meeting shall be dissolved.

64. The president of the Company or the chairman shall preside as chairman at every general meeting. If at any meeting the president or the chairman, as the case may be, is not present within fifteen (15) minutes after the time appointed for holding the meeting, or if neither of them is willing to act as chairman, the Directors present shall choose one of their

number to act, or if one Director only is present he shall preside as chairman if willing to act. If no Director is present, or if each of the Directors present declines to take the chair, or if the chairman chosen shall retire from the chair, the Members present in person or (in the case of a Member being a corporation) by its duly authorised Representative or by proxy and entitled to vote shall elect one of their number to be chairman.

65. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place as the meeting shall determine, but no business shall be transacted at any adjourned meeting other than the business which might lawfully have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen (14) days or more, at least seven (7) clear days' Notice of the adjourned meeting shall be given specifying the time and place of the adjourned meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting and the general nature of the business to be transacted. Save as aforesaid, it shall be unnecessary to give Notice of an adjournment.

65A. (1) Subject to the Act and the Applicable Law (if it applies), the chairman of a meeting of Members:

- (i) is responsible for the general conduct of, and the procedures to be adopted at the meeting;
- (ii) may make rulings or adjourn the meeting without putting a question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
- (iii) may determine the procedures to be adopted for the casting or recording of votes;
- (iv) may determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
- (v) may terminate debate or discussion on any matter being considered at the meeting and require that matter to be put to a vote;
- (vi) may refuse to allow debate or discussion on any matter which is not business referred to in the Notice of general meeting or is not business referred to in Bye-law 62(1);
- (vii) may refuse to allow any amendment to be moved to a resolution set out in the Notice of general meeting; and
- (viii) may delegate to any person any power conferred by this Bye-law 65A(1).

(2) The powers conferred on the chairman of a meeting of Members pursuant to Bye-law 65A(1) shall not limit the powers otherwise conferred by law.

(3) Unless the approval of the chairman of the meeting of Members is obtained, no person may move at any meeting of Members:-

- (i) any resolution (other than a resolution in the same terms as specified in the Notice of general meeting); or
- (ii) any amendment of a resolution, in respect of any business other than:-
  - (a) the consideration of the annual financial report, Director's report and Auditor's report;

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- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) the fixing of the Auditor's remuneration.

66. If an amendment is proposed to any resolution under consideration but is in good faith ruled out of order by the chairman of the meeting, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling. In the case of a resolution duly proposed as a special resolution, no amendment thereto (other than a mere clerical amendment to correct a patent error) may in any event be considered or voted upon.

### VOTING

67. Subject to any special rights or restrictions as to voting for the time being attached to any shares by or in accordance with these Bye-laws, at any general meeting on a show of hands every Member present in person (or being a corporation is present by a Representative duly authorised under Section 78 of the Act) or by proxy shall have one vote and on a poll every Member present in person or by proxy or, in the case of a Member being a corporation by its duly authorised Representative or by proxy shall have one vote for every fully paid share of which he is the holder but so that no amount paid up or credited as paid up on a share in advance of calls or instalments is treated for the foregoing purposes as paid up on the share. Notwithstanding anything contained in these Bye-laws, where more than one proxy is appointed by a Member which is a clearing house (or its nominee(s)), each such proxy shall have one vote on a show of hands. A resolution put to the vote of a meeting shall be decided on a show of hands unless voting by way of a poll is required by the rules of the Designated Stock Exchange or (before or on the declaration of the result of the show of hands or on the withdrawal of any other demand for a poll) a poll is demanded:

- (a) by the chairman of such meeting; or
- (b) by at least five Members present in person or in the case of a Member being a corporation by its duly authorised Representative or by proxy for the time being entitled to vote at the meeting; or
- (c) by a Member or Members present in person or in the case of a Member being a corporation by its duly authorised Representative or by proxy and representing not less than one-tenth of the total voting rights of all Members having the right to vote at the meeting; or
- (d) by a Member or Members present in person or in the case of a Member being a corporation by its duly authorised Representative or by proxy and holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all shares conferring that right.

A demand by a person as proxy for a Member or in the case of a Member being a corporation

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by its duly authorised Representative shall be deemed to be the same as a demand by a Member.

68. Unless a poll is duly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has been carried, or carried unanimously, or by a particular majority, or not carried by a particular majority, or lost, and an entry to that effect made in the minute book of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

69. If a poll is duly demanded the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The Company shall only be required to disclose the voting figures on a poll if such disclosure is required by the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange.

70. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken in such manner (including the use of ballot or voting papers or tickets) and either forthwith or at such time (being not later than thirty (30) days after the date of the demand) and place as the chairman directs. It shall not be necessary (unless the chairman otherwise directs) for notice to be given of a poll not taken immediately.

71. The demand for a poll shall not prevent the continuance of a meeting or the transaction of any business other than the question on which the poll has been demanded, and, with the consent of the chairman, it may be withdrawn at any time before the close of the meeting or the taking of the poll, whichever is the earlier.

72. On a poll votes may be given either personally or by proxy.

73. A person entitled to more than one vote on a poll need not use all his votes or cast all the votes he uses in the same way.

74. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such meeting shall be entitled to a second or casting vote in addition to any other vote he may have.

75. Where there are joint holders of any share any one of such joint holder may vote, either in person or by proxy, in respect of such share as if he were solely entitled thereto, but if more than one of such joint holders be present at any meeting the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register in respect of the joint holding. Several executors or administrators of a deceased Member in whose name any share stands shall for the purposes of this Bye-law be deemed joint holders thereof.

76. (1) A Member who is a patient for any purpose relating to mental health or in respect of whom an order has been made by any court having jurisdiction for the protection or management of the affairs of persons incapable of managing their own affairs

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may vote, whether on a show of hands or on a poll, by his receiver, committee, curator bonis or other person in the nature of a receiver, committee or curator bonis appointed by such court, and such receiver, committee, curator bonis or other person may vote on a poll by proxy, and may otherwise act and be treated as if he were the registered holder of such shares for the purposes of general meetings, provided that such evidence as the Board may require of the authority of the person claiming to vote shall have been deposited at the Office, head office or Registration Office, as appropriate, not less than forty-eight (48) hours before the time appointed for holding the meeting, or adjourned meeting or poll, as the case may be.

(2) Any person entitled under Bye-law 55 to be registered as the holder of any shares may vote at any general meeting in respect thereof in the same manner as if he were the registered holder of such shares, provided that forty-eight (48) hours at least before the time of the holding of the meeting or adjourned meeting, as the case may be, at which he proposes to vote, he shall satisfy the Board of his entitlement to such shares, or the Board shall have previously admitted his right to vote at such meeting in respect thereof.

77. (1) No Member shall, unless the Board otherwise determines, be entitled to attend and vote and to be reckoned in a quorum at any general meeting unless he is duly registered and all calls or other sums presently payable by him in respect of shares in the Company have been paid.

(2) Where the Company has knowledge that any Member is, under the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange and where applicable the Secondary Stock Exchange, required to abstain from voting on any particular resolution of the Company or restricted to voting only for or only against any particular resolution of the Company, any votes cast by or on behalf of such Member in contravention of such requirement or restriction shall not be counted.

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78. If:

- (a) any objection shall be raised to the qualification of any voter; or
- (b) any votes have been counted which ought not to have been counted or which might have been rejected; or
- (c) any votes are not counted which ought to have been counted;

the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless the same is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs. Any objection or error shall be referred to the chairman of the meeting and shall only vitiate the decision of the meeting on any resolution if the chairman decides that the same may have affected the decision of the meeting. The decision of the chairman on such matters shall be final and conclusive.

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## PROXIES

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79. Any Member entitled to attend and vote at a meeting of the Company shall be entitled to appoint another person as his proxy to attend and vote instead of him. A Member who is the holder of two or more shares may appoint more than one proxy or attorney to represent him and vote on his behalf at a general meeting of the Company or at a class meeting. A proxy or attorney need not be a Member. In addition, a proxy or proxies representing either a Member who is an individual or a Member which is a corporation shall be entitled to exercise the same powers on behalf of the Member which he or they represent as such Member could exercise.

80. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under its seal or under the hand of an officer, attorney or other person authorised to sign the same. In the case of an instrument of proxy purporting to be signed on behalf of a corporation by an officer thereof it shall be assumed, unless the contrary appears, that such officer was duly authorised to sign such instrument of proxy on behalf of the corporation without further evidence of the fact.

App3 11(2)

81. The instrument appointing a proxy and (if required by the Board) the power of attorney or other authority (if any) under which it is signed, or a certified copy of such power or authority, shall be delivered to such place or one of such places (if any) as may be specified for that purpose in or by way of note to or in any document accompanying the Notice convening the meeting (or, if no place is so specified at the Registration Office or the Office, as may be appropriate) not less than forty-eight (48) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date named in it as the date of its execution, except at an adjourned meeting or on a poll demanded at a meeting or an adjourned meeting in cases where the meeting was originally held within twelve (12) months from such date. Delivery of an instrument appointing a proxy shall not preclude a Member from attending and voting in person at the meeting convened and in such event, the instrument appointing a proxy shall be deemed to be revoked.

