

17 July 2020

**House of Representatives Standing Committee on Economics
Review of the Four Major Banks and other Financial Institutions – Superannuation Sector
Re: Questions in Writing**

- 1 This letter responds to your letters of 21 May and 29 June 2020 requesting responses to additional questions in writing of IFM Investors Pty Ltd (“**IFM**”).
- 2 As described previously, IFM is part of the IFM Group, the wholly-owned investment management business of Industry Super Holdings. IFM provides investment management and advisory services to IFM Group funds and mandates established as part of the IFM Group’s infrastructure, debt investments, listed equities, and private equity business lines.
- 3 IFM manages funds on behalf of approximately 450 institutional investors globally, including superannuation and pension funds, sovereign wealth funds, insurers, endowments, foundations and universities.
- 4 IFM welcomes this opportunity to further assist the House of Representatives Standing Committee on Economics (“**Committee**”) in its Review of the Four Major Banks and other Financial Institutions (“**Review**”).
- 5 The Review’s terms of reference emphasise assessing “the progress made by relevant financial institutions in implementing the recommendations of the Royal Commission” into Misconduct in the Banking, Superannuation and Financial Services Industry (the “**Royal Commission**”). The Committee’s questions in writing, to which this correspondence is addressed, do not fall within the Review’s terms of reference.
- 6 Noting that the Committee’s questions in writing fall outside the terms of reference, IFM has nonetheless undertaken reasonable inquiries, in the time available, of its books, records and employees to provide the responses below.
- 7 **Members Equity Bank (IFM55QW and 56QW)**
- 8 Members Equity Bank Limited (“**ME Bank**”) does not manage investments on behalf of IFM.
- 9 IFM does not have an ownership interest in ME Bank.
- 10 IFM does invest in senior debt securities issued by ME Bank on behalf of the mandates and funds for which IFM acts as investment manager, with a short term tenor of typically three to six months to maturity. The aggregate annual positions in these investments over the last five years are set out below as a share of IFM’s investments in the asset class:

Year	Share of asset class value (%)
2015	2.7
2016	2.1
2017	1.7
2018	1.2
2019	1.1

11 The average annual performance of IFM’s investments in debt securities issued by ME Bank has met or exceeded the asset class benchmark.

12 **Illiquid and unlisted assets (IFM57QW and 60QW)**

13 The table below sets out the share of unlisted assets managed by IFM located in Australia, based on the asset’s headquarters.

Country/Region	Share of unlisted asset class value 2019, (%)		
	Infra Equity	Debt	Private Equity
Australia	22.3	45	100
Others	77.7	55	Nil

Note: Excludes investments in private equity fund-of-funds.

14 IFM does not maintain definitions for ‘illiquid assets’ or ‘liquid assets’.

15 **Board, governance, and employee assessment (IFM58QW, 59QW, 62QW and 63QW)**

16 A copy of IFM’s constitution is attached.

17 Directors are generally appointed for a period of three years from the 1st of January of the year following their appointment. Each year, one third of the Directors must retire, or retire and seek reappointment.

18 The process for board appointment includes a Directors Nomination Committee (“**DNC**”). The DNC comprises an equal number of Board Directors and shareholder representatives, to consider and nominate candidates for shareholder approval. Nominees are elected by shareholder vote at an annual general meeting.

19 The skills and competencies of the Board are regularly considered and reviewed. A skills matrix is completed in respect of each Director to ensure that the Board on a collective basis possesses the requisite skills and knowledge. There are no current gaps identified. In addition, an annual review of the fitness and propriety of each Director is conducted.

20 Other than the Chair of the Board Investment Committee (“**BIC**”), there are no standing members of the BIC. Instead, members of the Board are appointed to the BIC as necessary and appropriate to consider specific matters. The members of the BIC are subject to skills and competencies processes by virtue of their membership on the Board.

