

Constitution of Brane Labs Pty Ltd

Contents

1	Introduction	1
2	Restrictions	2
3	Appointment of directors	2
4	Alternate directors	3
5	Powers of directors	4
6	Removal and resignation of directors.....	5
7	Directors' interests	6
8	Directors' meetings	8
9	Remuneration of directors.....	10
10	Secretary.....	12
11	Officers' Indemnity	12
12	Meetings of members holding shares in a class	15
13	Meetings of members.....	15
14	When notice is given	17
15	Voting at meetings of members	21
16	Issue of shares.....	23
17	Title to shares.....	24
18	Transfer of shares	25
19	Proxies and body corporate representatives.....	30
20	Body corporate representative	30
21	Dividends and reserves.....	31
22	Shareholders' rights on distribution of assets	33
23	Execution of documents.....	34
24	Miscellaneous	35

Constitution of
Brane Labs Pty Ltd
A company limited by shares

1 Introduction

1.1 Replaceable rules excluded

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

1.2 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (3) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means Brane Labs Pty Ltd;
- (5) **directors** means the directors or sole director for the time being of the Company or the directors assembled as a board;
- (6) **member, shareholder or holder** means any person entered in the Register as a member for the time being of the Company;
- (7) **month** means calendar month;
- (8) **Register** means the register of members to be kept under the Act;
- (9) **representative** means a person authorised to act as a representative of a body corporate under section 250D of the Act;
- (10) **seal** means the common seal of the Company and includes any official seal of the Company;
- (11) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary;
- (12) **securities** has the meaning given by section 92(1) of the Act and includes options over unissued securities and renounceable and non-renounceable rights to subscribe for securities; and
- (13) **Substantial Shareholder** means a shareholder holding more than 20% of the issued shares;
- (14) **Preference Shares** means a class of convertible preference shares.

1.3 Interpretation

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

2 Restrictions

2.1 No more than 50 non-employee shareholders

The Company must not have more than 50 shareholders excluding:

- (1) any employee shareholders, being a person who is (or was at the time they became a shareholder) an employee of the Company or a subsidiary of the Company;
- (2) any crowd sourced funding shareholders, being a person who became a shareholder pursuant the crowd sourced funding provisions of the Act,

and counting any joint holders of shares as one person.

2.2 No issue of securities that requires disclosure

The Company must not offer shares or engage in any activity that would require the Company to lodge a prospectus or other disclosure document under Chapter 6D of the Act. This Rule 2.2 does not apply to an offer of shares to existing shareholders of the Company or employees of the Company or a subsidiary of the Company.

3 Appointment of directors

3.1 Number of directors

The number of the directors must be not less than one nor more than 9. The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 3.1.

3.2 Appointment of directors

- (1) The Company in general meeting may by resolution, and the directors may at any time, appoint a person qualified to be a director, either to fill a casual vacancy or as

an addition to the existing directors, provided the total number of directors does not at any time exceed the number fixed under this constitution.

- (2) Directors who are appointed at a meeting of members take office immediately after the end of the meeting. Directors who retire at a meeting of members continue to hold office until the end of the meeting.

3.3 Insufficient directors

In the event of a vacancy in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

3.4 Death or incapacity of single director

If a person who is the only director and the only shareholder of the Company:

- (1) dies or cannot manage the Company because of the person's mental incapacity and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the Company; or
- (2) becomes bankrupt and a trustee in bankruptcy is appointed to the person's property, the trustee may appoint a person as the director of the Company.

A person appointed as a director of the Company under this rule 3.4 holds that office as if he or she had been properly appointed the usual way.

4 Alternate directors

4.1 Appointment

A director may appoint any person approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period. An alternate director is not taken into account for the purpose of rule 3.

4.2 No alternate director in sole director company

While the Company has only one director the provisions of this constitution for the appointment of alternate directors do not apply.

4.3 Rights and powers of alternate director

- (1) An alternate director is entitled to notice of meetings of the directors and, if the appointing director is not present at a meeting, is entitled to attend and vote in his or her stead.
- (2) Subject to the Act, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (3) An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

4.4 Suspension or revocation of appointment

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

4.5 Form of appointment, suspension or revocation

An appointment, suspension or revocation under rule 4.1 or rule 4.4 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given electronically.

4.6 Termination of appointment

The appointment of an alternate director automatically terminates:

- (1) if the appointing director ceases to hold office as director;
- (2) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or
- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

4.7 Power to act as alternate for more than one director

A director or any other person may act as alternate director to represent more than one director. Subject to the Act, notwithstanding this rule, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is only to be counted once as a director.

5 Powers of directors

5.1 General business management

The business of the Company is to be managed by or under the direction of the directors. The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.

5.2 Validation of acts of directors and secretaries

- (1) An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- (2) A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

5.3 Borrowing powers

- (1) Without limiting the generality of rule 5.2(1), but subject to rule 2, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

- (2) Debentures or other securities may be issued on the terms and at prices decided by the directors, including bearing interest or not, with rights to subscribe for, or exchange into, shares or other securities in the Company or a related body corporate or with special privileges as to redemption, participating in share issues, attending and voting at general meetings and appointing directors.