82. Instruments of proxy shall be in any common form or in such other form as the Board may approve (provided that this shall not preclude the use of the two-way form) and the Board may, if it thinks fit, send out with the Notice of any meeting forms of instrument of proxy for use at the meeting. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll and to vote on any amendment of a resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy shall, unless the contrary is stated therein, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

App3 11(1)

83. A vote given in accordance with the terms of an instrument of proxy shall be valid

notwithstanding the previous death or insanity of the principal, or revocation of the instrument of proxy or of the authority under which it was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the Office or the Registration Office (or such other place as may be specified for the delivery of instruments of proxy in the Notice convening the meeting or other document sent therewith) two (2) hours at least before the commencement of the meeting or adjourned meeting, or the taking of the poll, at which the instrument of proxy is used.

84. Anything which under these Bye-laws a Member may do by proxy he may likewise do by his duly appointed attorney and the provisions of these Bye-laws relating to proxies and instruments appointing proxies shall apply mutatis mutandis in relation to any such attorney and the instrument under which such attorney is appointed.

#### CORPORATIONS ACTING BY REPRESENTATIVES

85. (1) Any corporation which is a Member may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its Representative at any meeting of the Company or at any meeting of any class of Members. The person so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise if it were an individual Member and such corporation shall for the purposes of these Bye-laws be deemed to be present in person at any such meeting if a person so authorised is present thereat.

(2) Where a Member and/or warrant holder is a recognised clearing house (within the meaning of the Securities and Futures Ordinance (Chapter 571) of the Laws of Hong Kong) or its nominee(s), it may authorise such person or persons as it thinks fit to act as its representative(s) or proxy(ies) at any meeting of the Company or at any meeting of any class of Members and/or warrant holders provided that, if more than one person is so authorised, the authorisation or proxy form must specify the number and class of shares and/or warrants in respect of which each such person is so authorised. The person so authorised will be deemed to have been duly authorised without the need of producing any documents of title, notarised authorisation and/or further evidence for substantiating the facts that it is duly authorised and will be entitled to exercise the same power on behalf of the recognised clearing house as that clearing house or its nominee(s) could exercise if it were an individual Member and/or warrant holder of the Company.

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(3) Any reference in these Bye-laws to a duly authorised Representative of a Member being a corporation shall mean a Representative authorised under the provisions of this Bye-law.

#### WRITTEN RESOLUTIONS OF MEMBERS

86. (1) Subject to the Act, a resolution in writing signed (in such manner as to indicate, expressly or impliedly, unconditional approval) by or on behalf of all persons for the time being entitled to receive notice of and to attend and vote at general meetings of the

Company shall, for the purposes of these Bye-laws, be treated as a resolution duly passed at a general meeting of the Company and, where relevant, as a special resolution so passed. Any such resolution shall be deemed to have been passed at a meeting held on the date on which it was signed by the last Member to sign, and where the resolution states a date as being the date of his signature thereof by any Member the statement shall be prima facie evidence that it was signed by him on that date. Such a resolution may consist of several documents in the like form, each signed by one or more relevant Members.

(2) Notwithstanding any provisions contained in these Bye-laws, a resolution in writing shall not be passed for the purpose of removing a Director before the expiration of his term of office under Bye-law 88(4) or for the purposes set out in Bye-law 156(3) relating to the removal and appointment of the Auditor.

### BOARD OF DIRECTORS

87. (1) Unless otherwise determined by the Company in general meeting, the number of Directors shall not be less than two (2). There shall be no maximum number of Directors unless otherwise determined from time to time by the Members in general meeting. The Directors shall be elected or appointed in the first place at the statutory meeting of Members and thereafter at the annual general meeting in accordance with Bye-law 88 or at any special general meeting and shall hold office until the next appointment of Directors or until their successors are elected or appointed. Any general meeting may authorise the Board to fill any vacancy in their number left unfilled at a general meeting.

(2) The Directors shall have the power from time to time and at any time to appoint any person as a Director either to fill a casual vacancy on the Board or, subject to authorisation by the Members in general meeting, as an addition to the existing Board but so that the number of Directors so appointed shall not exceed any maximum number determined from time to time by the Members in general meeting. Any Director so appointed by the Board shall hold office only until the next following annual general meeting of the Company and shall then be eligible for re-election at that meeting.

App3 4(2)

(3) Neither a Director nor an alternate Director shall be required to hold any shares of the Company by way of qualification and a Director or alternate Director (as the case may be) who is not a Member shall be entitled to receive Notice of and to attend and speak at any general meeting of the Company and of all classes of shares of the Company.

(4) The Members may, at any general meeting convened and held in accordance with these Bye-laws, by ordinary resolution remove a Director at any time before the expiration of his period of office notwithstanding anything to the contrary in these Bye-laws or in any agreement between the Company and such Director (but without prejudice to any claim for damages under any such agreement) provided that the Notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director fourteen (14) days before the meeting and at such meeting such Director shall be entitled to be heard on the motion for his removal.

App3 4(3)

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(5) A vacancy on the Board created by the removal of a Director under the provisions of subparagraph (4) above may be filled by the election or appointment by the Members at the meeting at which such Director is removed to hold office until the next appointment of Directors or until their successors are elected or appointed or, in the absence of such election or appointment such general meeting may authorise the Board to fill any vacancy in the number left unfilled. A nomination of a person for Director (other than a Director retiring in accordance with these Bye-laws) must be a Notice in writing signed by a Member entitled to attend and vote at the meeting of Members at which the election is proposed, and be accompanied by a Notice in writing signed by the nominee consenting to the nomination.

(6) The Company may from time to time in general meeting by ordinary resolution increase or reduce the number of Directors but so that the number of Directors shall never be less than two (2).

#### RETIREMENT OF DIRECTORS

88. (1) Notwithstanding any other provisions in the Bye-laws, at each annual general meeting one-third of the Directors for the time being (or, if their number is not a multiple of three (3), the number nearest to but not less than one-third) shall retire from office by rotation provided that every Director shall be subject to retirement at least once every three years. This Bye-law does not apply to the managing director.

(2) A retiring Director shall be eligible for re-election and shall continue to act as a Director throughout the meeting at which he retires. The Directors to retire by rotation shall include (so far as necessary to ascertain the number of directors to retire by rotation) any Director who wishes to retire and not to offer himself for re-election. Any further Directors to retire shall be those of the other Directors subject to retirement by rotation who have been longest in office since their last re-election or appointment and so that as between persons who became or were last re-elected Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot. Any Director appointed pursuant to Bye-law 87(2) shall not be taken into account in determining which particular Directors or the number of Directors who are to retire by rotation.

89. No person other than a Director retiring at the meeting shall, unless recommended by the Directors for election, be eligible for election as a Director at any general meeting unless a Notice signed by a Member (other than the person to be proposed) duly qualified to attend and vote at the meeting for which such Notice is given of his intention to propose such person for election and also a Notice signed by the person to be proposed of his willingness to be elected shall have been lodged at the head office or at the Registration Office provided that the minimum length of the period, during which such Notice(s) are given, shall be at least seven (7) days and that (if the Notices are submitted after the dispatch of the Notice of the general meeting appointed for such election) the period for lodgment of such Notice(s) shall commence on the day after the dispatch of the Notice of the general meeting appointed

for such election and end no later than seven (7) days prior to the date of such general meeting.

#### DISQUALIFICATION OF DIRECTORS

90. The office of a Director shall be vacated if the Director:
- (1) resigns his office by Notice in writing delivered to the Company at the Office or tendered at a meeting of the Board;
  - (2) becomes of unsound mind or whose property is liable to be dealt with under a law relating to mental health or dies;
  - (3) without special leave of absence from the Board, is absent from meetings of the Board for six consecutive months, and his alternate Director, if any, shall not during such period have attended in his stead and the Board resolves that his office be vacated; or
  - (4) becomes bankrupt or insolvent under administration or has a receiving order made against him or suspends payment or compounds with his creditors;
  - (5) is prohibited by law from being a Director;
  - (6) as an Executive Director ceases to be an employee of the Company or a related corporation; or
  - (6) ceases to be a Director by virtue of any provision of the Statutes or is removed from office pursuant to these Bye-laws.

#### EXECUTIVE DIRECTORS

91. The Board may from time to time appoint any one or more of its body to be a managing director, joint managing director or deputy managing director or to hold any other employment or executive office with the Company for such period (subject to their continuance as Directors) and upon such terms as the Board may determine and the Board may revoke or terminate any of such appointments. Any such revocation or termination as aforesaid shall be without prejudice to any claim for damages that such Director may have against the Company or the Company may have against such Director. A Director appointed to an office under this Bye-law shall be subject to the same provisions as to removal as the other Directors of the Company, and he shall (subject to the provisions of any contract between him and the Company) ipso facto and immediately cease to hold such office if he shall cease to hold the office of Director for any cause.

92. Notwithstanding Bye-laws 97, 98, 99 and 100, an executive director appointed to

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an office under Bye-law 91 hereof shall receive such remuneration (whether by way of salary, commission, participation in profits or otherwise or by all or any of those modes) and such other benefits (including pension and/or gratuity and/or other benefits on retirement) and allowances as the Board may from time to time determine, and either in addition to or in lieu of his remuneration as a Director.

#### ALTERNATE DIRECTORS

93. With the approval of a majority of the other Directors, any Director may at any time by Notice delivered to the Office or head office or at a meeting of the Directors appoint any person to be his alternate Director. Any person so appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present. An alternate Director may be removed at any time by the person or body which appointed him and, subject thereto, the office of alternate Director shall continue until the next annual election of Directors or, if earlier, the date on which the relevant Director ceases to be a Director. Any appointment or removal of an alternate Director shall be effected by Notice signed by the appointor and delivered to the Office or head office or tendered at a meeting of the Board. An alternate Director may also be a Director in his own right and may act as alternate to more than one Director. An alternate Director shall, if his appointor so requests, be entitled to receive Notices of meetings of the Board or of committees of the Board to the same extent as, but in lieu of, the Director appointing him and shall be entitled to such extent to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to exercise and discharge all the functions, powers and duties of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these Bye-laws shall apply as if he were a Director save that as an alternate for more than one Director his voting rights shall be cumulative.

