



Abalone Investment Ltd

Constitution

CONTENTS

1.	Replaceable rules	1
2.	Listing Rules	1
3.	Directors	1
3.1	Number of Directors	1
3.2	Founding Directors	2
3.3	Qualifications	2
3.4	Appointment by the Board	2
3.5	Election by general meeting	2
3.6	Term of appointment	3
3.7	Eligible candidates	4
3.8	Chairman	4
3.9	Cessation of Director's appointment	4
3.10	Removal from office	5
4.	Alternate Directors	5
4.1	Appointment	5
4.2	Notice of Board meetings	5
4.3	Obligations and entitlements of Alternate Directors	5
4.4	Termination of appointment	6
4.5	Form of appointments and revocation	6
5.	Powers of the Board	6
5.1	Powers generally	6
5.2	Power to borrow	6
5.3	Power to give security	6
5.4	Power to indemnify officers	7
6.	Executing negotiable instruments	7
7.	Managing Director	7
7.1	Appointment of Managing Director	7
7.2	Removal of Managing Director	7
7.3	Termination of appointment of Managing Director	7
8.	Delegation of Board powers	7
8.1	Power to delegate	7
8.2	Power to revoke delegation	8
8.3	Terms of delegation	8
8.4	Proceedings of committees	8
9.	Directors duties and interests	8
9.1	Compliance with duties under the Act	8
9.2	Directors of wholly-owned subsidiaries	8

9.3	Director entitled to hold other offices	9
9.4	Directors may contract with the Company	9
9.5	Disclosure of interests	9
9.6	Agreements with third parties	9
9.7	Confidentiality	10
10. Directors' remuneration		10
10.1	Remuneration of Executive Directors	10
10.2	Remuneration of non-executive Directors	10
10.3	Additional remuneration for extra services	11
10.4	Expenses	11
10.5	Retirement benefits	11
11. Officers' indemnity and insurance		11
11.1	Indemnity	11
11.2	Insurance	12
12. Board meetings		12
12.1	Convening Board meetings	12
12.2	Notice	12
12.3	Use of technology	12
12.4	Chairing Board meetings	13
12.5	Quorum	13
12.6	Resolutions	13
12.7	Flying minutes	13
12.8	Valid proceedings	14
13. Meetings of Members		14
13.1	Annual general meeting	14
13.2	Calling meetings of Members	14
13.3	Notice of meeting	14
13.4	Postponement or cancellation	15
13.5	Technology	15
13.6	Non-receipt	15
13.7	Class meetings	15
14. Proceedings at meetings of Members		15
14.1	Member present at meeting	15
14.2	Quorum	15
14.3	Quorum not present	16
14.4	Chairing meetings of Members	16
14.5	Right to attend meetings of Members	16
14.6	Suspension of Member's rights	16
14.7	Chairperson's powers	17
14.8	Adjournment	17
15. Proxies, attorneys and representatives		18
15.1	Appointment of proxies	18

15.2	Member's attorney	18
15.3	Corporate representatives	18
15.4	Notification of appointment	18
15.5	Standing appointments	18
15.6	Suspension of proxy or attorney's powers	19
15.7	Priority of conflicting appointments of attorney or representative	19
16.	Entitlement to vote	19
16.1	Voting on a show of hands	19
16.2	When a poll may be demanded	19
16.3	Voting on a poll	20
16.4	Voting rights	20
16.5	Votes of joint holders	20
16.6	Voting restrictions	20
16.7	Decision on right to vote	21
17.	Secretary	21
17.1	Appointment of Secretary	21
17.2	Terms and conditions of office	21
17.3	Cessation of Secretary's appointment	21
17.4	Removal from office	21
18.	Minutes	22
18.1	Minutes must be kept	22
18.2	Minutes as evidence	22
18.3	Inspection of minute books	22
19.	Company seal	23
19.1	Common seal	23
19.2	Use of seals	23
19.3	Fixing seals to documents	23
20.	Shares	23
20.1	Issue at discretion of Board	23
20.2	Preference and Redeemable Preference Shares	24
20.3	Surrender of shares	24
20.4	Brokerage and commissions	24
20.5	Variation of rights	24
20.6	Certificates	25
21.	Partly paid shares	25
21.1	Power to make calls	25
21.2	When a call is made	25
21.3	Interest on late payment	25
21.4	Instalments	25
21.5	Joint holders	26
22.	Forfeiture	26

22.1	Notice requiring payment	26
22.2	Forfeiture for non-compliance	26
22.3	Notification of forfeiture	26
22.4	Disposal and annulment	27
22.5	Effect of forfeiture	27
22.6	Mortgage of uncalled capital	27
23.	Company liens	28
23.1	Existence of liens	28
23.2	Sale of shares to enforce lien	28
23.3	Indemnity for payments required to be made by the Company	28
24.	Dividends	29
24.1	Declaration of dividend	29
24.2	Amount of dividend	29
24.3	Accumulation of reserves	29
24.4	Dividends must be paid out of profits	30
24.5	Dividends in kind	30
24.6	Source of dividends	30
24.7	Method of payment	30
24.8	Joint holders' receipt	31
24.9	Retention of dividends by the Company	31
24.10	No interest on dividends	31
25.	Share plans	31
25.1	Implementing share plans	31
25.2	Varying, suspending or terminating share plans	32
26.	Transfer of shares	32
26.1	Modes of transfer	32
26.2	Delivery of transfer and certificate	32
26.3	Refusal to register transfer	32
26.4	Transferor remains holder until transfer registered	33
27.	Transmission of shares	33
27.1	Death of joint holder	33
27.2	Death of single holder	33
27.3	Transmission of shares on insolvency or mental incapacity	33
27.4	Refusal to register holder	34
28.	Alteration of share capital	34
28.1	Capitalisation of profits	34
28.2	Adjustment of capitalised amounts	34
28.3	Conversion of shares	34
28.4	Adjustments on conversion	35
28.5	Reduction of capital	35
29.	Winding up	35

29.1	Entitlement of Members	35
29.2	Distribution of assets generally	35
29.3	No distribution of liabilities	36
29.4	Distribution not in accordance with legal rights	36

30.	Notices	36
30.1	Form of notices	36
30.2	Method and address for giving notices	36
30.3	Notices by hand or email	37
30.4	Notices by post	37
30.5	Notices by facsimile	37
30.6	Signatures	37
30.7	Overseas Members	38
30.8	Notice to joint holders	38
30.9	Notices to "lost" Members	38

31.	Unclaimed money	38
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Schedule 1	– Dictionary	39
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Schedule 2	– Rules for interpretation	41
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Schedule 3	– Terms of issue of preference shares	42
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TERMS

1. Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this Constitution.

2. Listing Rules

If the Company is admitted to the official list of the ASX, then the following applies:

- (a) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, then authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, then this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, then this Constitution is deemed not to contain that provision to the extent of the inconsistency.

3. Directors

3.1 Number of Directors

- (a) The Company must have a minimum of three Directors.
- (b) The maximum number of Directors of the Company will be determined by the Board from time to time.