21 Shareholders are not represented on the Board.

22 In accordance with IFM policy, prior to being hired, candidates are carefully interviewed, and subject to background and reference checks. Under IFM’s employee performance assessment framework, the performance of all IFM executives with responsibility for investment is evaluated at least twice during each year, including assessment of investment performance.

23 **Listed company voting and engagement (IFM61QW and 66QW)**

24 IFM's Proxy and Engagement Committee ("PEC") is responsible for the oversight and implementation of IFM's proxy voting process and decisions in respect of voting on resolutions at annual general meetings of listed companies. The PEC is comprised of the Global Head of Listed Equities, the Head of Large Cap - Active Equities, and is chaired by the Executive Director, Responsible Investment. The PEC reports to a subcommittee of the Board, and consults with IFM's Chief Executive and Global Head of External Relations.

25 IFM subscribes to voting research and voting guidance from the Australian Council of Superannuation Investors and CGI Glass Lewis. Advisers are paid for their services and contracted on an annual basis. Although IFM considers proxy voting advice, IFM makes its own independent assessment in respect of votes on all resolutions in the Australian listed company portfolio. IFM's voting decisions are published on its website.

26 IFM's voting decisions seek to enhance the long term value of the companies in which it invests.

27 **Investments managed by other entities (IFM69QW and 70QW)**

28 No external entity manages more than 30 percent of the capital of any asset class in which IFM invests.

29 **Remuneration (IFM71QW)**

30 Reference is made to the 11 November 2019 letter of IFM to the Committee, which describes IFM's remuneration structures. Investment and corporate performance, measured at the end of the financial year, affects the remuneration of executive management pursuant to applicable incentive plans.

31 The chief executive commenced employment on 30 March and the terms are unchanged.

32 The fees paid to the Chair of the IFM Board were reduced after 11 March 2020.

33 **Investment in fossil fuel producers (IFM72QW)**

34 Other than listed equity investments, IFM does not have interests in pure play fossil fuel producers. IFM recognises the risks of climate change, and incorporates environmental, social and governance investment factors into decision making across each asset class in which it invests. IFM's investment teams adhere to IFM's Responsible Investment Charter and Environmental, Social and Governance Policy, both of which can be accessed via the following link: <https://www.ifminvestors.com/about-us/responsible-investment>. IFM received an A+ rating from the United Nations-supported Principles for Responsible Investment, to which IFM is a signatory.

35 **Miscellaneous (IFM64QW, 65QW, 67QW, and 68QW)**

36 IFM has no art collection.

37 IFM's letter of 11 November 2019 sets out expenditures for certain events, at some of which candidates or political office holders were in attendance. Over the last 10 years, IFM also purchased tickets to three events organised by the Australian Labor Party, one in 2010 and two in 2013.

38 Regarding IFM's participation in the ACTU Member Connect and ACTU Superannuation Partnerships programs, please refer to IFM's letter to the Committee of 11 November 2019, which provides this information. The expenditures paid to these programs were for the purposes specified by then-IFM Chief Executive Mr Brett Himbury in the Committee's hearing of 22 November 2019 and create significant value; they were not donations.

39 IFM has not commissioned external parties to prepare reports focused solely on the performance, investment strategies, or conflicts of interest of funds over the past five years. However, IFM regularly assesses the performance of its products and services. IFM also arranges for a comprehensive review of its conflicts management framework to be undertaken at least every three years in line with Superannuation Prudential Standard 521, with the assistance of a qualified independent party.

40 **Conclusion**

41 IFM looks forward to engaging further with the Committee as to how the superannuation sector as a whole can work together to ensure that the sector continues to operate efficiently, fairly, and to the benefit of fund members, in line with the findings and recommendations of the Royal Commission.

Yours faithfully

IFM Investors Pty Ltd

ATTACHMENT

Corporations Act 2001

A Company Limited by Shares

**INDUSTRY FUNDS
MANAGEMENT PTY LTD
ACN 107 247 727**

Incorporates changes made 10 January 2012.