94. An alternate Director shall only be a Director for the purposes of the Act and shall only be subject to the provisions of the Act insofar as they relate to the duties and obligations of a Director when performing the functions of the Director for whom he is appointed in the alternative and shall alone be responsible to the Company for his acts and defaults and shall not be deemed to be the agent of or for the Director appointing him. An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified by the Company to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company any fee in his capacity as an alternate Director except only such part, if any, of the remuneration otherwise payable to his appointor as such appointor may by Notice to the Company from time to time direct.

95. Every person acting as an alternate Director shall have one vote for each Director for whom he acts as alternate (in addition to his own vote if he is also a Director). If his appointor is for the time being not available or unable to act, the signature of an alternate Director to any resolution in writing of the Board or a committee of the Board of which his appointor is a member shall, unless the Notice of his appointment provides to the contrary, be

as effective as the signature of his appointor.

96. An alternate Director shall ipso facto cease to be an alternate Director if his appointor ceases for any reason to be a Director, however, such alternate Director or any other person may be re-appointed by the Directors to serve as an alternate Director PROVIDED always that, if at any meeting any Director retires but is re-elected at the same meeting, any appointment of such alternate Director pursuant to these Bye-laws which was in force immediately before his retirement shall remain in force as though he had not retired.

96A The Company is not required to pay any remuneration to an alternate Director.

#### NON-EXECUTIVE DIRECTORS' FEES AND EXPENSES

97. The ordinary remuneration of the non-executive Directors shall from time to time be determined by the Company in general meeting and shall (unless otherwise directed by the resolution by which it is voted) be divided amongst the Board in such proportions and in such manner as the Board may agree or, failing agreement, equally, except that any non-executive Director who shall hold office for part only of the period in respect of which such remuneration is payable shall be entitled only to rank in such division for a proportion of remuneration related to the period during which he has held office. Such remuneration shall be deemed to accrue from day to day.

98. Each non-executive Director shall be entitled to be repaid or prepaid all travelling, hotel and incidental expenses reasonably incurred or expected to be incurred by him in attending meetings of the Board or committees of the Board or general meetings or separate meetings of any class of shares or of debentures of the Company or otherwise in connection with the discharge of his duties as a non-executive Director.

99. Any non-executive Director who, by request, goes or resides abroad for any purpose of the Company or who performs services which in the opinion of the Board go beyond the ordinary duties of a non-executive Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Board may determine and such extra remuneration shall be in addition to or in substitution for any ordinary remuneration provided for by or pursuant to any other Bye-law.

100. Subject to the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, the Board shall obtain the approval of the Members in general meeting before making any payment to any Director or past Director of the Company by way of compensation for loss of office, or as consideration for or in connection with his retirement from office (not being payment to which the Director is contractually entitled).

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#### DIRECTORS' INTERESTS

101. A Director may:

(a) hold any other office or place of profit with the Company (except that

of Auditor) in conjunction with his office of Director for such period and, subject to the relevant provisions of the Act, upon such terms as the Board may determine. Any remuneration (whether by way of salary, commission, participation in profits or otherwise) paid to any Director in respect of any such other office or place of profit shall be in addition to any remuneration provided for by or pursuant to any other Bye-law;

- (b) act by himself or his firm in a professional capacity for the Company (otherwise than as Auditor) and he or his firm may be remunerated for professional services as if he were not a Director;
- (c) continue to be or become a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or member of any other company promoted by the Company or in which the Company may be interested as a vendor, Member or otherwise and (unless otherwise agreed) no such Director shall be accountable for any remuneration, profits or other benefits received by him as a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer or Member of or from his interests in any such other company. Subject as otherwise provided by these Bye-laws the Directors may exercise or cause to be exercised the voting powers conferred by the shares in any other company held or owned by the Company, or exercisable by them as directors of such other company in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, joint managing directors, deputy managing directors, executive directors, managers or other officers of such company) or voting or providing for the payment of remuneration to the director, managing director, joint managing director, deputy managing director, executive director, manager or other officers of such other company and any Director may vote in favour of the exercise of such voting rights in manner aforesaid notwithstanding that he may be, or about to be, appointed a director, managing director, joint managing director, deputy managing director, executive director, manager or other officer of such a company, and that as such he is or may become interested in the exercise of such voting rights in manner aforesaid.

102. Subject to the Act and to these Bye-laws, no Director or proposed or intending Director shall be disqualified by his office from contracting with the Company, either with regard to his tenure of any office or place of profit or as vendor, purchaser or in any other manner whatever, nor shall any such contract or any other contract or arrangement in which any Director is in any way interested be liable to be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company or the Members for any remuneration, profit or other benefits realised by any such contract or arrangement by reason of such Director holding that office or of the fiduciary relationship thereby established

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provided that such Director shall disclose the nature of his interest in any contract or arrangement in which he is interested in accordance with Bye-law 103 herein.

103. A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Bye-law, a general Notice to the Board by a Director to the effect that:

- (a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with a specified person who is connected with him;

shall be deemed to be a sufficient declaration of interest under this Bye-law in relation to any such contract or arrangement, provided that no such Notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.

104. A Director who to his knowledge is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company shall declare the nature of his interest at the meeting of the Board at which the question of entering into the contract or arrangement is first considered, if he knows his interest then exists, or in any other case at the first meeting of the Board after he knows that he is or has become so interested. For the purposes of this Bye-law, a general Notice to the Board by a Director to the effect that:

- (a) he is a member or officer of a specified company or firm and is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with that company or firm; or
- (b) he is to be regarded as interested in any contract or arrangement which may after the date of the Notice be made with a specified person who is connected with him;

shall be deemed to be a sufficient declaration of interest under this Bye-law in relation to any such contract or arrangement, provided that no such Notice shall be effective unless either it is given at a meeting of the Board or the Director takes reasonable steps to secure that it is brought up and read at the next Board meeting after it is given.

104A. (1) A Director shall not vote (nor be counted in the quorum) on any resolution of the Board approving any contract or arrangement or any other proposal in which he or any of

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his associates is materially interested, but this prohibition shall not apply to any of the following matters namely:

- (i) any contract or arrangement for the giving to such Director or his associate(s) any security or indemnity in respect of money lent by him or any of his associates or obligations incurred or undertaken by him or any of his associates at the request of or for the benefit of the Company or any of its subsidiaries;
- (ii) any contract or arrangement for the giving of any security or indemnity to a third party in respect of a debt or obligation of the Company or any of its subsidiaries for which the Director or his associate(s) has himself/themselves assumed responsibility in whole or in part whether alone or jointly under a guarantee or indemnity or by the giving of security;
- (iii) any contract or arrangement concerning an offer of shares or debentures or other securities of or by the Company or any other company which the Company may promote or be interested in for subscription or purchase, where the Director or his associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;
- (iv) any contract or arrangement in which the Director or his associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the Company by virtue only of his/their interest in shares or debentures or other securities of the Company;
- (v) any contract or arrangement concerning any other company in which the Director or his associate(s) is/are interested only, whether directly or indirectly, as an officer or executive or a member or in which the Director and any of his associates are not in aggregate beneficially interested in five (5) per cent or more of the issued shares or of the voting rights of any class of shares of such company (or of any third company through which his interest or that of any of his associates is derived); or
- (vi) any proposal or arrangement concerning the adoption, modification or operation of a share option scheme, a pension fund or retirement, death or disability benefits scheme or other arrangement which relates both to directors, his associates and employees of the Company or of any of its subsidiaries and does not provide in respect of any Director, or his associate(s), as such any privilege or advantage not accorded generally to the class of persons to which such scheme or fund relates.

(2) A company shall be deemed to be a company in which a Director and/or his associate(s) owns five (5) per cent or more if and so long as (but only if and so long as) he and/or his associates, (either directly or indirectly) are the holders of or beneficially interested in five (5) per cent. or more of any class of the equity share capital of such company or of the voting rights available to members of such company (or of any third

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company through which his interest or that of any of his associates is derived). For the purpose of this paragraph there shall be disregarded any shares held by a Director or his associate(s) as bare or custodian trustee and in which he or any of them has no beneficial interest, any shares comprised in a trust in which the interest of the Director or his associate(s) is/are in reversion or remainder if and so long as some other person is entitled to receive the income thereof, and any shares comprised in an authorised unit trust scheme in which the Director or his associate(s) is/are interested only as a unit holder.

(3) Where a company in which a Director and/or his associate(s) holds five (5) per cent or more is materially interested in a transaction, then that Director and/or his associate(s) shall also be deemed materially interested in such transaction.

(4) If any question shall arise at any meeting of the Board as to the materiality of the interest of a Director (other than the chairman of the meeting) or as to the entitlement of any Director (other than such chairman) to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be referred to the chairman of the meeting and his ruling in relation to such other Director shall be final and conclusive except in a case where the nature or extent of the interest of the Director concerned as known to such Director has not been fairly disclosed to the Board. If any question as aforesaid shall arise in respect of the chairman of the meeting such question shall be decided by a resolution of the Board (for which purpose such chairman shall not vote thereon) and such resolution shall be final and conclusive except in a case where the nature or extent of the interest of such chairman as known to such chairman has not been fairly disclosed to the Board.