- (c) If the number of Directors at any time falls below the minimum number required by clause 3.1(a), then the Board may only act—
 - (i) to appoint new Directors so the Company has the minimum number of Directors required by clause 3.1(a)
 - (ii) to convene a meeting of Members, or
 - (iii) in emergencies.

3.2 Founding Directors

The following people will be the founding Directors of the Company from the time of its incorporation:

- (a) Richard James Watson.
- (b) David Gerard Mazengarb.
- (c) Paul Leonard Charles Kelly.

3.3 Qualifications

- (a) A Director must be a natural person and at least 18 years of age.
- (b) A Director is not required to be a Member of the Company.

3.4 Appointment by the Board

- (a) To the extent permitted by the Act, and subject to the maximum number of Directors determined by the Board under clause 3.1(b) not being exceeded, the Board may appoint a new Director at any time other than during a general meeting.
- (b) Further, and subject to clause 3.1(b), the Directors may appoint any person as a Director to fill a casual vacancy. Any person appointed under this clause 3.4(b) holds office until the next general meeting when an election will be held to fill the vacancy. However, such person is not to be taken into account in determining the number of directors who are to retire by rotation at the meeting pursuant to clause 3.6.

3.5 Election by general meeting

To the extent permitted by the Act, and subject to the maximum number of Directors determined by the Board under clause 3.1(b) not being exceeded,

Directors may be elected by an ordinary resolution of a general meeting of the Company.

3.6 Term of appointment

- (a) A Director will hold office for a period of no more than two years from appointment.
- (b) A Director will be eligible for re-appointment to the Board.
- (c) At every annual general meeting one third (rounded down to the nearest whole number) of the Directors must retire but they remain eligible for re-election. A retiring Director retains office until the dissolution of the meeting of which the Director retires. Nothing in this clause requires a Director to retire from office earlier than at the conclusion of the second annual general meeting after which the Director was elected or re-elected.
- (d) The Directors that are required to retire pursuant to this clause are the Directors longest in office since last being elected. If Directors were elected on the same date, then the Directors to retire are (unless they otherwise agree between themselves) determined by a ballot.
- (e) At least 21 days before each annual general meeting the Secretary will send a notice to all Members specifying those Directors who are to retire from office and those Directors who will remain in office.
- (f) Any Member may nominate a person not disqualified for any reason from holding office as a Director for election as a Director. Such nomination must be delivered to the Secretary at least 35 days prior to the date of the annual general meeting. At the same time as sending a notice under clause 3.6(e), the Secretary will also send a list of candidates nominated under this clause 3.6(f) to all Members.
- (g) Each Voting Member present at the annual general meeting is entitled to vote for any number of candidates not exceeding the number of vacancies. The chairperson of the annual general meeting will declare the persons elected as Directors and such declaration will be final. The persons elected will become Directors upon the dissolution of the annual general meeting in question.
- (h) If there are insufficient numbers of candidates nominated, then the Board will fill the remaining vacancy or vacancies.

3.7 Eligible candidates

The Company cannot validly elect a person as a Director under clauses 3.5 or 3.6, unless—

- (a) the Board recommends the appointment, or
- (b) at least 35 days before the meeting at which the appointment is proposed (or such other time the Board determines in its discretion), the Company receives at its registered office, both—
 - (i) a nomination of the person by a Member (who may be the person), and
 - (ii) a consent to act as a Director signed by the person.

3.8 Chairman

The Board may appoint a person to act as chairman of the Company and may determine the period for which the chairman will hold office.

3.9 Cessation of Director's appointment

A person automatically ceases to be a Director if the person—

- (a) is not permitted by the Act (or an order made under the Act) to be a Director
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company pursuant to sections 206F or 206G of the Act
- (c) becomes of unsound mind
- (d) is physically or mentally incapable of acting as Director of the Company
- (e) fails to attend Board meetings for a continuous period of three months without first obtaining a leave of absence from the Board
- (f) resigns by notice in writing to the Company
- (g) is removed from office, or
- (h) if the person was appointed to the office for a specified period, then on expiration of that period.

3.10 Removal from office

- (a) A Director may be removed from office if—
 - (i) the Company passes an ordinary resolution removing the Director from office, or
 - (ii) Members who hold a majority of the issued shares in the Company deliver a notice in writing to the Company, requiring the removal of a Director from office.
- (b) The powers to remove a Director under this clause are in addition to the powers outlined in section 203D of the Act.

4. Alternate Directors

4.1 Appointment

A Director may appoint a person to act as an Alternate Director to attend a Board meeting or act as a Director at any time when that Director is not available.

4.2 Notice of Board meetings

If an Alternate Director is appointed, then the Company must provide the Alternate Director with notice of Board meetings, as if that Alternate Director was a Director of the Company.

4.3 Obligations and entitlements of Alternate Directors

- (a) An Alternate Director may attend Board meetings and vote in place of the Director who has appointed them (provided that Director is not present at the Board meeting).
- (b) If an Alternate Director has been appointed by more than one Director, then that Alternate Director is entitled to one vote for each appointment.
- (c) Whilst a person is acting as an Alternate Director, that person is an officer of the Company and is subject to all the duties and entitled to exercise all the powers and rights of a Director.
- (d) An Alternate Director is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors.

- (e) Alternate Directors are not entitled to any remuneration from the Company.

4.4 Termination of appointment

- (a) The Director who appointed a person as an Alternative Director may at any time revoke the appointment.
- (b) Any appointment of an Alternate Director immediately ceases if—
 - (i) the Director who has appointed that Alternate Director ceases to be a Director, or
 - (ii) any event specified in clause 3.8 occurs in relation to the Alternate Director.

4.5 Form of appointments and revocation

The appointment or revocation of an Alternate Director is not effective until a written notice of appointment or revocation signed by the Director is provided to the Company.

5. Powers of the Board

5.1 Powers generally

- (a) The management and control of the business and affairs of the Company are vested in the Board.
- (b) Subject to this Constitution and the Act, the Board may exercise all powers and do all things within the power of the Company.

5.2 Power to borrow

Without limiting the powers conferred on the Board in clause 5.1, the Board may raise or borrow money or guarantee the debts or obligations of any person and may enter into financing arrangements on terms it thinks fit.

5.3 Power to give security

Without limiting the powers conferred on the Board in clause 5.1, the Board may charge any property or business of the Company or give any other security for a debt, liability or obligation of the Company or any other person.

5.4 Power to indemnify officers

If any Director (including any Alternate Director) or other officer of the Company is personally liable for the payment of any sum which is due from the Company, then the Board may charge the whole or any part of the assets of the Company by way of indemnity to prevent the officer suffering any loss in respect of the payment.

6. Executing negotiable instruments

- (a) The Board must decide how negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company.
- (b) The Company may execute, accept, or endorse negotiable instruments in any way approved by the Board.

7. Managing Director

7.1 Appointment of Managing Director

The Board may appoint one or more Directors to be a Managing Director either for a specified term or without specifying a term.