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TABLE OF CONTENTS

Clause No		Page No
1.	INTERPRETATION	1
	1.1 Definitions	1
	1.2 Construction	2
	1.3 Headings	2
2.	PROPRIETARY COMPANY	2
	2.1 Restricted Right of Transfer	2
	2.2 Members not to exceed Fifty	2
	2.3 Public not to Subscribe	2
3.	SHARES	2
4.	REDUCTION OF CAPITAL	3
5.	OTHER ALTERATION OF CAPITAL	3
6.	VARIATION OF CLASS RIGHTS	3
	6.1 Variation	3
	6.2 Consent Required	3
	6.3 Restrictions on Variation	3
7.	CERTIFICATES	4
	7.1 Right to Certificate	4
	7.2 Lost, Destroyed and Damaged Certificates	4
8.	CALLS	4
	8.1 Board may make Calls	4
	8.2 Responsibility of Members	4
	8.3 Time of Call	4
	8.4 Money Payable by Allotment Deemed Calls	4
	8.5 Payment of Calls in Advance	4
	8.6 Evidence of Liability for Calls	5
9.	FORFEITURE OF SHARES	5
	9.1 Notice Requiring Payment	5
	9.2 Forfeiture	5
	9.3 Notice of Forfeiture	5
	9.4 Dealing with Forfeited Shares	5
	9.5 Annulment of Forfeiture	5
	9.6 Liability of Former Member	6
	9.7 Disposition of Forfeited Share	6
10.	LIEN	6
	10.1 Company's Lien	6
	10.2 Exemptions	6
	10.3 Enforcement of Lien	6
	10.4 Transfer and Title	6
	10.5 Proceeds of Sale	7

11.	TAXATION LIEN	7
	11.1 Member's Obligation to Repay	7
	11.2 Company's Lien	7
	11.3 Indemnity	7
	11.4 Debt Due	7
	11.5 Refusal to Register Transfer	7
12.	STOCK	7
	12.1 Conversion of Shares	7
	12.2 Transfer of Stock	7
	12.3 Rights and Liabilities of Stock Holders	8
13.	TRANSFER OF SHARES	8
	13.1 Right to Transfer	8
	13.2 Form of Transfer	8
	13.3 Corporate Shareholder	8
	13.4 Registration of Transfer	8
	13.5 Board Discretion	8
	13.6 Retaining Instruments of Transfer	8
	13.7 Closing the Register	8
14.	TRANSMISSION OF SHARES	9
	14.1 Title on Death of Member	9
	14.2 Transmission	9
	14.3 Bankrupt Members	9
	14.4 Board may refuse Registration	9
15.	GENERAL MEETINGS	9
	15.1 Annual General Meeting	9
	15.2 Extraordinary General Meetings	9
	15.3 Convening General Meetings	9
	15.4 Notice of General Meetings	9
	15.5 Omission to give Notice	10
	15.6 Minute of Holding Company	10
	15.7 Resolution without General Meeting	10
	15.8 Deemed Resolution of Member	10
	15.9 Validation of Meetings on Short Notice	10
	15.10 Calling Class Meetings	10
16.	PROCEEDINGS AT GENERAL MEETINGS	11
	16.1 Business of Annual General Meetings	11
	16.2 Special Business	11
	16.3 Quorum	11
	16.4 Procedure if No Quorum	11
	16.5 Chairperson	11
	16.6 Adjournment of General Meetings	11
17.	VOTING AT GENERAL MEETINGS	12
	17.1 Show of Hands	12
	17.2 Demanding a Poll	12
	17.3 Taking a Poll	12
	17.4 Casting Vote	12
	17.5 Members Entitlement to Vote	12
	17.6 Votes by Legal Representative	13