#### GENERAL POWERS OF THE DIRECTORS

105. (1) The business of the Company shall be managed and conducted by the Board, which may pay all expenses incurred in forming and registering the Company and may exercise all powers of the Company (whether relating to the management of the business of the Company or otherwise) which are not by the Statutes or by these Bye-laws required to be exercised by the Company in general meeting, subject nevertheless to the provisions of the Statutes and of these Bye-laws and to such regulations being not inconsistent with such provisions, as may be prescribed by the Company in general meeting, but no regulations made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if such regulations had not been made. The general powers given by this Bye-law shall not be limited or restricted by any special authority or power given to the Board by any other Bye-law.

(2) Any person contracting or dealing with the Company in the ordinary course of business shall be entitled to rely on any written or oral contract or agreement or deed, document or instrument entered into or executed as the case may be by any two of the Directors acting jointly on behalf of the Company and the same shall be deemed to be validly entered into or executed by the Company as the case may be and shall, subject to any rule of law, be binding on the Company.

(3) Without prejudice to the general powers conferred by these Bye-laws it

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is hereby expressly declared that the Board shall have the following powers:

- (a) to give to any person the right or option of requiring at a future date that an allotment shall be made to him of any share at par or at such premium as may be agreed.
- (b) to give to any Directors, officers or servants of the Company an interest in any particular business or transaction or participation in the profits thereof or in the general profits of the Company either in addition to or in substitution for a salary or other remuneration.
- (c) to resolve that the Company be discontinued in Bermuda and continued in a named country or jurisdiction outside Bermuda subject to the provisions of the Act.

106. The Board may establish any regional or local boards or agencies for managing any of the affairs of the Company in any place, and may appoint any persons to be members of such local boards, or any managers or agents, and may fix their remuneration (either by way of salary or by commission or by conferring the right to participation in the profits of the Company or by a combination of two or more of these modes) and pay the working expenses of any staff employed by them upon the business of the Company. The Board may delegate to any regional or local board, manager or agent any of the powers, authorities and discretions vested in or exercisable by the Board (other than its powers to make calls and forfeit shares), with power to sub-delegate, and may authorise the members of any of them to fill any vacancies therein and to act notwithstanding vacancies. Any such appointment or delegation may be made upon such terms and subject to such conditions as the Board may think fit, and the Board may remove any person appointed as aforesaid, and may revoke or vary such delegation, but no person dealing in good faith and without Notice of any such revocation or variation shall be affected thereby.

107. The Board may by power of attorney appoint under the Seal any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under these Bye-laws) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him. Such attorney or attorneys may, if so authorised under the Seal of the Company, execute any deed or instrument under their personal seal with the same effect as the affixation of the Seal.

108. The Board may entrust to and confer upon a managing director, joint managing director, deputy managing director, an executive director or any Director any of the powers exercisable by it upon such terms and conditions and with such restrictions as it thinks fit, and either collaterally with, or to the exclusion of, its own powers, and may from time to time

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revoke or vary all or any of such powers but no person dealing in good faith and without Notice of such revocation or variation shall be affected thereby.

109. All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for moneys paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time by resolution determine. The Company's banking accounts shall be kept with such banker or bankers as the Board shall from time to time determine.

110. (1) The Board may establish or concur or join with other companies (being subsidiary companies of the Company or companies with which it is associated in business) in establishing and making contributions out of the Company's moneys to any schemes or funds for providing pensions, sickness or compassionate allowances, life assurance or other benefits for employees (which expression as used in this and the following paragraph shall include any Director or ex-Director who may hold or have held any executive office or any office of profit under the Company or any of its subsidiary companies) and ex-employees of the Company and their dependants or any class or classes of such person.

(2) The Board may pay, enter into agreements to pay or make grants of revocable or irrevocable, and either subject or not subject to any terms or conditions, pensions or other benefits to employees and ex-employees and their dependants, or to any of such persons, including pensions or benefits additional to those, if any, to which such employees or ex-employees or their dependants are or may become entitled under any such scheme or fund as mentioned in the last preceding paragraph. Any such pension or benefit may, as the Board considers desirable, be granted to an employee either before and in anticipation of or upon or at any time after his actual retirement.

#### BORROWING POWERS

111. The Board may exercise all the powers of the Company to raise or borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and, subject to the Act, to issue debentures, bonds and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any third party.

112. Debentures, bonds and other securities may be made assignable free from any equities between the Company and the person to whom the same may be issued.

113. Any debentures, bonds or other securities may be issued at a discount (other than shares), premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise.

114. (1) Where any uncalled capital of the Company is charged, all persons taking any subsequent charge thereon shall take the same subject to such prior charge, and

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shall not be entitled, by Notice to the Members or otherwise, to obtain priority over such prior charge.

(2) The Board shall cause a proper register to be kept, in accordance with the provisions of the Act, of all charges specifically affecting the property of the Company and of any series of debentures issued by the Company and shall duly comply with the requirements of the Act in regard to the registration of charges and debentures therein specified and otherwise.

#### PROCEEDINGS OF THE DIRECTORS

115. The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it considers appropriate. Questions arising at any meeting shall be determined by a majority of votes. In the case of any equality of votes the chairman of the meeting shall have an additional or casting vote.

116. A meeting of the Board may be convened by the Secretary on request of a Director or by any Director. The Secretary shall convene a meeting of the Board of which Notice may be given in writing or by telephone or in such other manner including, but not limited to, the use of Instantaneous Communication Device referred to in Bye-law 122A as the Board may from time to time determine whenever he shall be required so to do by the president or chairman, as the case may be, or any Director.

117. (1) The quorum necessary for the transaction of the business of the Board, may be fixed by the Board and, unless so fixed at any other number, shall be two (2). An alternate Director shall be counted in a quorum in the case of the absence of a Director for whom he is the alternate provided that he shall not be counted more than once for the purpose of determining whether or not a quorum is present.

(2) Directors may participate in any meeting of the Board by means of a conference telephone, electronic or other communications equipment through which all persons participating in the meeting can communicate with each other simultaneously and instantaneously and, for the purpose of counting a quorum, such participation shall constitute presence at a meeting as if those participating were present in person.

(3) Any Director who ceases to be a Director at a Board meeting may continue to be present and to act as a Director and be counted in the quorum until the termination of such Board meeting if no other Director objects and if otherwise a quorum of Directors would not be present.

118. The continuing Directors or a sole continuing Director may act notwithstanding any vacancy in the Board but, if and so long as the number of Directors is reduced below the minimum number fixed by or in accordance with these Bye-laws, the continuing Directors or Director, notwithstanding that the number of Directors is below the number fixed by or in accordance with these Bye-laws as the quorum or that there is only one continuing Director, may act for the purpose of filling vacancies in the Board or of summoning general meetings

of the Company but not for any other purpose.

119. The Board may elect a chairman and one or more deputy chairman of its meetings and determine the period for which they are respectively to hold such office. If no chairman or deputy chairman is elected, or if at any meeting neither the chairman nor any deputy chairman is present within five (5) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.

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

121. (1) The Board may delegate any of its powers, authorities and discretions to committees, consisting of such Director or Directors and other persons as it thinks fit, and they may, from time to time, revoke such delegation or revoke the appointment of and discharge any such committees either wholly or in part, and either as to persons or purposes. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, conform to any regulations which may be imposed on it by the Board.

(2) All acts done by any such committee in conformity with such regulations, and in fulfilment of the purposes for which it was appointed, but not otherwise, shall have like force and effect as if done by the Board, and the Board shall have power, with the consent of the Company in general meeting, to remunerate the members of any such committee, and charge such remuneration to the current expenses of the Company.

122. The meetings and proceedings of any committee consisting of two or more committee members shall be governed by the provisions contained in these Bye-laws for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any regulations imposed by the Board under the last preceding Bye-law.

122A. The contemporaneous linking together by Instantaneous Communication Device of a number of consenting Directors not less than the quorum, whether or not any one or more of the Directors is overseas, is deemed to constitute a meeting of the Directors under these Bye-laws so long as the following conditions are met:

- (a) all the Directors entitled to receive the Notice of the meeting are entitled to Notice of a meeting by Instantaneous Communication Device and to be linked by Instantaneous Communication Device for the purposes of such meeting. Notice of any such meeting may be given by the Instantaneous Communication Device or in any other manner permitted by these Bye-laws;
- (b) at the commencement of the meeting each Director must acknowledge the Director's presence for the purposes of a meeting of the Directors to all the other Directors taking part;
- (c) for the duration of the meeting each of the Directors taking part in the meeting by Instantaneous Communication Device is able to hear each

- of the other Directors taking part;
- (d) no Director may leave the meeting by disconnecting the Director's Instantaneous Communication Device unless the Director has previously obtained the express consent of the chairman of the meeting. A Director is conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless the Director has previously obtained the express consent of the chairman of the meeting to leave the meeting; and
  - (e) a minute of the proceedings of a meeting by Instantaneous Communication Device is sufficient evidence of those proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman.

If a meeting of Directors by Instantaneous Communication Device is affected by technical difficulties, the chairman of the meeting may adjourn the meeting to a later date or time. Despite any such adjournment and unless otherwise determined by the chairman of the meeting, the minutes of the meeting recorded up to the point at which the meeting is adjourned will be deemed to be a true and correct record of the events that took place up to the point of such adjournment.