7.2 Removal of Managing Director

The Managing Director is subject to the same rules regarding resignation and removal from office as the other Directors.

7.3 Termination of appointment of Managing Director

Regardless of the term of appointment of a Managing Director, the Managing Director will be removed from office in either of the following circumstances:

- (a) The Managing Director ceases to be a Director.
- (b) The Board passes a resolution to remove the Managing Director from the office of Managing Director.

8. Delegation of Board powers

8.1 Power to delegate

Pursuant to section 198D of the Act, the Board may delegate any of its powers to—

- (a) a committee of Directors

- (b) a Director
- (c) an employee of the Company, or
- (d) any other person.

8.2 Power to revoke delegation

The Board may revoke a delegation made under clause 8.1 at any time regardless of whether the delegation was made for a specific period of time.

8.3 Terms of delegation

- (a) The Board may only delegate its powers by giving a written notice of delegation to the party to whom the power is being delegated.
- (b) The Board may delegate their powers under this clause—
 - (i) indefinitely, or for a specific period of time, and
 - (ii) on such terms the Board thinks fit.

8.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees will be, as far as possible, governed by the provisions of this Constitution which regulate the meetings and proceedings of the Board.

9. Directors duties and interests

9.1 Compliance with duties under the Act

Each Director must comply with the provisions of the Act and in particular, sections 180, 181, 182 and 183.

9.2 Directors of wholly-owned subsidiaries

In the event the Company is a wholly-owned subsidiary of a body corporate, a Director is authorised, by this clause and in accordance with the Act, to act in the best interests of the holding company.

9.3 Director entitled to hold other offices

A Director is entitled to—

- (a) hold any other office or position (either in the Company or elsewhere), provided that Director does not act as the Company's auditor or an employee of the Company's auditor, and
- (b) become a member or creditor of any corporation (including the Company), or
- (c) become a partner of any firm other than the Company's auditor.

9.4 Directors may contract with the Company

- (a) A Director is entitled to contract or enter into any arrangement with the Company (either as vendor, subscriber, purchaser or otherwise).
- (b) No contract or arrangement entered into between the Company and a Director may be avoided simply because of the relationship between the Company and the Director.
- (c) Where a Director enters into a contract with the Company pursuant to this clause 9.4, the Director is not liable to account to the Company for any profit derived from the contract or arrangement.
- (d) Except as prohibited by the Act and provided the Director complies with the provisions of this Constitution, a Director may be present at a meeting of the Board while a matter in which the Director is interested is being considered and may vote in respect of that matter with the agreement of the Board.
- (e) Despite having an interest in any contract or arrangement, a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing (if applicable) or otherwise.

9.5 Disclosure of interests

Each Director must at all times act in accordance with section 191 of the Act.

9.6 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director—

- (a) fails to disclose an interest, or

- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement in circumstances where that Director should not have been present or entitled to vote.

9.7 Confidentiality

- (a) The Directors and any Secretary must keep the affairs of the Company confidential.
- (b) The affairs of the Company may be disclosed in the following circumstances:
 - (i) By a Director, if the disclosure is required for the Director to perform his or her duties as an officer of the Company.
 - (ii) By the Board or the Company in general meeting.
 - (iii) Where the disclosure is required by law.
- (c) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality agreement before being appointed to that role.

10. Directors' remuneration

10.1 Remuneration of Executive Directors

The Board will determine the remuneration of each Executive Director, and may determine the remuneration of each senior manager (as defined in the Act), which may consist of—

- (a) salary
- (b) bonuses
- (c) fringe benefits, or
- (d) any other form of remuneration the Board thinks reasonable.

10.2 Remuneration of non-executive Directors

Non-executive Directors are entitled to be paid fees equal to an amount approved by the Board from time to time.

10.3 Additional remuneration for extra services

If a Director is asked by the Board to perform additional services on behalf of the Company, then the Company may pay that Director an additional sum which the Board determines is appropriate for the performance of the services.

10.4 Expenses

The Company must pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director—

- (a) in attending meetings of the Company, the Board, or a committee of the Board, or
- (b) in carrying out duties as a Director.

10.5 Retirement benefits

Subject to Division 2 of Part 2D.2 of the Act, the Company may agree to pay a retiring Director (or, on that Director's death, a surviving spouse or descendent) a pension or lump sum benefit.

11. Officers' indemnity and insurance

11.1 Indemnity

- (a) The Company must indemnify, to the maximum extent permitted by the Act, every person who is or has been an officer of the Company against all losses or liabilities incurred by the person as an officer of the Company, including but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) The indemnity in clause 11.1(a)—
 - (i) is a continuing obligation and is enforceable by a person to whom clause 11.1(a) applies even though that person may have ceased to be an officer of the Company
 - (ii) operates only to the extent that the loss or liability is not covered by insurance, and
 - (iii) is enforceable without the person to whom clause 11.1(a) applies first having to incur any expense or make any payment.

- (c) The Company may indemnify, to the extent permitted by the Act, its auditor against liability incurred as a result of the auditor's appointment or nomination by the Company, unless the liability arises out of conduct involving a lack of good faith.
- (d) The Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer, employee or auditor in defending an action for a liability incurred by that person whilst acting in their capacity as an officer, employee or auditor of the Company.

11.2 Insurance

Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

12. Board meetings

12.1 Convening Board meetings

A Director may convene a Board meeting at any time.

12.2 Notice

- (a) The Secretary (or convenor of the meeting) must give the following people reasonable notice of each Board meeting—
 - (i) each Director who is in Australia, and
 - (ii) each Alternate Director in accordance with clause 4.2.
- (b) Notice under this clause may be given orally or in writing.
- (c) The failure to give a notice to a Director or the non-receipt of a notice by a Director will not void any decisions made at a Board meeting where a Director was not present because that Director did not receive notice of the meeting.

12.3 Use of technology

- (a) A Board meeting may be held using any technology which enables each Director participating to hear and be heard by each other Director.
- (b) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is

located or, if an equal number of Directors is located in each of two or more places, at the place where the chairperson of the meeting is located.

12.4 Chairing Board meetings

- (a) The chairman of the Company will chair meetings of the Board.
- (b) If the chairman is not present within 15 minutes after the time for which a Board meeting is called, then the Directors present must elect a Director present to chair the meeting.

12.5 Quorum

- (a) A quorum must be present for the whole meeting.
- (b) Unless the Board decides otherwise, the quorum for a Board meeting is two Directors.
- (c) An Alternate Director who is also a Director in his or her own right may only be counted once toward a quorum.
- (d) A Director is treated as present at a meeting held by means of technology provided the Director is able to hear and be heard by all others attending.

12.6 Resolutions

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) If an equal number of votes is cast for and against a resolution, then the chairperson has a second or casting vote.
- (c) If the chairperson is not entitled to vote on the resolution, then there will be no casting vote and the matter must be decided in the negative.

12.7 Flying minutes

- (a) If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, then a Board resolution in those terms is passed at the time when the last Director signs the document.
- (b) A written resolution may be passed in counterparts provided each copy of the resolution signed by the Directors is identical. For the purposes of this clause, a telex, telegram, facsimile or electronic message signed by a Director is sufficient.