17.7	Votes by Joint Holders	13
17.8	Disqualification by Non Payment of Calls	13
17.9	Appointment of Proxies, Attorneys and Representatives	13
17.10	Instruments of Proxy	13
17.11	Authority of Proxy	13
18.	DIRECTORS	13
18.1	Number of Directors	13
18.1A	Appointment of Directors by Holding Company	14
18.2	Share Qualifications	14
18.3	Natural Persons	14
18.4	Vacation of Office	14
18.5	Other Offices	14
18.6	Appointment by Director's Personal Representative	14
18.7	Appointment by Trustee in Bankruptcy	15
19.	INDEPENDENT DIRECTOR	15
20.	REMUNERATION OF DIRECTORS	15
20.1	Remuneration and Expenses	15
20.2	Special Remuneration	15
21.	DIRECTORS' INTERESTS	15
21.1	Directors' Contracts	15
21.2	Declaration of Interest	16
21.3	Secretary to Record Declarations	16
22.	CHIEF EXECUTIVE OFFICER	16
22.1	Appointment of Chief Executive Officer	16
22.2	Retirement or Removal of Chief Executive Officer	16
22.3	Remuneration of Chief Executive Officer	16
22.4	Powers of Chief Executive Officer	16
23.	ALTERNATE DIRECTORS	16
23.1	Appointment of Alternate Director	16
23.2	Status of Alternate Director	17
24.	DIRECTORS' POWERS	17
24.1	Management of Business of Company	17
24.2	Directors' Borrowing Powers	17
24.3	Appointment of Attorneys	17
24.4	Appointment of Committees	17
24.5	Exercise of Powers outside Victoria	18
25.	PROCEEDINGS OF DIRECTORS' MEETINGS	18
25.1	Chairperson of Directors	18
25.2	Meetings	18
25.3	Quorum	18
25.4	Voting	18
25.5	Decisions of Board	18
25.6	Board Meetings by Instantaneous Communication Device	18
25.7	Circular Resolution without Meeting	19
25.8	Deemed Resolution of a Director	19
25.9	Defect in Appointment	19
25.10	Directors may act if Vacancy	19

26.	SECRETARY	19
27.	MINUTES	19
	27.1 Secretary to Enter Minutes	19
	27.2 Minutes to be Signed	20
	27.3 Minute Book	20
28.	STATUTORY REGISTERS	20
29.	COMPANY SEAL	20
	29.1 Custody	20
	29.2 Use of Seal	20
30.	DIVIDENDS	20
31.	ACCOUNTS	21
	31.1 Accounting Records	21
	31.2 Statutory Accounts	21
	31.3 Inspection of Books	21
	31.4 Retention of Books	21
32.	CHEQUES	21
33.	AUDITORS	21
34.	NOTICES	21
	34.1 Service	21
	34.2 Time of Service	22
	34.3 Notice to Joint Holders	22
	34.4 Entitlement to Receive Notice of General Meetings	22
35.	INDEMNITY	22
36.	DEADLOCK AND ARBITRATION	23
	36.1 Deadlock	23
	36.2 Arbitration	23
37.	WINDING UP	23

Corporations Act 2001

A Company Limited by Shares

**CONSTITUTION OF
INDUSTRY FUNDS MANAGEMENT PTY LTD
ACN 107 247 727**

1. **INTERPRETATION**

1.1 **Definitions**

In this Constitution unless expressed or implied to the contrary:

Board means the directors of the Company having authority to act for the Company acting as a body.

Call includes an amount payable on allotment on any fixed date or by instalments whether being the nominal value of a share or a premium.

clause means a clause of this Constitution.

Constitution means this constitution.

Company means Industry Funds Management Pty Ltd ACN 107 247 727

Debenture includes debenture stock, bonds, notes and other securities of the Company, whether constituting a charge on its assets or not.

Director means a person who is at the relevant time a duly appointed director of the Company.

Dividend means an amount paid to Members as a division of profits of the Company and includes bonus and interim dividends.

Chief Executive Officer means the Chief Executive Officer of the Company in accordance with this Constitution.

Member means a member of the Company in accordance with the *Corporations Act 2001*.

Office means the registered office of the Company.

Ordinary Resolution has the same meaning as the *Corporations Act 2001*.

Register means the register of Members kept in accordance with the *Corporations Act 2001*.