123. A resolution in writing signed by all the Directors except such as are temporarily unable to act through ill-health or disability, and all the alternate Directors, if appropriate, whose appointors are temporarily unable to act as aforesaid shall be as valid and effectual as if a resolution had been passed at a meeting of the Board duly convened and held provided that such number is sufficient to constitute a quorum and further provided that a copy of such resolution has been given or the contents thereof communicated to all the Directors for the time being entitled to receive Notices of Board meetings in the same manner as Notices of meetings are required to be given by these Bye-laws and further provided that no Director is aware of or has received any objection to the resolution from any Director. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the Directors or alternate Directors and for this purpose a facsimile signature of a Director or an alternate Director shall be treated as valid.

124. All acts bona fide done by the Board or by any committee or by any person acting as a Director or members of a committee, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any member of the Board or such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.

#### UNMARKETABLE SHAREHOLDINGS

124A. The Company is permitted to sell the shares of a Member who has less than a Marketable Parcel provided that:

- (a) the Company does so only once for each Member in any 12 month period;

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- (b) the Company notifies the Member in writing of its intention;
- (c) the Member is given at least 6 weeks from the date the Notice is sent in which to tell the Company that they wish to retain the shares and the Member has not done so;
- (d) no takeover offer has been announced or if a takeover offer has been announced, that takeover offer has closed;
- (e) either the Company or the purchaser pays the costs of the sale; and
- (f) the proceeds of the sale are not sent to the Member until the Company has received the certificate or certificates relating to the shares, if any, or is satisfied that any certificate or certificates have been lost or destroyed and the Member gives the Company a declaration and indemnity to that effect.

124B. The Board may:

- (a) exercise any powers permitted under the Applicable Law to enable the sale of shares;
- (b) on behalf of the Company, receive the purchase money or consideration for the sale of shares;
- (c) appoint a person to sign a transfer in respect of shares on behalf of the Company; and
- (d) enter in the Register of Members the name of the person to whom shares are sold,

Subject to the Applicable Law, the Company may sell any shares of a Member if the shares held by that Member are in a new holding created by a transfer on or after 1 September 1999 of a number of shares of that class that was less than a Marketable Parcel at the time:

- (i) a Proper ASTC Transfer was initiated; or
- (ii) a paper based transfer was lodged.

The Company must give that Member a Notice stating that the securities have been sold or disposed of.

#### MANAGERS

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125. The Board may from time to time appoint a general manager, a manager or managers of the Company and may fix his or their remuneration either by way of salary or commission or by conferring the right to participation in the profits of the Company or by a combination of two or more of these modes and pay the working expenses of any of the staff of the general manager, manager or managers who may be employed by him or them upon the business of the Company.

126. The appointment of such general manager, manager or managers may be for such period as the Board may decide, and the Board may confer upon him or them all or any of the powers of the Board as it may think fit.

127. The Board may enter into such agreement or agreements with any such general manager, manager or managers upon such terms and conditions in all respects as the Board may in their absolute discretion think fit, including a power for such general manager, manager or managers to appoint an assistant manager or managers or other employees whatsoever under them for the purpose of carrying on the business of the Company.

#### OFFICERS

128. (1) The officers of the Company shall consist of a president and vice-president or chairman and deputy chairman, the Directors and Secretary and such additional officers (who may or may not be Directors) as the Board may from time to time determine, all of whom shall be deemed to be officers for the purposes of the Act and these Bye-laws.

(2) The Directors shall, as soon as may be after each appointment or election of Directors, elect amongst the Directors a president and a vice-president or a chairman and a deputy chairman; and if more than one (1) Director is proposed for either of these offices, the election to such office shall take place in such manner as the Directors may determine.

(3) The officers shall receive such remuneration as the Directors may from time to time determine.

(4) Where the Company appoints and maintains a resident Representative ordinarily resident in Bermuda in accordance with the Act, the resident Representative shall comply with the provisions of the Act.

The Company shall provide the resident Representative with such documents and information as the resident Representative may require in order to be able to comply with the provisions of the Act.

The resident Representative shall be entitled to have Notice of, attend and be heard at all meetings of the Directors or of any committee of such Directors or general meetings of the Company.

129. (1) The Secretary and additional officers, if any, shall be appointed by the Board and shall hold office on such terms and for such period as the Board may determine. If thought fit, two (2) or more persons may be appointed as joint Secretaries. The Board may also appoint from time to time on such terms as it thinks fit one or more assistant or deputy Secretaries.

(2) The Secretary shall attend all meetings of the Members and shall keep correct minutes of such meetings and enter the same in the proper books provided for the purpose. He shall perform such other duties as are prescribed by the Act or these Bye-laws or as may be prescribed by the Board.

130. Subject to these Bye-laws, the president or the chairman, as the case may be, shall act as chairman at all meetings of the Members and of the Directors at which he is present.

131. The officers of the Company shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Directors from time to time.

132. A provision of the Act or of these Bye-laws requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as or in place of the Secretary.

#### REGISTER OF DIRECTORS AND OFFICERS

133. (1) The Board shall cause to be kept in one or more books at the Office a Register of Directors and Officers and shall enter therein the following particulars with respect to each Director and Officer, that is to say:

(a) in the case of an individual, his or her present first name, surname and address; and

(b) in the case of a company, its name and registered office.

(2) The Board shall within a period of fourteen (14) days from the occurrence of :

(a) any change among the Directors and Officers; or

(b) any change in the particulars contained in the Register of Directors and Officers,

cause to be entered on the Register of Directors and Officers the particulars of such change and of the date on which it occurred.

(3) The Register of Directors and Officers shall be open to inspection by

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members of the public without charge at the Office between 10:00 a.m. and 12:00 noon on every Business Day.

(4) In this Bye-law "Officer" has the meaning ascribed to it in Section 92A(7) of the Act.

#### MINUTES

134. (1) The Board shall cause Minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of officers;
  - (b) of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
  - (c) of all resolutions and proceedings of each general meeting of the Members and meetings of the Board.
- (2) Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the Office.

(3) The Company must ensure that Minutes of a meeting are signed within a reasonable time after the meeting by the chairman of that meeting.

#### SEAL

135. (1) The Company shall have one or more Seals, as the Board may determine. For the purpose of sealing documents creating or evidencing securities issued by the Company, the Company may have a securities seal which is a facsimile of the Seal with the addition of the words "Securities Seal" on its face or in such other form as the Board may approve. The Board shall provide for the custody of each Seal and no Seal shall be used without the authority of the Board or of a committee of the Board authorised by the Board in that behalf. Subject as otherwise provided in these Bye-laws, any instrument to which a Seal is affixed shall be signed autographically by one Director and the Secretary or by two Directors or by such other person (including a Director) or persons as the Board may appoint, either generally or in any particular case, save that as regards any certificates for shares or debentures or other securities of the Company the Board may by resolution determine that such signatures or either of them shall be dispensed with or affixed by some method or system of mechanical signature. Every instrument executed in the manner provided by this Bye-law shall be deemed to be sealed and executed with the authority of the Board previously given.

(2) Where the Company has a Seal for use abroad, the Board may by writing under the Seal appoint any agent or committee abroad to be the duly authorised agent of the Company for the purpose of affixing and using such Seal and the Board may impose restrictions on the use thereof as may be thought fit. Wherever in these Bye-laws reference is

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made to the Seal, the reference shall, when and so far as may be applicable, be deemed to include any such other Seal as aforesaid.

#### AUTHENTICATION OF DOCUMENTS

136. Any Director or the Secretary or any person appointed by the Board for the purpose may authenticate any documents affecting the constitution of the Company and any resolution passed by the Company or the Board or any committee, and any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or extracts, and if any books, records, documents or accounts are elsewhere than at the Office or the head office the local manager or other officer of the Company having the custody thereof shall be deemed to be a person so appointed by the Board. A document purporting to be a copy of a resolution, or an extract from the minutes of a meeting, of the Company or of the Board or any committee which is so certified shall be conclusive evidence in favour of all persons dealing with the Company upon the faith thereof that such resolution has been duly passed or, as the case may be, that such minutes or extract is a true and accurate record of proceedings at a duly constituted meeting.

#### DESTRUCTION OF DOCUMENTS

137. (1) The Company shall be entitled to destroy the following documents at the following times:

- (a) any share certificate which has been cancelled at any time after the expiry of one (1) year from the date of such cancellation;
- (b) any dividend mandate or any variation or cancellation thereof or any notification of change of name or address at any time after the expiry of two (2) years from the date such mandate variation cancellation or notification was recorded by the Company;
- (c) any instrument of transfer of shares which has been registered at any time after the expiry of seven (7) years from the date of registration;
- (d) any allotment letters after the expiry of seven (7) years from the date of issue thereof; and
- (e) copies of powers of attorney, grants of probate and letters of administration at any time after the expiry of seven (7) years after the account to which the relevant power of attorney, grant of probate or letters of administration related has been closed;

and it shall conclusively be presumed in favour of the Company that every entry in the Register purporting to be made on the basis of any such documents so destroyed was duly

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and properly made and every share certificate so destroyed was a valid certificate duly and properly cancelled and that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document destroyed hereunder was a valid and effective document in accordance with the recorded particulars thereof in the books or records of the Company. Provided always that: (1) the foregoing provisions of this Bye-law shall apply only to the destruction of a document in good faith and without express notice to the Company that the preservation of such document was relevant to a claim; (2) nothing contained in this Bye-law shall be construed as imposing upon the Company any liability in respect of the destruction of any such document earlier than as aforesaid or in any case where the conditions of proviso (1) above are not fulfilled; and (3) references in this Bye-law to the destruction of any document include references to its disposal in any manner.