12.8 Valid proceedings

Each resolution passed by a person acting as a Director or member of a committee is valid even if it is later discovered that there was a defect in the appointment of the person or that the person was disqualified from voting on the resolution.

13. Meetings of Members

13.1 Annual general meeting

The Company must hold an annual general meeting in accordance with section 250N of the Act.

13.2 Calling meetings of Members

- (a) A meeting of Members must be convened by the Board as required by the Act.
- (b) A meeting of Members may be convened at any other time by the Board or a Director.

13.3 Notice of meeting

- (a) Subject to the Act, the following people must receive at least 21 days' written notice of a meeting of Members:
 - (i) Each Member, whether or not the Member is entitled to vote at the meeting (except where the shares are held jointly, in which case notice must be given to the holder of the share noted first on the register).
 - (ii) Each Director.
 - (iii) The Company's auditor.
- (b) The notice of meeting must be in a form which complies with the Act.
- (c) A notice required to be given under this clause may be given—
 - (i) personally
 - (ii) by sending it by post to the address for the Member in the register of Members, or

- (iii) by sending it to the fax number or electronic address nominated by the Member.

13.4 Postponement or cancellation

- (a) Subject to the requirements in sections 249D(5) and 250N of the Act, the Board may—
 - (i) postpone a meeting of Members
 - (ii) cancel a meeting of Members, or
 - (iii) change the place for a general meeting.
- (b) If a meeting of Members is postponed or adjourned for one month or more, then the Company must give new notice of the resumed meeting.

13.5 Technology

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

13.6 Non-receipt

Resolutions passed at a meeting of Members are not void because of—

- (a) an accidental failure to give notice to any person entitled to receive notice, or
- (b) the non-receipt of notice by any person entitled receive notice.

13.7 Class meetings

Clauses 13, 14, 15, 16, and 18 apply to meetings of a class of Members.

14. Proceedings at meetings of Members

14.1 Member present at meeting

If a Member has appointed a proxy or attorney to act at a meeting of Members, then that Member is taken to be present at a meeting at which the proxy or attorney is present.

14.2 Quorum

- (a) The quorum for a meeting of Members is 10 Voting Members.

- (b) Each individual present may only be counted once toward a quorum.
- (c) If a Member has appointed more than one proxy, then only one of them may be counted toward a quorum.

14.3 Quorum not present

- (a) If a quorum is not present within 15 minutes after the time for which a meeting of Members is due to commence, then the meeting is adjourned to the day, time and place that the Board decides and notifies to Members.
- (b) If the Board does not notify Members of a new time and place for the adjourned meeting, then the meeting is deemed to be adjourned to the same time on the same day in the next week at the same place.
- (c) If a quorum is not present at an adjourned meeting, then the meeting is dissolved.

14.4 Chairing meetings of Members

- (a) If the Board has appointed a Director to chair Board meetings, then that Director will chair the meetings of Members.
- (b) If the Director appointed to chair the Board meetings is not present at the meeting of Members or is not willing to chair the meeting, then the Voting Members present must elect a Member or Director present to chair the meeting.

14.5 Right to attend meetings of Members

- (a) Every Member has the right to attend all meetings of Members whether or not they are entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of Members whether or not they are a Member.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

14.6 Suspension of Member's rights

If a call on a share is due and unpaid, then the holding of that share does not entitle the Member to be present, speak or vote at, or be counted in the quorum for, a meeting of Members.

14.7 Chairperson's powers

- (a) The chairperson of a meeting of Members has the sole responsibility to ensure the meeting is conducted in a proper and orderly manner. To ensure the meeting is conducted in such a manner, the chairperson may—
 - (i) terminate any discussion or debate on any matter being considered by the meeting
 - (ii) subject to the Act, eject a Member from the meeting, or
 - (iii) require the adoption of any procedure which is, in the chairperson's opinion, necessary for—
 - A. proper and orderly debate or discussion, or
 - B. the proper and orderly casting or recording of votes.
- (b) The chairperson may invite a person who is not a Member to attend and to speak at the meeting.
- (c) The chairperson may take any action he or she considers appropriate for the safety of persons attending the meeting and in this regard, may refuse admission to, or require the following people to leave the meeting:
 - (i) People possessing a placard or banner.
 - (ii) People possessing an article considered by the chairperson to be dangerous, offensive or liable to cause disruption.
 - (iii) People who behave or threaten to behave in a dangerous, offensive or disruptive way.

14.8 Adjournment

- (a) The chairperson of a meeting of Members at which a quorum is present may adjourn the meeting to another time and place.
- (b) If a meeting is adjourned, then only unfinished business from the original meeting may be considered at the resumed meeting.

15. Proxies, attorneys and representatives

15.1 Appointment of proxies

- (a) A Member is entitled to appoint up to two proxies to attend and act for the Member at a meeting of Members.
- (b) An appointment of proxy must be made by written notice to the Company in a form which complies with the Act and is signed or acknowledged by the Member.
- (c) If a Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, then each proxy may exercise half of those votes.

15.2 Member's attorney

A Member may appoint an attorney to act at a meeting of Members.

15.3 Corporate representatives

In accordance with section 250D of the Act, a body corporate Member may appoint an individual to act as its representative at meetings of Members.

15.4 Notification of appointment

- (a) An appointment of a proxy, attorney or representative will be effective 48 hours after the Company receives evidence of the appointment.
- (b) For the purposes of this clause, the following documents will constitute evidence of the appointment:
 - (i) An original proxy form executed by the Member (or a certified copy of the original).
 - (ii) An original power of attorney (or a certified copy of the original).
 - (iii) A certified copy of the appointment of a corporate representative (such appointment must be in accordance with the provisions of the Act).

15.5 Standing appointments

- (a) A Member may make a standing appointment.
- (b) If a Member wishes to revoke a standing appointment, then the Member must send the Company a written notice of revocation of appointment.

15.6 Suspension of proxy or attorney's powers

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present.

15.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments, then the following applies:

- (a) An attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment.
- (b) Subject to clause 15.7(a), the more recently appointed attorney or representative may act to the exclusion of any other attorney or representative.

16. Entitlement to vote

16.1 Voting on a show of hands

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Voting Members present.
- (b) Unless a poll is demanded, a declaration by the chairperson that a resolution has been passed or lost is conclusive.

16.2 When a poll may be demanded

- (a) A poll may be demanded by—
 - (i) at least five Members entitled to vote on the resolution
 - (ii) Members entitled to cast at least five percent of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded), or
 - (iii) the chairperson.
- (b) A request for a poll may be withdrawn.

16.3 Voting on a poll

- (a) If a poll is demanded pursuant to clause 16.2, then it must be taken in the manner and at the time and place as the chairperson directs.
- (b) A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (c) The result of the poll is the meeting's resolution of the motion on which the poll was demanded.
- (d) A poll demanded on any question of adjournment must be taken as soon as the demand is made.