Secretary means any person duly authorised to perform the duties of secretary of the Company.

Special Resolution has the same meaning as in the *Corporations Act 2001*.

1.2 Construction

- (a) Words or expressions used in this Constitution will be interpreted in accordance with the provisions of the *Corporations Act 2001* in force at the time the interpretation is required.
- (b) In this Constitution unless a different intention appears:
 - (i) words importing the singular will include the plural and vice versa; and
 - (ii) words importing one gender will include the other; and
 - (iii) words importing person will include companies and corporations
 - (iv) Any headings or marginal notes in this Constitution are used for convenience only and will not affect its construction.
 - (v) Division 10 of Part 1.2 of the *Corporations Act 2001* applies in relation to this Constitution as if it were an instrument made under the *Corporations Act 2001* as in force on the date on which this Constitution becomes binding on the Company.

1.3 Headings

Headings and subheadings are included for reference only and do not affect the interpretation of this Constitution.

2. PROPRIETARY COMPANY

2.1 Restricted Right of Transfer

The Company is a proprietary company and the right to transfer shares in the Company is restricted as provided in this Constitution.

2.2 Members not to exceed Fifty

The number of Members must not exceed 50.

2.3 Public not to Subscribe

The Company must not invite the public to subscribe for or make any offer to the public to accept subscriptions for shares in or Debentures of the Company. The Company must not invite the public to deposit money with or make any offer to the public to accept deposits of money with the Company.

3. SHARES

- (a) The Board may determine to issue Shares or otherwise allot, control or dispose of Shares with such rights privileges entitlements and on such conditions as they deem fit, subject to the provisions of this Constitution and the *Corporations Act 2001*.
- (b) The Company may issue redeemable preference Shares or preference Shares redeemable at the option of the Company and the Board may

exercise such power in any manner it may think fit subject to the *Corporations Act 2001*.

4. **REDUCTION OF CAPITAL**

The Company may, by Special Resolution, reduce its capital in any way permitted by law.

5. **OTHER ALTERATION OF CAPITAL**

The Company may, by Ordinary Resolution:

- (a) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (b) sub-divide its shares or any of them into shares of a smaller amount than is fixed by the Constitution so that the proportion between the amount paid and the amount, if any, unpaid on each reduced share is the same as it was with the original share. The Company may also determine that any of the shares resulting from the sub-division have some special or preferential rights or some disabilities or conditions as between the shares resulting from the sub-division; and
- (c) cancel shares which have not then been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its share capital by the amount of the cancelled shares.

6. **VARIATION OF CLASS RIGHTS**

6.1 **Variation**

If the share capital is divided into different classes of shares, the rights, privileges, disabilities and conditions attached to any class may be varied or abrogated only in accordance with the *Corporations Act 2001* and this clause.

6.2 **Consent Required**

No rights, privileges, disabilities or conditions attached to any class of shares can be varied or abrogated without the written consent of the holders of at least three quarters of the issued shares of that class or without the sanction of a Special Resolution passed at a general meeting of the holders of the shares of that class. The clauses dealing with general meetings apply so far as they are capable to general meetings of classes of shareholders except that three persons constitute a quorum and any holder of shares of the relevant class may demand a poll.

6.3 **Restrictions on Variation**

The rights conferred on the holders of the shares of a class are not deemed to be varied by the creation or issue of further shares ranking equally with the first mentioned shares unless expressly provided by the terms of issue of those first mentioned shares or unless required by the *Corporations Act 2001*.

7. CERTIFICATES

7.1 Right to Certificate

Every Member is entitled without payment to receive a certificate under the seal of the Company in accordance with the *Corporations Act 2001* for the shares registered in the name of that Member. Delivery of a certificate to one joint holder is sufficient delivery to all joint holders of that share.

7.2 Lost, Destroyed and Damaged Certificates

If the share certificate or other document of title is lost or destroyed, the Company may issue a duplicate certificate in its place upon the conditions set out in section 1089 of the *Corporations Act 2001*. If a share certificate is worn out or damaged, then upon its production to the Company, the Directors may order it to be cancelled and may issue a duplicate certificate in its place.