5.4 Appointment of attorney

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

5.5 Negotiable instruments

- (1) Any two directors, if the Company has two or more directors, or the director, if the Company has only one director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

5.6 Delegation

- (1) The directors may delegate any of their powers to a committee of directors, a single director, an employee of the Company or any other person, and may revoke the delegation.
- (2) The exercise of the power by the delegate is as effective as if the directors had exercised it.
- (3) The delegate must exercise the powers delegated in accordance with any directions of the directors. The delegate has no power to delegate further.

5.7 Committee of directors

- (1) The meetings and proceedings of any committee of directors consisting of two or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- (2) The directors may establish local boards or agencies for managing any of the affairs of the Company in any specified locality and may appoint any persons to be members of the local board or any managers or agents and may fix their remuneration.
- (3) In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. A delegate appointed by the directors may be authorised to subdelegate any of the powers vested in them.

6 Removal and resignation of directors

6.1 Removal of directors

- (1) The Company may by resolution remove a director from office.
- (2) Members holding shares which give them the right at least 50% of votes at a general meeting may at any time by instrument in writing remove a director from office and appoint a person to be a director either in place of a director so removed or to fill a casual vacancy, or as an addition to the board of directors (but so that the total number of directors does not exceed the number fixed in accordance with this constitution).
- (3) A removal or appointment under rule 6.1(2) takes effect immediately on the delivery of the instrument of removal or appointment at the registered office of the Company. The instrument may be delivered electronically.

6.2 Resignation of director

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

6.3 Vacation of office of director

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

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present (either personally or by an alternate director) at three consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) fails to pay any call due on any shares held by him or her for 1 month or any further time the directors allow after the call is made;
- (5) becomes disqualified from being a director under the Act or any order made under the Act;
- (6) is removed from office in accordance with rule 6.1; or
- (7) resigns from office in accordance with rule 6.2.

7 Directors' interests

7.1 Director to disclose interests

- (1) A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest as soon as practicable after the director becomes aware of his or her interest in the matter and in the manner required by section 191(3) of the Act.
- (2) The requirements of rule 7.1(1) are subject to the limitations and qualifications set out in section 191 of the Act.

7.2 Effect of interest in contract

Subject to the Act, if a director has a material personal interest in a matter that relates to the affairs of the Company and:

(1) the director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the directors; or

(2) the interest is one that does not need to be disclosed under the Act;

then:

(3) the director may vote on matters that relate to the interest;

(4) any transactions that relate to the interest may proceed;

(5) the director may retain benefits under the transaction even though the director has the interest; and

(6) the Company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under rule 7.1, rules 7.2(5) and 7.2(6) apply only if the disclosure is made before the transaction is entered into.

7.3 Standing notice of interest

(1) A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.

(2) A notice under rule 7.3(1) may be given at a directors' meeting (either orally or in writing) or to the other directors individually in writing.

(3) If the standing notice is given to the other directors individually in writing the notice is effective when it has been given to every director and the notice must be tabled at the next directors' meeting after it is given.

(4) The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

7.4 Other interests

Without limiting rule 7.1 or rule 7.2 a director may to the extent permitted by the Act:

(1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;

(2) enter into any contract with the Company giving the director an option to take up shares in the Company; and

(3) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

7.5 Extension of meaning of "Company"

For the purposes of rules 7.1, 7.2 and 7.3 Company includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

7.6 Other directorships and shareholdings

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

7.7 Voting by interested directors

Subject to the Act:

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

7.8 Wholly owned subsidiary

Subject to the Act, if the Company is a wholly owned subsidiary of another body corporate, a director may act in the best interests of the other body corporate.

8 Directors' meetings

8.1 Circulating resolutions

- (1) The directors may pass a resolution without a directors' meeting being held if directors sufficient to approve the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last required director signs.
- (4) An electronic copy of a document addressed to, accessed or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 8.1 must be treated as a document in writing signed by that director.
- (5) In this rule 8.1 a reference to all directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his or her appointor.

8.2 Resolutions and declarations of sole director

While the Company has only one director:

- (1) the director may pass a resolution by recording it and signing the record; and
- (2) the director may make a declaration by recording it and signing the record, and recording and signing the declaration satisfies any requirement in the Act that the declaration be made at a directors' meeting.

8.3 Meetings of directors

The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

8.4 Calling directors' meetings

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

8.5 Notice of meeting

- (1) Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
 - (a) has been given special leave of absence; or
 - (b) is absent and has not left contact details acceptable to the directors at which he or she may be given notice.
- (2) A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail, electronic link or any other means of communication.

8.6 Waiver of notice

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

8.7 Technology meeting of directors

- (1) A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- (2) If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- (3) The following provisions apply to a technology meeting:
 - (a) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (b) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

- (4) If the secretary is not present at a technology meeting or the Company does not have a secretary one of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- (5) A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- (6) A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

8.8 Chairing directors' meetings

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- (2) The directors must elect a director present to chair a meeting, or part of it, if:
 - (a) a director has not already been elected to chair the meeting; or
 - (b) a previously elected chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting.
- (3) The directors may appoint a deputy chair who in the absence of the chair at a meeting of the directors may exercise all the powers and authorities of the chair.

8.9 Quorum

- (1) The quorum for a directors' meeting is two directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- (2) An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the law relating to directors' interests and the Act generally, entitled to vote).