(2) Notwithstanding any provision contained in these Bye-laws, the Directors may authorise the destruction of documents set out in sub-paragraphs (a) to (e) of paragraph (1) of this Bye-law and any other documents in relation to share registration which have been microfilmed or electronically stored by the Company or by the share registrar on its behalf provided always that this Bye-law shall apply only to the destruction of a document in good faith and without express notice to the Company and its share registrar that the preservation of such document was relevant to a claim.

#### DIVIDENDS AND OTHER PAYMENTS

138. Subject to the Act and the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, the Company in general meeting may from time to time declare dividends in any currency to be paid to the Members but no dividend shall be declared in excess of the amount recommended by the Board. The Company in general meeting may also make a distribution to the Members out of any contributed surplus (as ascertained in accordance with the Act).

139. No dividend shall be paid or distribution made out of contributed surplus if to do so would render the Company unable to pay its liabilities as they become due or the realisable value of its assets would thereby become less than the aggregate of its liabilities and its issued share capital and share premium accounts.

140. Except in so far as the rights attaching to, or the terms of issue of, any share otherwise provide:

- (a) all dividends shall be declared and paid according to the amounts paid up on the shares in respect of which the dividend is paid, but no amount paid up on a share in advance of calls shall be treated for the purposes of this Bye-law as paid up on the share; and
- (b) all dividends shall be apportioned and paid pro rata according to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

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141. The Board may from time to time pay to the Members such interim dividends as appear to the Board to be justified by the profits of the Company and in particular (but without prejudice to the generality of the foregoing) if at any time the share capital of the Company is divided into different classes, the Board may pay such interim dividends in respect of those shares in the capital of the Company which confer on the holders thereof deferred or non-preferential rights as well as in respect of those shares which confer on the holders thereof preferential rights with regard to dividend and provided that the Board acts bona fide the Board shall not incur any responsibility to the holders of shares conferring any preference for any damage that they may suffer by reason of the payment of an interim dividend on any shares having deferred or non-preferential rights and may also pay any fixed dividend which is payable on any shares of the Company half-yearly or on any other dates, whenever such profits, in the opinion of the Board, justifies such payment.

142. The Board may deduct from any dividend or other moneys payable to a Member by the Company on or in respect of any shares all sums of money (if any) presently payable by him to the Company on account of calls or otherwise.

143. No dividend or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.

144. Any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first in the Register in respect of the shares at his address as appearing in the Register or addressed to such person and at such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the Register in respect of such shares, and shall be sent at his or their risk and payment of the cheque or warrant by the bank on which it is drawn shall constitute a good discharge to the Company notwithstanding that it may subsequently appear that the same has been stolen or that any endorsement thereon has been forged. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable or property distributable in respect of the shares held by such joint holders.

145. All dividends or bonuses unclaimed for one (1) year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. Any dividend or bonuses unclaimed after a period of six (6) years from the date of declaration shall be forfeited and shall revert to the Company. The payment by the Board of any unclaimed dividend or other sums payable on or in respect of a share into a separate account shall not constitute the Company a trustee in respect thereof.

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146. Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared, the Board may further resolve that such dividend be satisfied wholly or in part by the distribution of specific assets of any kind and in particular of paid up shares, debentures or warrants to subscribe securities of the Company or any other company, or in any one or more of such ways, and where any difficulty arises in regard to the

distribution the Board may settle the same as it thinks expedient, and in particular may issue certificates in respect of fractions of shares, disregard fractional entitlements or round the same up or down, and may fix the value for distribution of such specific assets, or any part thereof, and may determine that cash payments shall be made to any Members upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Board and may appoint any person to sign any requisite instruments of transfer and other documents on behalf of the persons entitled to the dividend, and such appointment shall be effective and binding on the Members. The Board may resolve that no such assets shall be made available to Members with registered addresses in any particular territory or territories where, in the absence of a registration statement or other special formalities, such distribution of assets would or might, in the opinion of the Board, be unlawful or impracticable and in such event the only entitlement of the Members aforesaid shall be to receive cash payments as aforesaid. Members affected as a result of the foregoing sentence shall not be or be deemed to be a separate class of Members for any purpose whatsoever.

147. (1) Whenever the Board or the Company in general meeting has resolved that a dividend be paid or declared on any class of the share capital of the Company, the Board may further resolve either:

- (a) that such dividend be satisfied wholly or in part in the form of an allotment of shares credited as fully paid up, provided that the Members entitled thereto will be entitled to elect to receive such dividend (or part thereof if the Board so determines) in cash in lieu of such allotment. In such case, the following provisions shall apply:
  - (i) the basis of any such allotment shall be determined by the Board;
  - (ii) the Board, after determining the basis of allotment, shall give not less than two (2) weeks' Notice to the holders of the relevant shares of the right of election accorded to them and shall send with such Notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;
  - (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and
  - (iv) the dividend (or that part of the dividend to be satisfied by the allotment of shares as aforesaid) shall not be payable in cash on shares in respect whereof the cash election has not been duly exercised ("the non-elected shares") and in satisfaction thereof shares of the relevant class shall be allotted credited as fully paid up to the holders of the non-elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the

credit of any reserves or other special account other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares of the relevant class for allotment and distribution to and amongst the holders of the non-elected shares on such basis; or

- (b) that the Members entitled to such dividend shall be entitled to elect to receive an allotment of shares credited as fully paid up in lieu of the whole or such part of the dividend as the Board may think fit. In such case, the following provisions shall apply:
- (i) the basis of any such allotment shall be determined by the Board;
  - (ii) the Board, after determining the basis of allotment, shall give not less than two (2) weeks' Notice to the holders of the relevant shares of the right of election accorded to them and shall send with such Notice forms of election and specify the procedure to be followed and the place at which and the latest date and time by which duly completed forms of election must be lodged in order to be effective;
  - (iii) the right of election may be exercised in respect of the whole or part of that portion of the dividend in respect of which the right of election has been accorded; and
  - (iv) the dividend (or that part of the dividend in respect of which a right of election has been accorded) shall not be payable in cash on shares in respect whereof the share election has been duly exercised ("the elected shares") and in lieu thereof shares of the relevant class shall be allotted credited as fully paid up to the holders of the elected shares on the basis of allotment determined as aforesaid and for such purpose the Board shall capitalise and apply out of any part of the undivided profits of the Company (including profits carried and standing to the credit of any reserves or other special account other than the Subscription Rights Reserve) as the Board may determine, such sum as may be required to pay up in full the appropriate number of shares of the relevant class for allotment and distribution to and amongst the holders of the elected shares on such basis.
- (2) (a) The shares allotted pursuant to the provisions of paragraph (1) of this Bye-law shall rank *pari passu* in all respects with shares of the same class (if any) then in issue save only as regards participation in the relevant dividend or in any other distributions, bonuses or rights paid, made, declared or announced prior to or contemporaneously with the payment or declaration of the relevant dividend unless, contemporaneously with the announcement by the Board of

their proposal to apply the provisions of sub-paragraph (a) or (b) of paragraph (2) of this Bye-law in relation to the relevant dividend or contemporaneously with their announcement of the distribution, bonus or rights in question, the Board shall specify that the shares to be allotted pursuant to the provisions of paragraph (1) of this Bye-law shall rank for participation in such distribution, bonus or rights.

(b) The Board may do all acts and things considered necessary or expedient to give effect to any capitalisation pursuant to the provisions of paragraph (1) of this Bye-law, with full power to the Board to make such provisions as it thinks fit in the case of shares becoming distributable in fractions (including provisions whereby, in whole or in part, fractional entitlements are aggregated and sold and the net proceeds distributed to those entitled, or are disregarded or rounded up or down or whereby the benefit of fractional entitlements accrues to the Company rather than to the Members concerned). The Board may authorise any person to enter into on behalf of all Members interested, an agreement with the Company providing for such capitalisation and matters incidental thereto and any agreement made pursuant to such authority shall be effective and binding on all concerned.

(3) The Company may upon the recommendation of the Board by ordinary resolution resolve in respect of any one particular dividend of the Company that notwithstanding the provisions of paragraph (1) of this Bye-law a dividend may be satisfied wholly in the form of an allotment of shares credited as fully paid up without offering any right to Members to elect to receive such dividend in cash in lieu of such allotment.

(4) The Board may on any occasion determine that rights of election and the allotment of shares under paragraph (1) of this Bye-law shall not be made available or made to any Members with registered addresses in any territory where, in the absence of a registration statement or other special formalities, the circulation of an offer of such rights of election or the allotment of shares would or might, in the opinion of the Board, be unlawful or impracticable, and in such event the provisions aforesaid shall be read and construed subject to such determination. Members affected as a result of the foregoing sentence shall not be or be deemed to be a separate class of Members for any purpose whatsoever.

(5) Any resolution declaring a dividend on shares of any class, whether a resolution of the Company in general meeting or a resolution of the Board, may specify that the same shall be payable or distributable to the persons registered as the holders of such shares at the close of business on a particular date, notwithstanding that it may be a date prior to that on which the resolution is passed, and thereupon the dividend shall be payable or distributable to them in accordance with their respective holdings so registered, but without

prejudice to the rights inter in respect of such dividend of transferors and transferees of any such shares. The provisions of this Bye-law shall mutatis mutandis apply to bonuses, capitalisation issues, distributions of realised capital profits or offers or grants made by the Company to the Members.

(6) If a breach of the rules of the Designated Stock Exchange or Secondary Stock Exchange occurs in relation to shares which are Restricted Securities or a breach of any Restriction Agreement in relation to those shares occurs, the Member holding such shares will cease to be entitled to any dividends or distributions in respect of those shares for as long as the breach subsists.