8. CALLS

8.1 Board may make Calls

The Board may make Calls upon Members for money unpaid on their shares, whether on account of the nominal value of the shares or by way of premium subject to the terms on which the shares were issued. The Board must give at least 14 clear days' written notice of the Call and the notice must specify the time or times and the place for payment. The Directors may allow Calls to be paid by instalments and they may revoke or postpone a Call. They may differentiate between the holders as to the amount of Calls to be paid and the times of payment.

8.2 Responsibility of Members

Each Member must pay the amount of the Call in accordance with the notice. Joint holders of share are jointly and severally liable to pay Calls regarding that share.

8.3 Time of Call

A Call is deemed to have been made when the resolution of the Board authorising the Call was placed.

8.4 Money Payable by Allotment Deemed Calls

Any money which, according to the terms of issue of a share, becomes payable on allotment or on a fixed date or by instalments, whether on account of the nominal value of the share or by way of premium, is for the purposes of this Constitution deemed to be a Call duly made and notified and payable on the date on which the amount became payable.

8.5 Payment of Calls in Advance

The Board may receive from any Member willing to pay all or part of the money unpaid upon any of the shares held by that Member beyond the amount called up, either as a loan repayable or as a payment in advance of Calls. The Board may authorise the payment by the Company of interest, as the Board determines on the amount of money paid in advance which exceeded the Call then made and due.

8.6 Evidence of Liability for Calls

In an action to recover money due in respect of a Call, it is sufficient to prove that:

- (a) the name of the Member sued is entered in the Register as the holder or one of the holders of the shares in respect of which the debt accrued;
- (b) the resolution making the Call is duly recorded in the minute book;
- (c) notice of the Call was given to the Member sued in accordance with this Constitution; and
- (d) the payment was a prescribed term of the conditions on which the shares were allotted.

9. FORFEITURE OF SHARES

9.1 Notice Requiring Payment

If a Member fails to pay a Call or instalment of a Call by the due date, the Board may, while any part of the Call is overdue and unpaid, serve a written notice on the Member demanding payment of the Call together with interest accrued and all expenses incurred by the Company as a result of non-payment. The notice must specify a further day (at least 14 days after the date of giving notice) on or before which the Call, interest and expenses if any, must be paid. It must also specify the place where payment is to be made. The notice must state that, if payment is not made by the specified date at the appointed place the shares, in respect of which the money is payable, may be forfeited.

9.2 Forfeiture

If the requirements of the notice are not complied with, the shares in respect of which the notice has been given may be forfeited by a resolution of the Board before payment has been made. The forfeiture includes all Dividends, interest and other moneys payable regarding the forfeited shares and not actually paid before forfeiture.

9.3 Notice of Forfeiture

Notice that a share has been forfeited must be given to the Member in whose name the share stood immediately before the forfeiture. An entry of the forfeiture and the date must immediately be made in the Register. No forfeiture is invalid because of failure to give notice or make the entry.

9.4 Dealing with Forfeited Shares

A forfeited share is deemed to be the property of the Company and the Board may sell, re-allot or otherwise deal with it as they think fit. Forfeited shares may be re-allotted with or without any money paid by the former holder being credited as paid up.

9.5 Annulment of Forfeiture

At any time before a sale or disposition, the forfeiture may be annulled on any terms which the Board thinks fit.

9.6 **Liability of Former Member**

A person whose shares have been forfeited ceases to be a Member in respect of those shares but remains liable to pay and must immediately pay to the Company all moneys which at the time of forfeiture were payable by that person to the Company in respect of those shares together with interest at the prescribed rate and expenses until payment of all moneys in respect of the shares. The Directors may enforce payment of these moneys as they think fit.