16.4 Voting rights

Subject to the Act and this Constitution—

- (a) on a show of hands each Member present has one vote except where a Member has appointed more than one person as representative, proxy or attorney, in which case no person appointed by that Member is entitled to vote, and
- (b) on a poll, each Member present—
 - (i) has one vote for every fully paid share held, and
 - (ii) for each partly paid share held, has a fraction of a vote equal to the proportion which the amount paid bears to the total issue price of the share.

16.5 Votes of joint holders

If more than one of the joint holders of a share are present at a meeting of Members and tender a vote in respect of the share, then the Company may only count the vote cast by the joint holder listed first in the register.

16.6 Voting restrictions

- (a) The Act or a court of competent jurisdiction may from time to time require that some Members are not to vote on a particular resolution.
- (b) If clause 16.6(a) is applicable, then votes cast by Members who are not entitled to vote must be disregarded in order for the resolution to have an intended effect.

16.7 Decision on right to vote

- (a) A Voting Member or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge or any other doubt as to the validity of a vote must be decided by the chairperson at the meeting. The chairperson's decision will be final.

17. Secretary

17.1 Appointment of Secretary

The Board must appoint at least one person to be the Company Secretary.

17.2 Terms and conditions of office

- (a) The Secretary will hold office on the terms and conditions set down by the Board.
- (b) The Board may vary any decision previously made by it in respect of a Secretary.

17.3 Cessation of Secretary's appointment

The following events will cause a person to be removed from the position of Company Secretary:

- (a) The person is no longer permitted by the Act (or an order made under the Act) to be a secretary of a company.
- (b) The person becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F or 206G of the Act.
- (c) The person becomes of unsound mind or physically or mentally incapable of performing the functions of Secretary.
- (d) The person resigns by notice in writing to the Company.
- (e) The person is removed from office pursuant to the terms of this Constitution.

17.4 Removal from office

The Board may pass a resolution to remove a Secretary from that office at any time.

18. Minutes

18.1 Minutes must be kept

In accordance with the provisions of the Act, the Board must ensure the following minutes are kept:

- (a) Meetings of the Company's Members (including details of all resolutions passed at those meetings).
- (b) Details of the Directors who are present at each Board meeting or committee meeting.
- (c) Details of the proceedings and resolutions passed at Board meetings (including meetings of a committee to which Board powers are delegated).
- (d) Details of resolutions passed by Directors without a meeting.
- (e) Details of disclosures made by Directors about their interests in transactions with the Company.

18.2 Minutes as evidence

Minutes recorded and signed by the chairperson in accordance with sections 251A of the Act are evidence of the proceeding, resolution or declaration to which those minutes relate.

18.3 Inspection of minute books

- (a) The Company must allow Members to inspect the minute books for the minutes.
- (b) If the Member requests a copy of the minute books, then the Company must send a copy to the Member within 14 days of receipt of the request.
- (c) The Company may charge a fee for sending a Member a copy of the minutes (provided that fee does not exceed the amount prescribed in the Act). If the Company charges a fee for sending a copy of the minutes, then the minutes must be sent to the Member within 14 days of the Company receiving payment of the fee.

19. Company seal

19.1 Common seal

- (a) The Company will not have a common seal, unless the Board determines otherwise.
- (b) If the Board determines the Company will have a common seal, then the Board is responsible for ensuring the safe custody of the seal and any duplicate seal it decides to adopt pursuant to section 123(2) of the Act.

19.2 Use of seals

- (a) If the Company has a common seal and duplicate seal, then they may only be used with the authority of the Board.
- (b) The Board must only authorise the use of a seal if it complies with the provisions of section 123 of the Act.

19.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed—

- (a) by two Directors
- (b) by one Director and one Secretary, or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. Shares

20.1 Issue at discretion of Board

Subject to this Constitution and the Act, the Board may, in its absolute discretion—

- (a) issue shares or other securities in the Company with such preferred, deferred or other special rights, obligations or restrictions as determined by the Board (including, but not limited to, the issue of shares of different classes and the issue of securities which convert into shares) and for the consideration the Board thinks fit
- (b) grant options over unissued shares in the Company, and

- (c) allot, cancel or otherwise dispose of shares in the Company.

20.2 Preference and Redeemable Preference Shares

- (a) The Board may issue or allot preference shares (including Redeemable Preference Shares) in the Company.
- (b) The rights attached to preference shares are set out in or determined in accordance with Schedule 3, unless the Company by Special Resolution determines other rights should attach to preference shares.

20.3 Surrender of shares

- (a) The Board may accept a surrender of shares in the following circumstances:
 - (i) If a question arises as to whether or not the shares being surrendered were validly issued.
 - (ii) In any other case where the Company has the power to accept the surrender of shares.
- (b) The Company may sell or re-issue surrendered shares in the same way as forfeited shares under clause 22.

20.4 Brokerage and commissions

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

20.5 Variation of rights

If the Company issues different classes of shares or divides issued shares into different classes, then the rights attached to shares in any class may (subject to sections 246C and 246D of the Act) be varied or cancelled in either of the following circumstances:

- (a) Where 75 percent of the holders of the issued shares which will be affected by the variation provide written consent to the Company approving the variation.
- (b) Where holders of the issued shares which will be affected by the variation pass a Special Resolution approving the variation.

20.6 Certificates

- (a) Unless the Act requires the Company to issue a certificate for particular securities, the Company need not issue certificates for securities (including shares) which it issues.
- (b) The Board may at any time determine the Company will issue certificates, cancel any certificates, and replace lost, destroyed or defaced certificates, on the basis and in the form which the Board resolves. If the Board decides certificates will be issued, then the Company is not entitled to charge any fee for issuing certificates.
- (c) Only one certificate will be issued in relation to each share registered in the names of two or more joint holders.

21. Partly paid shares

21.1 Power to make calls

- (a) Subject to the terms on which partly paid shares have been issued, the Board may make calls on Members who hold partly paid shares requesting payment of unpaid amounts.
- (b) Each Member who holds a partly paid share is liable to pay the amount of the call in the manner specified by the Board.

21.2 When a call is made

- (a) A call is taken to have been made at the time when the resolution of the Board authorising the call was passed.
- (b) The non-receipt of a call notice by a Member does not invalidate the call.
- (c) At any time prior to the date on which payment of the call is due, the Board may revoke the call or postpone the date for payment of the call.

21.3 Interest on late payment

If a call is not paid on or before the due date, then the Member from whom payment is due must pay interest at the Interest Rate on the unpaid amount from the due date until the call is paid.

21.4 Instalments

If the terms on which the partly paid shares are issued provide amounts are payable in regular instalments, then every instalment is payable as if it is a call

made by the Board and the terms of this Constitution apply as if the Board had made a call.

21.5 Joint holders

Joint holders of partly paid shares are jointly and severally liable to pay all amounts due and payable on the partly paid shares held by them.