### RESERVES

148. Before recommending any dividend, the Board may set aside out of the profits of the Company such sums as it determines as reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the Company may be properly applied and pending such application may, also at such discretion, either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit and so that it shall not be necessary to keep any investments constituting the reserve or reserves separate or distinct from any other investments of the Company. The Board may also without placing the same to reserve carry forward any profits which it may think prudent not to distribute.

### CAPITALISATION

149. The Company may, upon the recommendation of the Board, at any time and from time to time pass an ordinary resolution to the effect that it is desirable to capitalise all or any part of any amount for the time being standing to the credit of any reserve or fund (including the profit and loss account) whether or not the same is available for distribution and accordingly that such amount be set free for distribution among the Members or any class of Members who would be entitled thereto if it were distributed by way of dividend and in the same proportions, on the footing that the same is not paid in cash but is applied either in or towards paying up the amounts for the time being unpaid on any shares in the Company held by such Members respectively or in paying up in full unissued shares, debentures or other obligations of the Company, to be allotted and distributed credited as fully paid up among such Members, or partly in one way and partly in the other, and the Board shall give effect to such resolution provided that, for the purposes of this Bye-law, a share premium account and any reserve or fund representing unrealised profits, may be applied only in paying up in full unissued shares of the Company to be allotted to such Members credited as fully paid. In carrying sums to reserve and in applying the same the Board shall comply with the provisions of the Act.

150. The Board may settle, as it considers appropriate, any difficulty arising in regard to any distribution under the last preceding Bye-law and in particular may issue certificates in respect of fractions of shares or authorise any person to sell and transfer any fractions or may resolve that the distribution should be as nearly as may be practicable in the correct proportion but not exactly so or may ignore fractions altogether, and may determine that cash payments shall be made to any Members in order to adjust the rights of all parties, as may seem expedient to the Board. The Board may appoint any person to sign on behalf of the persons entitled to participate in the distribution any contract necessary or desirable for giving effect thereto and such appointment shall be effective and binding upon the Members.

### SUBSCRIPTION RIGHTS RESERVE

151. The following provisions shall have effect to the extent that they are not prohibited by and are in compliance with the Act:

(1) If, so long as any of the rights attached to any warrants issued by the Company to subscribe for shares of the Company shall remain exercisable, the Company does any act or engages in any transaction which, as a result of any adjustments to the subscription price in accordance with the provisions of the conditions of the warrants, would reduce the subscription price to below the nominal value of a share, then the following provisions shall apply:

- (a) as from the date of such act or transaction the Company shall establish and thereafter (subject as provided in this Bye-law) maintain in accordance with the provisions of this Bye-law a reserve (the "Subscription Rights Reserve") the amount of which shall at no time be less than the sum which for the time being would be required to be capitalised and applied in paying up in full the nominal amount of the

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additional shares required to be issued and allotted credited as fully paid pursuant to sub- paragraph (c) below on the exercise in full of all the subscription rights outstanding and shall apply the Subscription Rights Reserve in paying up such additional shares in full as and when the same are allotted;

- (b) the Subscription Rights Reserve shall not be used for any purpose other than that specified above unless all other reserves of the Company (other than share premium account) have been extinguished and will then only be used to make good losses of the Company if and so far as is required by law;
- (c) upon the exercise of all or any of the subscription rights represented by any warrant, the relevant subscription rights shall be exercisable in respect of a nominal amount of shares equal to the amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be the relevant portion thereof in the event of a partial exercise of the subscription rights) and, in addition, there shall be allotted in respect of such subscription rights to the exercising warrant holder, credited as fully paid, such additional nominal amount of shares as is equal to the difference between:
  - (i) the said amount in cash which the holder of such warrant is required to pay on exercise of the subscription rights represented thereby (or, as the case may be, the relevant portion thereof in the event of a partial exercise of the subscription rights); and
  - (ii) the nominal amount of shares in respect of which such subscription rights would have been exercisable having regard to the provisions of the conditions of the warrants, had it been possible for such subscription rights to represent the right to subscribe for shares at less than par

and immediately upon such exercise so much of the sum standing to the credit of the Subscription Rights Reserve as is required to pay up in full such additional nominal amount of shares shall be capitalised and applied in paying up in full such additional nominal amount of shares which shall forthwith be allotted credited as fully paid to the exercising warrant holders; and

- (d) if, upon the exercise of the subscription rights represented by any warrant, the amount standing to the credit of the Subscription Rights Reserve is not sufficient to pay up in full such additional nominal amount of shares equal to such difference as aforesaid to which the exercising warrant holder is entitled, the Board shall apply any profits

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or reserves then or thereafter becoming available (including, to the extent permitted by law, share premium account) for such purpose until such additional nominal amount of shares is paid up and allotted as aforesaid and until then no dividend or other distribution shall be paid or made on the fully paid shares of the Company then in issue. Pending such payment and allotment, the exercising warrant holder shall be issued by the Company with a certificate evidencing his right to the allotment of such additional nominal amount of shares. The rights represented by any such certificate shall be in registered form and shall be transferable in whole or in part in units of one share in the like manner as the shares for the time being are transferable, and the Company shall make such arrangements in relation to the maintenance of a register therefore and other matters in relation thereto as the Board may think fit and adequate particulars thereof shall be made known to each relevant exercising warrant holder upon the issue of such certificate.

(2) Shares allotted pursuant to the provisions of this Bye-law shall rank *pari passu* in all respects with the other shares allotted on the relevant exercise of the subscription rights represented by the warrant concerned. Notwithstanding anything contained in paragraph (1) of this Bye-law, no fraction of any share shall be allotted on exercise of the subscription rights.

(3) The provision of this Bye-law as to the establishment and maintenance of the Subscription Rights Reserve shall not be altered or added to in any way which would vary or abrogate, or which would have the effect of varying or abrogating the provisions for the benefit of any warrant holder or class of warrant holders under this Bye-law without the sanction of a special resolution of such warrant holders or class of warrant holders.

(4) A certificate or report by the auditors for the time being of the Company as to whether or not the Subscription Rights Reserve is required to be established and maintained and if so the amount thereof so required to be established and maintained, as to the purposes for which the Subscription Rights Reserve has been used, as to the extent to which it has been used to make good losses of the Company, as to the additional nominal amount of shares required to be allotted to exercising warrant holders credited as fully paid, and as to any other matter concerning the Subscription Rights Reserve shall (in the absence of manifest error) be conclusive and binding upon the Company and all warrant holders and Members.

#### ACCOUNTING RECORDS

152. The Board shall cause true accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place, and of the property, assets, credits and liabilities of the Company and of all other matters required by the Act or necessary to give a true and fair view of the Company's affairs and to explain its transactions.

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153. The accounting records shall be kept at the Office or, subject to the Act, at such other place or places as the Board decides and shall always be open to inspection by the Directors. No Member (other than a Director) shall have any right of inspecting any accounting record or book or document of the Company except as conferred by law or authorised by the Board or the Company in general meeting.

154. Subject to Section 88 of the Act and Bye-law 154A, a printed copy of the Directors' report, accompanied by the balance sheet and profit and loss account, including every document required by law to be annexed thereto, made up to the end of the applicable financial year and containing a summary of the assets and liabilities of the Company under convenient heads and a statement of income and expenditure, together with a copy of the Auditors' report, shall be sent to each person entitled thereto at least twenty-one (21) days before the date of the general meeting and laid before the Company in general meeting in accordance with the requirements of the Act provided that this Bye-law shall not require a copy of those documents to be sent to any person whose address the Company is not aware of or to more than one of the joint holders of any shares or debentures.

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154A. To the extent permitted by and subject to due compliance with all applicable Statutes, rules and regulations, including, without limitation, the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, and to obtaining all necessary consents, if any, required thereunder, the requirements of Bye-law 154 shall be deemed satisfied in relation to any person by sending to the person in any manner not prohibited by the Statutes, a summary financial statement derived from the Company's annual accounts and the directors' report which shall be in the form and containing the information required by Applicable Laws and regulations, provided that any person who is otherwise entitled to the annual financial statements of the Company and the directors' report thereon may, if he so requires by Notice in writing served on the Company, demand that the Company sends to him, in addition to a summary financial statement, a complete printed copy of the Company's annual financial statement and the directors' report thereon.

154B. The requirement to send to a person referred to in Bye-law 154 the documents referred to in that provision or a summary financial report in accordance with Bye-law 154A shall be deemed satisfied where, in accordance with all applicable Statutes, rules and regulations, including, without limitation, the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, the Company publishes copies of the documents referred to in Bye-law 154 and, if applicable, a summary financial report complying with Bye-law 154A, on the Company's computer network or in any other permitted manner (including by sending any form of electronic communication), and that person has agreed or is deemed to have agreed to treat the publication or receipt of such documents in such manner as discharging the Company's obligation to send to him a copy of such documents.

#### AUDIT

155. (1) Subject to Section 88 of the Act, at the annual general meeting or at a

subsequent special general meeting in each year, the Members shall appoint an auditor to audit the accounts of the Company and such auditor shall hold office until the Members appoint another auditor. Such auditor may be a Member but no Director or officer or employee of the Company shall, during his continuance in office, be eligible to act as an auditor of the Company.

(2) Subject to Section 89 of the Act, a person, other than an incumbent Auditor, shall not be capable of being appointed Auditor at an annual general meeting unless Notice in writing of an intention to nominate that person to the office of Auditor has been given not less than twenty-one (21) days before the annual general meeting and furthermore, the Company shall send a copy of any such notice to the incumbent Auditor.