9.7 **Disposition of Forfeited Share**

The Company may receive the consideration, if any, given for the share on any sale, re-allotment or other disposition and the Board may appoint a person to execute a transfer of the shares sold. The person to whom the share is sold, re-allotted or disposed of will, upon registration be deemed to be the holder of that share. That person is not liable to pay any Calls, interest or other moneys owing in respect of that share before the purchase or allotment. That person holds good title which is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale, re-allotment or disposal of the share.

10. **LIEN**

10.1 **Company's Lien**

Subject to the *Corporations Act 2001*, the Company has a first and paramount lien on every share registered in the name of a Member (whether solely or jointly with others) for all money (whether presently payable or not) Called or otherwise payable in respect of that share and interest and expenses. The lien extends to all Dividends declared regarding that share.

10.2 **Exemptions**

The Board may declare any share to be wholly or partially exempt from this clause as the Directors determine. If the Company registers a transfer of a share on which it has a lien without giving the transferee notice of its claim that share is freed and discharged from the lien.

10.3 **Enforcement of Lien**

The Board may sell any shares on which the Company has a lien in any manner which they think fit. Before selling the shares, the Board must give the relevant shareholder at least 14 days' written notice demanding payment of the overdue amount in respect of which the lien exists.

10.4 **Transfer and Title**

To give effect to the sale of shares sold pursuant to the Company's lien, the Board may authorise a person to execute an appropriate instrument of transfer of the shares. The purchaser will be registered as shareholder and is not required to see to the application of the purchase money. The purchaser's title is not affected by any irregularity or invalidity in the proceedings regarding the sale.

10.5 **Proceeds of Sale**

The proceeds of sale of the share under this clause must be applied towards payment to the Company of the amount which is payable and overdue. The residue, if any, is payable to the person or persons entitled to the shares at the date of the sale.

11. **TAXATION LIEN**

11.1 **Member's Obligation to Repay**

If the Company is obliged to pay an amount to a government or taxing authority in respect of the shares registered in the name of a Member (whether solely or jointly) or in respect of any Dividend, bonus or other moneys payable to the Member or the Member's estate regarding that share, that Member must repay the Company the amount paid to the government or taxing authority plus interest at the prescribed rate from the date of payment to the date of repayment.

11.2 **Company's Lien**

The Company has a lien on all shares registered in the name of the Member and on all Dividends, bonus and other moneys payable to that Member in respect of the amount paid to the government or taxing authority plus interest.

11.3 **Indemnity**

The Member whose shares are the subject of the liability fully indemnifies the Company.

11.4 **Debt Due**

The Company may recover the amount plus interest on any unpaid part of it as a debt due from the Member.

11.5 **Refusal to Register Transfer**

The Company may refuse to register a transfer of shares to or from the Member until the whole of that amount and interest is repaid to the Company.

12. **STOCK**

12.1 **Conversion of Shares**

The Company may by Ordinary Resolution convert any paid up shares into stock and reconvert any stock into paid up shares at any nominal value.

12.2 **Transfer of Stock**

The clauses relating to the transfer of shares apply to the transfer of stock to the extent that they are capable of application, subject to this clause. The Board may fix the minimum amount of stock transferable and restrict or prohibit the transfer of fractions of that minimum. The minimum must not exceed the nominal value of the shares from which the stock arose.

12.3 **Rights and Liabilities of Stock Holders**

The holders of stock have the same rights and liabilities as if they held the shares from which the stock arose. All clauses that apply to paid up shares apply to stock. References to shares and shareholders in this Constitution include stock and stockholders.

13. **TRANSFER OF SHARES**

13.1 **Right to Transfer**

Members may transfer all or any of the shares registered in their names in accordance with this Constitution. The transferor remains the holder of the shares until the name of the transferee is entered in the Register PROVIDED THAT no transfer of Shares to a non-Member will be permitted unless the Shares are first offered to the existing Members.

13.2 **Form of Transfer**

The instrument of transfer of a share must be in writing, in the standard form or other form approved by the Directors and must be signed by or on behalf of the transferor and the transferee.