22. Forfeiture

22.1 Notice requiring payment

- (a) If any Member fails to pay any amount owing in respect of shares by the due date, then the Board may serve the Member with a notice requiring the Member to pay the amount owing plus interest and expenses.
- (b) A notice served pursuant to clause 22.1(a) must provide a time and place for payment and must advise the Member that if the outstanding amount is not paid at this time, then the shares in respect of which the amounts are outstanding may be forfeited.
- (c) The Board is entitled to serve a notice pursuant to clause 22.1(a) at any time whilst payment remains outstanding.

22.2 Forfeiture for non-compliance

- (a) If a Member fails to comply with a notice given pursuant to clause 22.1, then any shares in respect of which the notice was given may be forfeited by a resolution of the Board passed after the day specified in the notice for payment.
- (b) If a Member's shares are forfeited, then dividends, interest and other money payable in relation to the forfeited shares will also be forfeited by the Member.

22.3 Notification of forfeiture

- (a) The Member in whose name the share was forfeited must be given a notice of the resolution of the Board and the date of forfeiture of shares must be recorded in the register.
- (b) Failure to give notice of forfeiture or to make an entry in the register will not invalidate the forfeiture of shares.

22.4 Disposal and annulment

- (a) A share forfeited under this clause immediately becomes the property of the Company and the Company may—
 - (i) reissue the share with or without any money paid on it by any former holder credited as paid, or
 - (ii) sell or otherwise dispose of the share to any person on the terms it thinks fit.
- (b) At any time prior to the sale or disposal of a forfeited share, the Board may annul the forfeiture of the share on terms and conditions the Board thinks fit.

22.5 Effect of forfeiture

- (a) A person who held a share which has been forfeited under this clause ceases to be a Member in respect of the forfeited share but remains liable to pay any amount outstanding in relation to the forfeited shares.
- (b) The Board may, at its total discretion, elect not to enforce payment of an amount due to the Company under this clause.
- (c) If the Company receives any income from the re-issue, sale or disposal of a forfeited share, then this income (after deduction of all costs and expenses) must be applied—
 - (i) in reduction or satisfaction of the outstanding amount owing in relation to the shares, and
 - (ii) subject to the terms of issue of the share, any surplus amount will be paid to the person who held the share immediately before forfeiture.

22.6 Mortgage of uncalled capital

If the Company grants a mortgage or charge over uncalled capital, then the Board may delegate its power to make calls to—

- (a) the person in whose favour the mortgage or charge is granted, or
- (b) a trustee or agent for that person.

23. Company liens

23.1 Existence of liens

- (a) Unless the shares are issued on special terms, the Company has a first ranking lien on each share for—
 - (i) all money payable in respect of that share including money which is due and owing but unpaid, and
 - (ii) any amounts paid by the Company for which the Company is indemnified pursuant to clause 23.3.
- (b) The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

23.2 Sale of shares to enforce lien

- (a) If the Company has a lien over a share and an outstanding amount is due and payable, then the Company may give notice to the Member registered as the holder of the share requiring payment of the amount secured by the lien.
- (b) A notice given pursuant to clause 23.2(a) must specify—
 - (i) the amount due and payable which is secured by the lien
 - (ii) how the amount due and payable was calculated
 - (iii) a date (at least 10 Business Days after the date of the notice) by which the amount must be paid, and
 - (iv) the method and place for payment.
- (c) If a Member fails to comply with a notice given pursuant to this clause, then the Company may sell the share as if it had been forfeited under clause 22.2.

23.3 Indemnity for payments required to be made by the Company

If the Company is legally required to make any payment on behalf of a Member or in relation to a share held by a Member, then the Company—

- (a) is fully indemnified by that Member from that liability

- (b) may recover any amount paid on behalf of a Member in relation to their shares, together with interest at the Interest Rate from the date of payment by the Company as a debt due from the Member, and
- (c) may refuse to register a transfer of any share by that Member until the debt has been paid to the Company.

24. Dividends

24.1 Declaration of dividend

- (a) The Board may declare a dividend is payable in respect of shares in the Company and may fix an amount and time for payment.
- (b) The Company does not incur a debt by declaring a dividend is payable or by fixing an amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives.
- (c) The decision to pay a dividend may be revoked by the Board at any time prior to the due date for payment of the dividend.

24.2 Amount of dividend

- (a) Subject to the terms of issue of shares, the Company may pay a dividend on one class of shares to the exclusion of another class.
- (b) Each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount paid on the share bears to the total issue price of the share.
- (c) The holder of a partly paid share will not be entitled to participate in the dividend unless all calls made on the share are fully paid on the due date for payment of the dividend.

24.3 Accumulation of reserves

Before paying any dividend to Members, the Board may do either or both of the following:

- (a) Set aside a percentage of the Company's profits for use by the Board in the business of the Company.
- (b) Carry forward any percentage of the profits which the Board decides not to distribute without transferring that amount to a reserve.

24.4 Dividends must be paid out of profits

- (a) The Company may only pay dividends from the profits of the Company.
- (b) A resolution of the Board as to the amount of the Company's profits and the amount of them available for dividend is conclusive.

24.5 Dividends in kind

- (a) A dividend may be paid—
 - (i) in cash
 - (ii) by distribution of specific assets (including shares or securities of any other corporation)
 - (iii) by the issue of shares, or
 - (iv) by the grant of options.
- (b) If the Board pays dividends by a distribution of assets, then the Board may—
 - (i) fix the value of any asset distributed
 - (ii) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves, and
 - (iii) vest the assets in a trustee who will hold the assets on behalf of the Members entitled to the asset.

24.6 Source of dividends

The Board may resolve to pay a dividend to some Members out of a particular reserve or out of profit derived from a particular source and pay the same dividend to other Members entitled to it out of other reserves or profits.

24.7 Method of payment

- (a) The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque or electronic funds transfer.
- (b) The Company may distribute assets by sending the certificates or other evidence of title to Members through the post.
- (c) Where cheques or certificates of title are sent through the post, they must be sent to the address of the Member recorded in the register (or in the case

of a jointly held share, the address of the joint holder named first in the register) or to any other address the Member directs in writing.

24.8 Joint holders' receipt

Any one of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in relation to that share.

24.9 Retention of dividends by the Company

The Company may retain the dividend payable on a share in the following circumstances:

- (a) Where a person is seeking to be registered as the holder of a share pursuant to clause 27 of this Constitution, the Company may retain the dividend until the person is registered as the holder of the share.
- (b) Where the Company has a lien it may retain the dividend payable in relation to the share to satisfy the liabilities in respect of which the lien exists.

24.10 No interest on dividends

No interest is payable on a dividend.

25. Share plans

25.1 Implementing share plans

The Board may implement one or more of the following plans on such terms as it thinks fit:

- (a) A dividend re-investment plan whereby Members entitled to receipt of dividends may elect to have the money payable to them applied in payment for shares or other securities issued under the plan. For accounting purposes, the dividend is treated as having been paid to the Member and simultaneously repaid by that person to the Company for the acquisition of the shares or securities in accordance with the plan.
- (b) Any other plan under which Members may elect to have dividends or other cash payments in respect of shares satisfied by—
 - (i) the issue of shares in the Company or a related body corporate

- (ii) payment from a particular reserve or out of profits derived from a particular source, or
 - (iii) payment from another body corporate or a trust.
- (c) A plan under which shares or other securities of the Company or a related body corporate may be issued or otherwise provided for the benefit of employees or Directors of the Company or any of its related bodies corporate.