8.10 Passing of directors' resolutions

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution. The chair does not have a casting vote.
- (2) A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to one vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

8.11 Restriction on voting

A director is not entitled to be present in person or by an alternate director or to vote at a meeting of directors or to be counted in a quorum if and so long as he or she has failed to pay any call to the Company on shares held by him or her after the date upon which the payment should have been made.

9 Remuneration of directors

9.1 Payment of remuneration

- (1) The directors are to be paid the remuneration that the Company determines by resolution.
- (2) The Company determines by resolution only the total remuneration to be paid to the directors, and the directors determine how the total remuneration is divided among them.
- (3) The remuneration of directors accrues daily.
- (4) The expression “remuneration” in rule 9.1(1) does not include any amount which may be paid by the Company under rules 9.2, 9.4, 9.6, 9.7 or 11.6.

9.2 Payment of expenses

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

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

9.3 Information about directors remuneration

If required by the Act, the Company must comply with a direction by the members to disclose the remuneration paid to each director by the Company (whether paid to the director in his or her capacity as a director or another capacity).

9.4 Payment for extra services

Subject to the Act, any director called upon to perform extra services or undertake any executive or other work for the Company beyond his or her general duties, may be remunerated either by a fixed sum or a salary as determined by the directors.

9.5 Cancellation, suspension, reduction or postponement

The Company may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director.

9.6 Effect of cessation of office

- (1) The directors may:
 - (a) upon a director ceasing to hold office; or
 - (b) at any time after a director ceases to hold office;whether by retirement or otherwise, pay to:
 - (c) the former director; or
 - (d) any of the legal personal representatives or dependants of the former director in the case of death;a lump sum in respect of past services of the director of an amount not exceeding the amount permitted by the Act, without recourse to a general meeting.

- (2) The Company may contract with any director to secure payment of the lump sum to the director, his or her legal personal representatives or dependants or any of them, unless prohibited by the Act.
- (3) A determination made by the directors in good faith that a person is or was at the time of the death of a director a dependent of the director is conclusive for all purposes of rule 9.6(1).

9.7 Payment of superannuation contributions

The Company may also pay the directors superannuation contributions of an amount necessary to meet the minimum level of superannuation contributions required under any applicable legislation to avoid any penalty, charge, tax or impost.

9.8 Loans to directors

Subject to the Act and the provisions of this constitution dealing with loans to members, the Company may make loans to directors or provide guarantees or security for obligations undertaken by directors.

10 Secretary

10.1 Appointment of secretary

The Company may, but need not, have a secretary. If the directors appoint a secretary it must be in accordance with the Act. The directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

10.2 Terms of office of secretary

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

11 Officers' Indemnity

11.1 Indemnity

To the extent permitted by the Act, the Company indemnifies:

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

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes:

- (1) a liability for negligence; and
- (2) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.

11.2 Illegal conduct

The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

11.3 Corporation Act

In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under sections 961M, 1317H, 1317HA or 1317HB of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 11.3(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Accounting and Corporate Regulatory Authority or a liquidator for a court order if the grounds for the court order are found by the court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act, in which the Court denies the relief.

Rule 11.3(2)(c) does not apply to costs incurred in responding to actions taken by the Accounting and Corporate Regulatory Authority or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 11.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

11.4 Officer's obligations

An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;

- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and cooperation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

11.5 Providing security for officer's liability

If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 11.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

11.6 Directors and Officers' Insurance

The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

11.7 Director can vote on contract of indemnity or insurance

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

11.8 No liability for acts of other officers

An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

11.9 Definitions

In rule 11.4 'Claim' means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;

- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 11.9(1) or 11.9(2) may be initiated.

In this rule 11, 'officer' means a director or secretary or a member of a local board or agency appointed under rule 5.7(2).

12 Meetings of members holding shares in a class

12.1 Variation of class rights

- (1) Rights attached to shares in a class of shares may be varied or cancelled only by special resolution of the Company and either:
 - (a) by special resolution passed at a meeting of the members holding shares in the class; or
 - (b) with the written consent of members with at least 75% of the votes in the class.

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

- (2) The Company must give a notice in writing of the variation or cancellation of shares to members of the class affected within 7 days after the variation or cancellation.
- (3) The provisions of this constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of members holding shares in a class except that:
 - (a) a quorum is constituted by not less than two members (personally present or represented by a duly appointed proxy, attorney or representative) holding at least 25% of the issued shares of the class or if there is one holder of shares in a class, that person; and
 - (b) any member who holds or represents shares of the class may demand a poll.

13 Meetings of members

13.1 Circulating resolutions – more than one member

- (1) This rule 13.1 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- (2) The Company may pass a resolution without a general meeting being held if members sufficient to pass the resolution at a general meeting (taking into account all relevant voting rights and exclusions) sign a document stating they are in favour of the resolution.
- (3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy. If a share is held jointly, each joint member must sign.

- (4) The resolution is passed when the last required member signs.
- (5) If the Company receives by electronic transmission, or electronically accesses a copy of a document referred to in this rule 13.1, it is entitled to assume that the copy is a true copy.

13.2 Resolutions of one member company

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

13.3 Calling of general meeting

- (1) A director may call a meeting of the Company's members.
- (2) Except as otherwise provided in the Act, members who hold at least 5% of the votes may call a general meeting or require the Directors to call a general meeting.
- (3) So long as the Company remains a proprietary company, no annual general meeting need be held.