(3) The Members may, at any general meeting convened and held in accordance with these Bye-laws, by special resolution remove the Auditor at any time before the expiration of his term of office and shall by ordinary resolution at that meeting appoint another Auditor in his stead for the remainder of his term.

156. Subject to Section 88 of the Act the accounts of the Company shall be audited at least once in every year.

157. The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine.

158. If the office of auditor becomes vacant by the resignation or death of the Auditor, or by his becoming incapable of acting by reason of illness or other disability at a time when his services are required, the Directors shall fill the vacancy and fix the remuneration of the Auditor so appointed.

159. The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto; and he may call on the Directors or officers of the Company for any information in their possession relating to the books or affairs of the Company.

160. The statement of income and expenditure and the balance sheet provided for by these Bye-laws shall be examined by the Auditor and compared by him with the books, accounts and vouchers relating thereto; and he shall make a written report thereon stating whether such statement and balance sheet are drawn up so as to present fairly the financial position of the Company and the results of its operations for the period under review and, in case information shall have been called for from Directors or officers of the Company, whether the same has been furnished and has been satisfactory. The financial statements of the Company shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards and the report of the Auditor shall be submitted to the Members in general meeting. The generally accepted auditing standards referred to herein may be those of a country or jurisdiction other than Bermuda. If the auditing standards of a country or jurisdiction other than Bermuda are used, the financial statements and the report of the Auditor should disclose this fact and name such country or jurisdiction.

NOTICES

161. Any Notice or document (including any “corporate communication” within the meaning ascribed thereto under the rules of the Designated Stock Exchange and where applicable the Secondary Stock Exchange), whether or not, to be given or issued under these Bye-laws from the Company to a Member shall be in writing or by cable, telex or facsimile transmission message or other form of electronic transmission or communication and any such Notice and document may be served or delivered by the Company on or to any Member either personally or by sending it through the post in a prepaid envelope addressed to such Member at his registered address as appearing in the Register or at any other address supplied by him to the Company for the purpose or, as the case may be, by transmitting it to any such address or transmitting it to any telex or facsimile transmission number or electronic number or address or website supplied by him to the Company for the giving of Notice to him or which the person transmitting the Notice reasonably and bona fide believes at the relevant time will result in the Notice being duly received by the Member or may also be served by advertisement in appointed newspapers (as defined in the Act) or in newspapers published daily and circulating generally in the territory of and in accordance with the requirements of the Designated Stock Exchange and where applicable the Secondary Stock Exchange or by placing it on the Company’s website or the website of the Designated Stock Exchange and where applicable the Secondary Stock Exchange and giving to the member a Notice stating that the Notice or other document is available there (a “notice of availability”). The notice of availability may be given to the Member by any of the means set out above. In the case of joint holders of a share all Notices shall be given to that one of the joint holders whose name stands first in the Register and notice so given shall be deemed a sufficient service on or delivery to all the joint holders.

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162. Any Notice or other document:

- (a) if served or delivered by post, shall where appropriate be sent by airmail and shall be deemed to have been served or delivered on the day following that on which the envelope containing the same, properly prepaid and addressed, is put into the post; in proving such service or delivery it shall be sufficient to prove that the envelope or wrapper containing the notice or document was properly addressed and put into the post and a certificate in writing signed by the Secretary or other officer of the Company or other person appointed by the Board that the envelope or wrapper containing the notice or other document was so addressed and put into the post shall be conclusive evidence thereof;
- (b) if sent by electronic communication, shall be deemed to be given on the day on which it is transmitted from the server of the Company or its agent. A Notice placed on the Company’s website or the website of the Designated Stock Exchange and where applicable the Secondary Stock Exchange, is deemed given by the Company to a Member on the day following that on which a Notice of availability is deemed served on the Member; and
- (c) if served or delivered in any other manner contemplated by these Bye-laws, shall be deemed to have been served or delivered at the time

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of personal service or delivery or, as the case may be, at the time of the relevant despatch, transmission or publication; and in proving such service or delivery a certificate in writing signed by the Secretary or other officer of the Company or other person appointed by the Board as to the fact and time of such service, delivery, despatch, transmission or publication shall be conclusive evidence thereof.

163. (1) Any Notice or other document delivered or sent by post to or left at the registered address of any Member in pursuance of these Bye-laws shall, notwithstanding that such Member is then dead or bankrupt or that any other event has occurred, and whether or not the Company has notice of the death or bankruptcy or other event, be deemed to have been duly served or delivered in respect of any share registered in the name of such Member as sole or joint holder unless his name shall, at the time of the service or delivery of the notice or document, have been removed from the Register as the holder of the share, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such Notice or document on all persons interested (whether jointly with or as claiming through or under him) in the share.

(2) A notice may be given by the Company to the person entitled to a share in consequence of the death, mental disorder or bankruptcy of a Member by sending it through the post in a prepaid letter, envelope or wrapper addressed to him by name, or by the title of representative of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, mental disorder or bankruptcy had not occurred.

(3) Any person who by operation of law, transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which prior to his name and address being entered on the Register shall have been duly given to the person from whom he derives his title to such share.

#### SIGNATURES

164. For the purposes of these Bye-laws, a cable or telex or facsimile or electronic transmission message purporting to come from a holder of shares or, as the case may be, a Director or alternate Director, or, in the case of a corporation which is a holder of shares from a director or the secretary thereof or a duly appointed attorney or duly authorised Representative thereof for it and on its behalf, shall in the absence of express evidence to the contrary available to the person relying thereon at the relevant time be deemed to be a document or instrument in writing signed by such holder or Director or alternate Director in the terms in which it is received.

#### WINDING UP

165. (1) Subject to the Act and any rights or restrictions attached to a class of shares, the Board shall have power in the name and on behalf of the Company to present a petition to the court for the Company to be wound up.

(2) A resolution that the Company be wound up by the court or be wound

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up voluntarily shall be a special resolution.

166. If the Company shall be wound up (whether the liquidation is voluntary or by the court) the liquidator may, with the authority of a special resolution and any other sanction required by the Act, divide among the Members in specie or kind the whole or any part of the assets of the Company and whether or not the assets shall consist of properties of one kind or shall consist of properties to be divided as aforesaid of different kinds, and may for such purpose set such value as he deems fair upon any one or more class or classes of property and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of the Members as the liquidator with the like authority shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no contributory shall be compelled to accept any shares or other property in respect of which there is a liability.

#### INDEMNITY

167. (1) The Directors, Secretary and other officers and every Auditor for the time being of the Company and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company and everyone of them, and everyone of their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages and expenses (including legal expenses) which they or any of them, their or any of their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, in their respective offices or trusts; and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto; PROVIDED THAT this indemnity shall not extend to any matter in respect of any fraud or dishonesty which may attach to any of said persons.

(2) Each Member agrees to waive any claim or right of action he might have, whether individually or by or in the right of the Company, against any Director on account of any action taken by such Director, or the failure of such Director to take any action in the performance of his duties with or for the Company; PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director.

(3) To the extent permitted by the Act, the Company may pay, or agree to pay, a premium for a contract insuring the Directors, Secretary and other officers against:-

- (i) a liability incurred by that person as an officer of the Company or a subsidiary; and
- (ii) legal costs of that person.

To the extent permitted by the Act, the Company may enter into an agreement or deed with a relevant officer or a person who is, or has been, an officer of a subsidiary, under which the Company must do all or any of the following:

- (i) keep books of the Company and allow either (or both) that person and that person's advisers access to such books on the terms agreed;
- (ii) indemnify that person against any liability incurred by that person as an officer of the Company or a subsidiary;
- (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of legal costs; and
- (iv) keep that person insured in respect of any act or omission by that person while a relevant officer or an officer of a subsidiary, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

#### ALTERATION OF BYE-LAWS AND AMENDMENT TO MEMORANDUM OF ASSOCIATION AND NAME OF COMPANY

168. No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Directors and confirmed by a special resolution of the Members. A special resolution shall be required to alter the provisions of the memorandum of association or to change the name of the Company.

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#### INFORMATION

169. No Member shall be entitled to require discovery of or any information in respect of any detail of the Company's trading or any matter which is or may be in the nature of a trade secret or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors it will be inexpedient in the interests of the members of the Company to communicate to the public.

#### MISCELLANEOUS PROVISIONS OF THE DESIGNATED STOCK EXCHANGE

If any of any securities of the Company are listed or quoted on the Designated Stock Exchange then the following clauses apply:

- 170. (1) Notwithstanding anything contained in these Bye-laws, if the rules of the Designated Stock Exchange prohibit an act being done, the act shall not be done.
- (2) Nothing contained in these Bye-laws prevents an act being done that the rules of the Designated Stock Exchange require to be done.

- (3) If the rules of the Designated Stock Exchange require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (4) If the rules of the Designated Stock Exchange require these Bye-laws to contain a provision, these Bye-laws are deemed to contain that provision.
- (5) If the rules of the Designated Stock Exchange require these Bye-laws not to contain a provision and it contains such a provision, these Bye-laws are deemed not to contain that provision.
- (6) If any provision of these Bye-laws is or becomes inconsistent with the rules of the Designated Stock Exchange, these Bye-laws are deemed not to contain that provision to the extent of the inconsistency.

To the extent permitted by the Applicable Law, the replaceable rules in the Corporations Act do not apply to the Company (except so far as they are repeated in these Bye-laws).