25.2 Varying, suspending or terminating share plans

The Board may at any time terminate, suspend, or vary the terms of any plan referred to in clause 25.1.

26. Transfer of shares

26.1 Modes of transfer

- (a) Subject to the provisions of this Constitution, a Member may transfer a share by any means permitted by the Act or by law.
- (b) The Board may impose a fee on the transfer of a share.

26.2 Delivery of transfer and certificate

Prior to registering a transfer of shares, the Company must receive a share transfer form—

- (a) delivered to the registered office of the Company (or any other address notified to Members by the Company)
- (b) accompanied by the certificate (if any) for the shares to be transferred, and
- (c) marked with payment of any stamp duty payable.

26.3 Refusal to register transfer

- (a) Subject to the Act, the Board may at its discretion refuse to register a transfer of shares.
- (b) The Board must not register a transfer if the transfer is prohibited by Act.
- (c) If the Board refuses to register a transfer, then the Company must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered.

26.4 Transferor remains holder until transfer registered

The transferor is deemed to remain the holder of the shares transferred until the name of the transferee is entered in the register.

27. Transmission of shares

27.1 Death of joint holder

- (a) Surviving joint holders are the only people entitled to shares registered jointly in the names of a deceased Member and others.
- (b) However, the estate of a deceased joint holder is not released from any liability in respect of the shares.

27.2 Death of single holder

- (a) The personal representative of a deceased Member is the only person recognised by the Company as having any title to shares registered in the name of the deceased Member.
- (b) However, subject to receipt of transfer documentation in accordance with the provisions of clause 26, the Board may register any transfer signed by a Member prior to the Member's death.

27.3 Transmission of shares on insolvency or mental incapacity

- (a) A person who is entitled to shares because of the insolvency or mental incapacity of a Member must provide the Board with evidence of the bankruptcy or mental incapacity of the Member and the person's entitlement to be registered as holder of the shares.
- (b) Upon receipt of evidence required by clause 27.3(a), the Board must register the person entitled as the holder of the shares as soon as practicable after receipt of a written and signed notice to the Company from that person requiring it to do so.
- (c) A person entitled to be registered as the holder of shares pursuant to clause 27.3(a) has the same rights as the bankrupt or mentally incapacitated Member and may transfer the shares to another person whether or not they have been registered as the holder of the shares.

27.4 Refusal to register holder

The Company has the same right to refuse to register a personal representative or person entitled to shares on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.

28. Alteration of share capital

28.1 Capitalisation of profits

- (a) The Company may capitalise profits, reserves or other amounts available for distribution to Members.
- (b) Subject to the terms of issue of shares and clause 28.4, Members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

28.2 Adjustment of capitalised amounts

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate including—

- (a) fixing the value of specific assets
- (b) making cash payments to Members on the basis of the value fixed for assets
- (c) disregarding fractional entitlements, and
- (d) vesting cash or specific assets in trustees.

28.3 Conversion of shares

Subject to the Act and the provisions of this Constitution, the Company may, by resolution passed at a meeting of Members, convert—

- (a) shares into a larger or smaller number of shares (provided in the case of a conversion of partly paid shares into a larger number of shares, the proportion between the amount paid and the amount unpaid on each share must be the same as before the conversion)
- (b) ordinary shares into preference shares, or
- (c) preference shares into ordinary shares.

28.4 Adjustments on conversion

The Board may do anything necessary to give effect to a resolution converting shares including, if a Member becomes notionally entitled to a fraction of a share as a result of the conversion by—

- (a) making a cash payment or disregarding fractional entitlements so as to adjust the rights of Members between themselves
- (b) vesting fractional entitlements in a trustee to be dealt with as determined by the Board, or
- (c) rounding up fractional entitlements to the nearest whole share by capitalising an amount under clause 28.1 even though not all Members participate in the capitalisation.

28.5 Reduction of capital

The Company may reduce its share capital—

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1 of the Act
- (b) by buying back shares in accordance with Division 2 of Part 2J.1 of the Act
- (c) as permitted by sections 258E and 258F of the Act, or
- (d) in any other way for the time being permitted by the Act.

29. Winding up

29.1 Entitlement of Members

- (a) Subject to the terms of issue of shares and this clause 29, the surplus assets of the Company remaining after payment of its debts are divisible among the Members in proportion to the number of fully paid shares held by them.
- (b) For the purposes of this clause, a partly paid share will be counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

29.2 Distribution of assets generally

If the Company is wound up, then the liquidator may, with the sanction of a Special Resolution of the Company—

- (a) divide the assets of the Company among the Members in kind

- (b) fix the value of assets and decide how the division is to be carried out as between the Members and different classes of Members, and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the Members as the liquidator thinks appropriate.

29.3 No distribution of liabilities

The liquidator cannot compel a Member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

29.4 Distribution not in accordance with legal rights

If the liquidator decides on a division or vesting of assets of the Company under clause 29.2 which does not accord with the legal rights of the contributories, then any contributory which would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507 of the Act.

30. Notices

30.1 Form of notices

Notices given under this Constitution must be—

- (a) in writing
- (b) signed by the party giving the notice or its authorised representative
- (c) addressed to the address recorded in the register (or the alternate address, if any) of the person to whom it is to be given, and
- (d) in the English language and legible.

30.2 Method and address for giving notices

Notices must be given or served by—

- (a) delivery by hand
- (b) posting by pre-paid security or certified mail
- (c) transmitting by facsimile, or
- (d) sending by email, or any other electronic means.

30.3 Notices by hand or email

If, after 8:30 am and before 5:00 pm local time on a Business Day in the place of delivery, a party delivers a notice by hand or by email, then the notice will be taken as given on the day of delivery or transmission. If delivery is made before 8:30 am, but after 12:00 am on that same day, then the delivery is taken to have occurred at 8:30 am on that day so long as it is a Business Day. If any delivery is made after 5:00 pm on the Business Day, then delivery is taken to have occurred on the next Business Day.

30.4 Notices by post

If a party gives notice by post, then the notice will be taken as given on the second Business Day after the notice is posted.

30.5 Notices by facsimile

- (a) If a party gives notice by facsimile, then the notice will be taken as given on the day of transmission if the transmission report states that the transmission was completed before 5:00 pm on a Business Day, that it was sent in full and without error, and no objection is received from the recipient. Otherwise, the notice will be taken to be given on the next Business Day following the day of transmission.
- (b) If a party gives notice by facsimile and the transmission is not fully intelligible, then the party giving the notice may not rely on this clause 30.5 to prove the giving of the notice.
- (c) A facsimile may not be relied on if the party giving the notice has reason to believe the transmission or part of the transmission is unintelligible.
- (d) A party is not entitled to object to a facsimile as being not fully intelligible unless the party requests re-transmission within two hours (being hours between 8:30 am and 5:00 pm on the Business Day in the place of delivery) of completion of transmission. If a facsimile transmission is made within two hours before 5:00 pm on the Business Day and is unintelligible, then the receiving party has until 10:30 am on the next Business Day to request re-transmission.