13.4 Amount of notice of meeting

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

13.5 Persons entitled to notice of general meeting

- (1) Written notice of a meeting of the Company's members must be given individually to:
 - (a) each member entitled to vote at the meeting;
 - (b) each director;
 - (c) the Company's auditor; and
 - (d) subject to rule 13.6, every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his or her death or bankruptcy, would be entitled to receive notice of the meeting.
- (2) No other person is entitled to receive notice of general meetings.
- (3) If a share is held jointly, then unless the share is the only share in the Company, notice need only be given to one of the members, being the joint member named first in the Register.

13.6 Notice upon transmission

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

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

13.7 How notice is given

- (1) The Company may give the notice of meeting to a member:
- (a) personally;
 - (b) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
 - (c) by sending it to the facsimile number or electronic mail address (if any) nominated by the member (including as an attachment to or link within such electronic mail);
 - (d) by sending it by other electronic means (if any) nominated by the member; or
 - (e) by notifying the member in accordance with rule 13.7(2).
- (2) If the member nominates:
- (a) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
 - (b) an electronic means (**nominated access means**) the member may use to access notices of meeting;
- the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):
- (c) that the notice of meeting is available; and
 - (d) how the member may use the nominated access means to access the notice of meeting.

14 When notice is given

- (1) A notice of meeting sent by post is taken to be given on the 2nd business day after it is posted.
- (2) Except as provided by rule 14(3) a notice of meeting given to a member under rule 13.7(1)(c) is taken to be given on the business day after it is sent.
- (3) A notice of meeting given to a member under rule 13.7(1)(c) is not effective if:

- (a) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (b) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (c) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- (4) A notice of meeting given to a member under rule 13.7(1)(e) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
 - (5) A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 14 is conclusive evidence of the matter.

14.2 Period of notice

Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

14.3 Contents of notice

A notice of a general meeting must:

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

14.4 Constructive notice

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

14.5 Notice of adjourned meeting

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

14.6 Accidental omission to give notice

Subject to the Act, the accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution or the accidental omission to advertise (if necessary) the meeting does not invalidate the proceedings at or any resolution passed at the meeting.

14.7 Postponement of general meeting

- (1) The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by shareholders as provided by the Act) for not more than 42 days after the date for which it was originally called.
- (2) Whenever any meeting is postponed (as distinct from being adjourned under rule 14.9(3) or rule 14.10(4)) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

14.8 Technology

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

14.9 Quorum

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

14.10 Chair at general meetings

- (1) If the directors have appointed one of their number as chair of their meetings, the person appointed presides as chair at every general meeting.
- (2) If the directors have appointed one of their number as deputy chair of their meetings, to act as chair in the absence of the chair, the person appointed presides as chair at every general meeting at which the chair is absent.
- (3) Where a general meeting is held and:
 - (a) a chair has not been appointed as referred to in rule 14.10(1) or a deputy chair as referred to in rule 14.10(2); or
 - (b) the chair or deputy chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present may appoint one of their number to be chair of the meeting and in default of their doing so the members present must appoint another director or if no director is present or willing to act then the members present may appoint any one of their number to be chair of the meeting.

- (4) The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.
- (5) The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.
- (6) The chair of the meeting may in his or her absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a member, director or auditor of the Company.

14.11 Who can speak a general meeting

Where a general meeting is held:

- (1) a director who is not a member is entitled to be present and to speak to any general meeting;
- (2) a secretary who is not a member is entitled to be present and to speak at any general meeting;
- (3) the auditor of the Company from time to time and any assistant of the auditor who is not a member is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company; and
- (4) any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

14.12 Business at adjourned meetings

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

15 Voting at meetings of members

15.1 How many votes a member has

- (1) Subject to any rights or restrictions attached to any class of shares and to this constitution, at a meeting of members:
 - (a) on a show of hands, each member has one vote; and
 - (b) on a poll, each member has one vote for each share the member holds.
- (2) The vote may be exercised in person, by proxy or body corporate representative.
- (3) When a shareholder appoints two proxies the appointment must specify the proportion of the Member's voting rights which each proxy is entitled to represent.
- (4) Where a person is entitled to vote in more than one capacity (representative or proxy) in respect of the same share, that person is only entitled to one vote.
- (5) A member is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

15.2 Jointly held shares

- (1) Any one of the joint holders may vote at any meeting of the company either personally or by a properly authorised representative, or proxy in respect of the shares as if that joint holder was solely entitled to the shares.
- (2) If a share is held jointly and more than one member votes in respect of that share, only the vote of the member whose name appears first in the Register counts.
- (3) Rule 15.2(1) applies whether the vote is cast in person or by proxy.
- (4) Several executors or administrators of a deceased member are treated, for the purposes of rule 15.2(1), as joint holders.

15.3 Objections to right to vote

- (1) A challenge to a right to vote at a meeting of members:
 - (a) may only be made at the meeting; and
 - (b) must be determined by the chair, whose decision is final.
- (2) A vote not disallowed following the challenge is valid for all purposes.

15.4 Votes need not all be cast in the same way

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

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

15.5 How voting is carried out

- (1) A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- (2) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- (3) Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

15.6 Matters on which a poll may be demanded

A poll may be demanded on any resolution. A demand for a poll may be withdrawn.

15.7 When a poll is effectively demanded

- (1) At a meeting of the Company's members, a poll may be demanded by:
 - (a) at least 5 members entitled to vote on the resolution;
 - (b) a member or members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (c) the chair.
- (2) The poll may be demanded:
 - (a) before a vote is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- (3) The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

15.8 When and how polls must be taken

- (1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (3) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (4) The result of the poll is the resolution of the meeting at which the poll was demanded.

15.9 Voting rights of persons entitled under transmission rule

A person entitled under the transmission rule (rule 18.2) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

- (1) 48 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the Company documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement; or
- (2) the directors have previously admitted the person's right to vote at the meeting in respect of the shares.

15.10 Resolutions proposed by members

A member may not at any meeting move any resolution relating to special business unless:

- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and two months has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the directors.

16 Issue of shares

16.1 General

- (1) Subject to the Act the directors may issue shares to persons at times and on terms and conditions and having attached to them preferred, deferred or other special rights or restrictions as the directors see fit.
- (2) Subject to the Act the directors may issue Preference Shares to persons at times as the directors see fit, on the Preference Terms.
- (3) Subject to the Act, any preference shares other than Preference Shares may, with the sanction of a resolution of the Company in general meeting, be issued on the terms that they are, or at the option of the Company are, liable to be redeemed.
- (4) The Company may redeem all or any redeemable preference shares upon 7 days written notice. The notice must be delivered or posted to the holder of the redeemable preference shares accompanied by a cheque for the amount paid up in respect of the shares to be redeemed. Redemption takes place 7 days after delivery or posting of the notice and cheque.
- (5) The directors may grant to any person (including any directors, officer or employee of the Company or a related body corporate of the Company) options or other securities with rights of conversion to shares or pre-emptive rights to any shares for any consideration and for any period.

16.2 Ordinary shares

All shares of the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:

- (1) the right to attend and vote at meetings of the Company and on a show of hands to one vote and on a poll to one vote for each share held;
- (2) the right to participate in dividends (if any) determined on the class of shares held; and
- (3) on the winding up of the Company, the right to participate in the division of any surplus assets or profits of the Company in proportion to the number of shares held, irrespective of the amount paid or credited as paid on the shares, and fully

paid ordinary shares will rank above all other classes of shares in a winding up. In the case of any shares that were partly paid up at the commencement of the winding up, that the amount required to be paid to make them fully paid must first be contributed to the Company.

16.3 Conversion of shares

- (1) The Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.
- (2) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.
- (3) The resolution by which any share is subdivided may determine that as between the holders of the shares resulting from the subdivision one or more of the shares have some preference or special advantage as regards dividend, capital, voting or otherwise as compared with the others.

17 Title to shares

17.1 Entitlement to share certificates

- (1) A person whose name is entered as a member in the register of members is entitled without payment to one certificate for the shares registered in the member's name or to several certificates in reasonable denominations.
- (2) Where securities are held jointly by several persons the Company is not bound to issue more than one certificate.
- (3) Delivery of a certificate of securities may be effected by delivering it personally to the holder or by posting it in a prepaid envelope addressed to the holder at the address shown in the Register or by delivering or posting the certificate in accordance with the written instructions of the holder. Delivery of a certificate to one of several joint holders is sufficient delivery to all of them.
- (4) A certificate must state:
 - (a) the name of the Company and the fact that it is registered under the Act;
 - (b) the number of the certificate;
 - (c) the number and class of shares for which the certificate is issued; and
 - (d) the extent to which the shares are paid up.

17.2 Replacement of certificates

- (1) If any certificate or other document of title to shares is worn out or defaced the directors must, upon production to them of the certificate or document, order it to be cancelled and issue within 10 business days after receipt of the worn out or defaced certificate or document a new certificate or document in its place upon the conditions prescribed by the Act.
- (2) If:
 - (a) satisfactory evidence is received by the directors that any certificate or other document of title to shares has been stolen, lost or destroyed and has not been pledged, sold or otherwise disposed of;

- (b) an indemnity and undertaking which the directors think adequate is given; and
- (c) any other steps (including advertising) which the directors think necessary are taken;
- (3) a new certificate or document must be issued to the party entitled to the stolen, lost or destroyed certificate or document within 5 business days after those conditions are satisfied. The Company is entitled to charge for each new certificate or document issued a fee not exceeding the maximum amount permitted by the Act.

17.3 Recognition of ownership

- (1) Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- (2) The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a share except an absolute right of ownership in the registered holder.

Rule 17.3(2) applies whether or not the Company has notice of the interest or right but does not apply where the Company is bound to recognise the interest or right by another provision of this constitution or by law.

17.4 Joint holders

- (1) Where two or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 17.4(2) and to the following:
 - (a) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
 - (b) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
 - (c) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the directors may require such evidence of death as they see fit;
 - (d) any one of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
 - (e) only the person whose name stands first in the Register as one of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.
- (2) Where three or more persons are registered holders of a share in the Register (or a request is made to register more than three persons) only the first three named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased shareholder.

18 Transfer of shares

18.1 Transfer of shares

- (1) Subject to this constitution, a member may transfer all or any of the member's shares by instrument in writing in any form that the directors approve. The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- (2) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (3) The directors may in their discretion refuse to register a transfer of shares without giving any reason for refusal. The directors may suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any one calendar year.
- (4) Before a transfer of shares is registered:
 - (a) the transfer and any share certificate must be lodged at the Company's registered office or any other place the directors allow;
 - (b) any fee payable on registration of the transfer must be paid; and
 - (c) the directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

The directors may in their discretion dispense with any of these requirements.