30.6 Signatures

- (a) A notice must be signed by the party giving the notice or its authorised representative.

- (b) The appearance of the name of a person signing at the foot of the document is sufficient evidence of signing.

30.7 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

30.8 Notice to joint holders

Notice to joint holders of shares must be given to the joint Member named first in the register.

30.9 Notices to "lost" Members

- (a) If the Board has reasonable grounds to believe a Member is not at the address shown in the register or otherwise notified to the Company, then the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.
- (b) This clause ceases to apply if the Member gives the Company notice of a new address.

31. Unclaimed money

The Company must deal with unclaimed dividends, distributions and proceeds of shares sold or reissued in accordance with the law relating to unclaimed money in the state in which the Company is registered.

Schedule 1 – Dictionary

Act	The Corporations Act 2001 (Cth) as amended from time to time, together with the Corporations Regulations.
Alternate Director	An alternate Director appointed under clause 4.
ASX	ASX Limited ABN 98 008 624 691.
Board	The Directors acting collectively under this Constitution.
Business Day	Any day other than a Saturday, Sunday or public holiday in Brisbane.
Company	Abalone Investment Ltd
Constitution	This document including all of its annexures, schedules and recitals and as amended from time to time.
Director	A person who is, for the time being, a director of the Company including, where appropriate, an Alternate Director.
Executive Director	A Director who is an employee of the Company or a subsidiary or acts in an executive capacity for the Company or a subsidiary under a contract for services and includes a Managing Director.
Interest Rate	The rate prescribed by the Board, or if no rate is prescribed, then 15 percent per annum.
Listing Rule	The listing rules of ASX and any other rules of ASX which are applicable while the Company's shares are admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.
Managing Director	A managing director appointed pursuant to clause 7.
Member	A person whose name is entered in the register as the holder of a share in the Company.
Redeemable Preference Shares	Has the meaning given in Schedule 3.
Secretary	A person appointed as a secretary of the Company in accordance with this Constitution.

Special Resolution A resolution passed by at least 75 percent of the votes cast by those members entitled to vote on the resolution.

Voting Member A Member who has the right to be present and to vote on at least one item of business to be considered at a meeting of Members.

Schedule 2—Rules for interpretation

In this Constitution unless the context indicates a contrary intention—

- (a) words denoting any gender include all genders
- (b) the singular number includes the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation
- (d) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- (e) a person includes companies and corporations and vice versa
- (f) except in the dictionary, headings do not affect the interpretation of this Constitution
- (g) the construction least favourable to the party responsible for drafting the Constitution will not be adopted against that party merely because that party put forward the first draft of this Constitution
- (h) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (i) amounts of money are expressed in Australian dollars unless otherwise expressly stated
- (j) a reference to a document includes any variation or replacement of it
- (k) a reference to any thing includes the whole or each part of it, and
- (l) the defined terms in Schedule 1 have the meaning given them in that schedule except where the context otherwise requires.

Schedule 3—Terms of issue of preference shares

Issue Resolution

If the Board resolves to issue a preference share, then it must pass an Issue Resolution which specifies—

- (a) the Dividend Date
- (b) the Dividend Rate
- (c) whether dividends are cumulative or non-cumulative
- (d) the priority with respect to payment of dividends and repayment of capital over other classes of shares
- (e) whether the share is a Redeemable Preference Share or not, and if so the Redemption Amount
- (f) if the share is redeemable at the end of a fixed period, the Redemption Date.

Franked dividends

If the Issue Resolution specifies that the dividend on preference shares must be a franked dividend, it may also specify—

- (a) the extent to which the dividend must be franked (within the meaning of the Tax Act), and
- (b) the consequences of the dividend not being franked.

Dividend entitlement

- (a) The holder of a preference share is entitled to be paid the Dividend Amount on each Dividend Date in priority to any payment of dividends on any other class of shares.
- (b) The dividend entitlement will not be cumulative unless the Issue Resolution provides it will be cumulative.

Priority on winding up

- (a) On winding up, the holder of a preference share is entitled to payment of the following amounts in priority to any payment to the holders of ordinary shares—
 - (i) the amount then paid up on the share, and

- (ii) if dividends are cumulative, then any arrears of dividend.
- (b) The holder of a preference share has no right to participate in surplus assets and profits of the Company.

Voting

Preference shareholders may only exercise a right to vote on the following matters:

- (a) On a proposal to reduce the Company's share capital.
- (b) On a resolution to approve the terms of a buy-back agreement.
- (c) On a proposal that affects rights attached to the share.
- (d) On a proposal to wind up the Company.
- (e) On a proposal for the disposal of the whole of the Company's property or business.
- (f) On any matter during the winding up of the Company.
- (g) On any other circumstances as the Board determines prior to the allotment of preference shares.

Redemption of Redeemable Preference Shares

Subject to the Act, the Company must redeem a Redeemable Preference Share on the Redemption Date by paying the Redemption Amount to the holder in cash, by cheque or in any other form that the holder agrees to in writing.

If the Company sends the holder of a Redeemable Preference Share a cheque for the Redemption Amount, then the share is redeemed on the date on which the holder receives the cheque.

Dictionary

In this Schedule 3, the following definitions apply:

Dividend Amount For any Dividend Period means the amount calculated as—

$$DA = P \times DR \times \frac{N}{365}$$

Where—

DA = Dividend Amount

P = the amount paid up on the preference share

DR = Dividend Rate, and

N = number of days in the relevant Dividend Period.

Dividend Date Means a date specified in the Issue Resolution on which a dividend in respect of that preference share is payable.

Dividend Period Means—

- (a) the period that begins on and includes the Issue Date and ends on and includes the day before the first Dividend Date after the Issue Date
- (b) the period that begins on and includes each Dividend Date and ends on and includes the day before the next Dividend Date, and
- (c) the period that begins on and includes the last Dividend Date and ends on and includes the day before the Redemption Date.

Dividend Rate Means the rate specified in the Issue Resolution for the calculation of the amount of dividend to be paid on that preference share on any Dividend Date.

Issue Date Means the date on which the share is issued.

Issue Resolution Means the resolution passed under clause 1 of this schedule.

Redeemable Preference Share	<p>Means a preference share which the Issue Resolution specifies is liable to be redeemed—</p> <ul style="list-style-type: none">(a) at a fixed time(b) on the happening of a particular event(b) at the Company’s option, or(c) at the holder’s option.
Redemption Amount	<p>In relation to a Redeemable Preference Share means the amount specified in the Issue Resolution to be paid on redemption of that share.</p>
Redemption Date	<p>In relation to a Redeemable Preference Share, means the date on which the Issue Resolution requires the Company to redeem that share.</p>
Tax Act	<p>Means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, or both, as applicable.</p>