- (5) All powers of attorney granted by members which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company must be treated as between the Company and the grantor of the powers as remaining in full force and may be acted upon until express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.
- (6) **(Proposed transfers)** Any seller(s) that propose to sell shares they hold must give notice in writing (**Transfer Notice**) to the Company and to each other shareholder (excluding the intended purchaser if that person is a Shareholder), setting out full details of:
 - a) the shares the seller(s) propose to sell (**Transfer Shares**);
 - b) the proportion of all shares, and any relevant class(es) of shares, that the Transfer Shares represent;
 - c) the name of the of the proposed purchaser (**Purchaser**) and of any person who controls the proposed purchaser;
 - d) the price per Transfer Share (which must be payable on completion i.e., no deferred consideration);
 - e) any other material terms of the proposed including any warranties the seller(s) propose to give the proposed purchaser;
 - f) the other shareholders' Pre-emptive Rights and, if applicable, tag along rights; and

- g) if applicable, notice that the seller(s) are exercising their drag along rights (**Drag Along Notice**).

The seller(s) may not transfer any Transfer Shares, or withdraw or revoke a Transfer Notice, until the processes set out in this constitution (to the extent relevant) are complete.

18.2 Transmission of shares

- (1) If a shareholder who does not own shares jointly dies, the Company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the person entitled to shares as the personal representative of a deceased shareholder or because of the bankruptcy or mental incapacity of a shareholder (successor) gives the directors the information they reasonably require to establish the successor's entitlement to be registered as holder of the shares:
 - (a) the successor may:
 - (i) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (b) the successor, whether or not registered as the holder of the shares, is entitled to the same rights, and is subject to the same liabilities, as if the successor were registered as holder of the shares.
- (3) On receiving an election under rule 18.2(2)(a)(i), the Company must register the successor as the holder of the shares.
- (4) A transfer under rule 18.2(2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (5) If a shareholder who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- (6) This rule 18.2 has effect subject to the *Bankruptcy Act 1966*.

18.3 Drag Along

- (1) (Drag Along Right) If a seller (or sellers) of shares issues a Transfer Notice and:
 - a. relates to the proposed sale of 75% or more of the shares to a purchaser that is not affiliated with the seller; and
 - b. contains a notice of intention to drag the other shareholders,then the other shareholders must sell all of their shares (Drag Along Shares) to the purchaser on the terms set out in the Transfer Notice (excluding any warranties) (Drag Along Right).
- (2) (Exercise) To exercise the drag along right the seller(s) must give a drag along notice stating the particulars of the proposed sale.

- (3) (Completion mechanics) If the sale of the Transfer Shares Completes, the seller(s) must ensure that the Purchaser simultaneously Completes acquisition of all Drag Along Shares. The completion obligations set out in clause **Error! Reference source not found.** apply to the extent necessary to give effect to the transfer of the Drag Along Shares.

18.4 Pre-Emptive Rights

- (1) **(Pre-emptive Right on Issue of Shares)** If the Company issues new securities in the Company (**Securities**) it must first offer those securities to the Substantial Shareholders before offering to the Securities other shareholders unless:
- a) the directors have resolved to issue the Securities as part of a crowd-sourced funding offer;
 - b) the Securities are being offered as part of a public offer of securities;
 - c) the directors resolve to issue up to 20% in aggregate of the issued share capital of the Company, provided such issuances are not exercised more than once in any 12 month period;
 - d) the majority of the Substantial Shareholders waive their pre-emptive rights in relation to the issuance of new securities;
 - e) the Securities are issued as part of an approved employee share option plan;
 - f) the Securities are issued as part of an exit event approved in accordance with the constitution;
 - g) the Securities are issued as part of an arm's length commercial agreement, provided that such issuances in any 12 month period are in aggregate not more than 25% of the issued share capital of the Company; or
 - h) the Securities are issued as part of the consideration for an acquisition of an interest in any business, entity or company approved by the directors.
- (2) **(Pre-emptive Right on Sale of Shares)** If a seller (or sellers) issues a Transfer Notice that does not contain a Drag Along Notice then that Transfer Notice constitutes an offer by the seller(s) to sell the Transfer Shares to the shareholders that received the notice at the Price stated in the notice (Pre-emptive Right). The Company is authorised to act as agent of the seller for the purpose of that offer. This Pre-emptive Right applies regardless of whether the Shareholder also has a Tag Along Right.
- (3) **(Exercise)** Each Shareholder wishing to purchase Transfer Shares (Buyer) must notify the Company of the number of Transfer Shares it wishes to purchase (Desired Number) within 15 Business Days of the date of Transfer Notice. A notice under this clause is irrevocable.
- (4) **(Allocating Transfer Shares) If the aggregate Desired Number is:**
- a) equal to or less than the total number of Transfer Shares, the Company must allocate to each Buyer their Desired Number of Transfer Shares or
 - b) greater than the total number of Transfer Shares, the Company must:
 - a. allocate to each Buyer the lesser of:
 - i. their Desired Number of Transfer Shares; or
 - ii. their Specified Proportion of the Transfer Shares (but with the Specified Proportion calculated by excluding from the total number of Shares held by all shareholders the Shares of the seller(s)); and
 - b. continually repeat the above process (each time excluding from the process and the calculation of Specified Proportions, the seller(s) and each Buyer who has already been allocated its Desired Number) until all Transfer Shares have been allocated.

- (5) **(Notification)** The Company may round up or down what would otherwise be fractional interests in Transfer Shares at its discretion. The Company must notify all shareholders of the final allocation of Transfer Shares.
- (6) **(Completion mechanics)** The seller(s) must sell, and each Buyer must buy, the Transfer Shares allocated to that Buyer.
- (7) The seller may sell any remaining Transfer Shares to the Purchaser in accordance with the Transfer Notice and subject to the shareholders' Tag Along Rights under clause 12.

18.5 Tag Along

- (1) **(Tag Along Right)** If a seller (or sellers) issues a Transfer Notice that:
 - a) relates to the proposed sale of 75% or more of all shares (**Sale Proportion**); and
 - b) does not contain a Drag Along Notice,

then each other shareholder has the right to require the seller(s) to procure that the purchaser also buys up to the Sale Proportion of that shareholder's shares on the terms set out in the Transfer Notice (**Tag Along Right**).
- (2) **(Exercise)** Each shareholder wishing to exercise its Tag Along Right must notify the seller(s) and the Company of the number of Shares it wishes to transfer to the purchaser (Tag Along Shares), which must not exceed the Sale Proportion of its shares within the 15 Business Days after receiving notice. A notice under this clause is irrevocable.

If any Tag Along Shares are preference shares then those preference shares will convert into ordinary shares upon completion of the transfer of those preference shares.
- (3) **(Exercise of Pre-emptive Rights)** If any shareholder(s) exercise their Pre-Emptive Rights in relation to the Transfer Shares then the Sale Proportion will be recalculated based on the number of Transfer Shares remaining after those shareholders have exercised their Pre-Emptive Rights. If the Sale Proportion is:
 - (a) less than 20% of all shares then the Tag Along Rights will be terminated and the seller(s) may sell the remaining Transfer Shares; or
 - (b) 20% or more of all shares then the Tag Along Rights will survive but the number of Tag Along Shares that each shareholder is entitled to transfer will, if necessary, be reduced so that it does not exceed that shareholder's Sale Proportion of its shares.
- (4) **(Completion mechanics)** The seller(s) agree to exclude from the sale to the purchaser the number of Transfer Shares equal to the aggregate number of Tag Along Shares (pro rata with each seller's shareholding). If the sale of the remaining Transfer Shares completes, the seller(s) must ensure that the purchaser simultaneously completes the acquisition of each relevant shareholder's Tag Along Shares. The completion obligations set out in clause apply to the extent necessary to give effect to the transfer of all Tag Along Shares.

18.6 Brokerage or commission

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company. Payments by way of brokerage or commission may be satisfied:

- (1) by the payment of cash;
- (2) by the issue of fully or partly paid shares or other securities; or
- (3) partly by the payment of cash and partly by the issue of fully or partly paid shares or other securities.

19 Proxies and body corporate representatives

19.1 Who can appoint a proxy

- (1) A member who is entitled to attend and cast a vote at a meeting of the Company's members or at a meeting of the holders of a class of shares may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.
- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (3) If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (4) Any fractions of votes resulting from the application of rule 19.1(2) or rule 19.1(3) are disregarded.

19.2 Rights of proxies

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
 - (a) to speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment); and
 - (c) to join in a demand for a poll.
- (2) If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- (3) A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- (4) A proxy may be revoked at any time by notice in writing to the Company.

20 Body corporate representative

- (1) A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (a) at meetings of the Company's members;
- (b) at meetings of creditors or debenture holders;
- (c) relating to resolutions to be passed without meetings; or
- (d) in the capacity of a member's proxy appointed under rule 19.1.

The appointment may be a standing one.

- (2) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (3) A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
- (4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

21 Dividends and reserves

21.1 Payment of dividends

- (1) The directors may pay dividends (both interim and final) and may fix:
 - (a) the amount;
 - (b) the time for payment; and
 - (c) the method of payment.
- (2) The Company in general meeting may resolve to pay a dividend, but may do so only if the directors have recommended a dividend.
- (3) A dividend which the Company in general meeting resolves to pay must not exceed the amount recommended by the directors.
- (4) Interest is not payable on a dividend.

21.2 Change decision to pay dividend

The directors may amend or revoke a decision by them to pay a dividend, at any time before the time fixed for payment arrives.

21.3 Power to employ reserves

- (1) The directors may, before recommending or deciding to pay any dividend, set aside out of the profits of the Company those sums they think proper as reserves, to be applied, at the discretion of the directors, for any purpose to which the profits of the Company may be properly applied.
- (2) Pending the application of reserves under rule 21.3(1), the reserves may, at the discretion of the directors, be used in the business of the Company or be invested as the directors see fit.

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

21.4 Crediting of dividends

- (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend and to this rule 21.4, all dividends are apportioned and paid equally on each share.
- (2) If a share is issued on terms that it will rank for dividend as from a particular date, that share ranks for dividend only from that date.
- (3) Despite any other provision of this rule 21.4 the holder of a partly paid share is not entitled to a greater proportion of the dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). In this rule 21.4(3) amounts paid in advance of a call are ignored when calculating the proportion.

21.5 Dividends where different classes of shares

- (1) Subject to rule **Error! Reference source not found.** of **Error! Reference source not found.**:
 - (a) if there is more than one class of shares, any dividend whether interim or otherwise may be paid on the shares of any one or more class or classes to the exclusion of the shares of any other class or classes; and
 - (b) if dividends are to be paid on more than one class, the dividend on the shares of one class may be at a higher or lower rate than one at the same rate as the dividend on the shares of another class, but the shares within each class must share equally in any dividend in respect of that class.
- (2) An objection may not be raised to any resolution which:
 - (a) determines a higher rate of dividend on the shares of any class than the dividend determined on the shares of any other class; or
 - (b) determines a dividend on the shares of any class to the exclusion of the shares of any other class;on the ground that:
 - (c) the resolution was passed by the votes of the holders of the shares of a class to receive the higher rate of dividend or to receive the dividend (as the case may be); and
 - (d) the resolution was opposed by the holders of the shares of a class to receive the lower rate of dividend or to be excluded (as the case may be).

21.6 Deductions from dividends

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

21.7 Unclaimed dividends

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

21.8 Entitlement to dividends

Unless otherwise specified in the decision to pay a dividend, all dividends are payable to the members on the Register on the date fixed for payment.

21.9 Payment of dividends on transmission

The directors may retain the dividends or bonuses payable on any share to which rule 18.2 applies until the person entitled to elect to be registered as holder of the share or to transfer the share does so.

21.10 Payment of dividends by asset distribution

- (1) Any general meeting determining or the directors deciding to pay a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate, and the directors must give effect to that resolution.
- (2) Where a difficulty arises in regard to a distribution of specific assets referred to in rule 21.10(1), the directors may resolve the difficulty as they see fit.
- (3) The directors may:
 - (a) fix the value for distribution of the specific assets or any part of those assets;
 - (b) determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties; and
 - (c) vest any of those specific assets in trustees;as the directors see fit.

21.11 Manner of payment of dividends

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

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

22 Shareholders' rights on distribution of assets

- (1) if the Company is wound up, the liquidator may, with the sanction of a special resolution of each class of shares, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set the value the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes

of members. This division need not be in accordance with the legal rights of the members, and in particular, any class may be given preferential or special rights or may be excluded altogether or in part; and

- (2) the liquidator may, with the sanction of a special resolution of each class of shares, vest the whole or any part of the property referred to in rule 22(1) in trustees upon trusts for the benefit of the contributories that the liquidator sees fit, but so that no member is compelled to accept any shares or other securities on which there is any liability.

23 Execution of documents

23.1 Common seal

- (1) The Company may, but need not, have a common seal. If the Company has a common seal the directors must provide for its safe custody.
- (2) The Company may have a duplicate common seal. It must be a copy of the common seal with the words duplicate seal, share seal or certificate seal added.
- (3) The common seal must not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- (4) The Company executes a document with its common seal if the fixing of the seal is witnessed by:
 - (a) Two directors of the Company;
 - (b) a director and a company secretary of the Company;
 - (c) if the Company has a sole director who is also the sole company secretary – that director; or
 - (d) if the Company has a sole director and does not have a secretary – that director;

and the form of execution complies with rule 23.4.

23.2 Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

- (1) two directors of the Company;
- (2) a director and a company secretary of the Company;
- (3) if the Company has a sole director who is also the sole company secretary – that director; or
- (4) if the Company has a sole director and does not have a secretary – that director;

and the form of execution complies with rule 23.4.

23.3 Execution of a document as a deed

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance rule 23.1 or rule 23.2.

23.4 Execution - General

- (1) Except if the Company has a sole director who is also the sole company secretary, the same person may not sign in the dual capacities of director and secretary.
- (2) A person who signs as sole director and sole company secretary must state next to his or her signature that he or she is the sole director and sole company secretary of the Company.
- (3) A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- (4) Rule 23.1 or rule 23.2 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

24 Miscellaneous

24.1 Minutes to be kept

- (1) The directors must keep minute books in which they record within one month:
 - (a) proceedings and resolutions of meetings of the Company's members;
 - (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (c) resolutions passed by members without a meeting;
 - (d) resolutions passed by directors without a meeting; and
 - (e) if the Company has only one director – the making of declarations by the director.
- (2) The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
 - (a) the chair of the meeting; or
 - (b) the chair of the next meeting.
- (3) The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- (4) If the Company has only one director, the director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- (5) Without limiting rule 24.1(1) the directors must record in the minute books:
 - (a) all appointments of officers;

- (b) the names of the directors and alternate directors present at all meetings of directors and the Company;
- (c) in the case of a technology meeting, the method by which the meeting was held;
- (d) all orders, resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
- (e) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
- (f) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

24.2 Rights of inspection

- (1) The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- (2) A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolutions of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- (3) Directors have the rights of inspection and access provided by section 198F of the Act.

24.3 Confidential information

Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

24.4 Notices other than notices of meeting

- (1) Any notice by the Company to a member, including a notice in connection with a call or forfeiture, may be given in the same way as a notice of meeting may be given under rule 13.7, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 14.
- (2) The references in rule 13.6(1) to notices to persons entitled to a share in consequence of the death or bankruptcy of a member, and in rule 17.4(1)(e) to notices to joint holders of a share apply to any notice given by the Company.

24.5 Formalities omitted

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