13.3 **Corporate Shareholder**

If the shareholder is a corporation, the instrument of transfer must be executed under the common seal of the corporation duly attested in accordance with its Constitution.

13.4 **Registration of Transfer**

Every instrument of transfer must be duly stamped and lodged for registration at the Office accompanied by the relevant share certificate (or proof of its loss or destruction satisfactory to the Directors) and any other proof of the transferor's title as required by the Directors.

13.5 **Board Discretion**

The Board may refuse to register any transfer and are not obliged to give reasons for the refusal. If the Board refuses to register an instrument of transfer, notice of the refusal must be given to the transferee within two months from the date the transfer was lodged in the Office.

13.6 **Retaining Instruments of Transfer**

Instruments of transfer that are registered must be retained by the Company for the minimum period required by law or longer if the Board so determines. An instrument of transfer that the Board refuses to register must be returned if requested to the person who lodged it unless there has been fraud or alleged fraud.

13.7 **Closing the Register**

The Register may be closed as the Board thinks fit, subject to the *Corporations Act 2001*, for no more than 30 days in any calendar year.

14. TRANSMISSION OF SHARES

14.1 Title on Death of Member

On the death of a Member the only persons recognised by the Company as entitled to the deceased Member's interest in the shares are the executors or administrators of the deceased Member or if the deceased Member was a joint holder, the survivor or survivors. This clause does not release the estate of a deceased joint holder from liability regarding jointly held shares.

14.2 Transmission

Any person entitled to shares as executor or administrator of a deceased Member, or as guardian of an infant Member or as representative of a committee of a Member of unsound mind may be registered as a Member or may execute a transfer of those shares (subject to the restrictions on the right to transfer contained in this Constitution) upon producing sufficient evidence of title as the Board determines.

14.3 Bankrupt Members

Subject to the *Bankruptcy Act 1966*, a person entitled to the share of a bankrupt Member may, upon production of evidence of entitlement to the satisfaction of the Board, elect to become the registered shareholder and must notify the Board accordingly or may execute a transfer of the share.

14.4 Board may refuse Registration

The Board has the same right to refuse to register a person entitled under this clause as if the person was transferee in an ordinary transfer.

15. GENERAL MEETINGS

15.1 Annual General Meeting

If required by the *Corporations Act 2001*, an annual general meeting of the Company must be held once in every calendar year in accordance with the *Corporations Act 2001*.

15.2 Extraordinary General Meetings

General meetings of the Company other than annual general meetings are called extraordinary general meetings.

15.3 Convening General Meetings

Any Director may convene a general meeting upon giving notice in accordance with this clause.

15.4 Notice of General Meetings

Notice of general meetings must:

- (a) be served on all Members entitled to receive notice at least 14 days before the day of the meeting (not including the day of service of the notice but including the day of the meeting);

- (b) be in writing;
- (c) specify the place, day and hour of the meeting;
- (d) specify the general nature of the business to be transacted at the meeting but need not specify the general business of an annual general meeting; and
- (e) contain notice of Special Resolutions proposed to be passed at the general meeting in accordance with the *Corporations Act 2001*.

15.5 **Omission to give Notice**

The accidental omission to give notice of a general meeting or the non-receipt of a notice of a general meeting by a Member does not invalidate the proceedings at the general meeting.

15.6 **Minute of Holding Company**

If a holding company holds all issued shares in the Company and the *Corporations Act 2001* or this Constitution require that an act, matter, Ordinary Resolution or Special Resolution must be performed, transacted or passed by or at a general meeting, it is sufficient if a minute is signed by a representative of the holding company authorised under section 249(3) of the *Corporations Act 2001* stating that the act, matter, Ordinary Resolution or Special Resolution has been performed, transacted or passed. The act, matter, Ordinary Resolution or special Resolution will be deemed, for all purposes to have been duly performed, transacted or passed at a general meeting.

15.7 **Resolution without General Meeting**

Subject to the *Corporations Act 2001*, a minute of a resolution of the Company determined on without a general meeting, signed by each Member entitled to vote is as valid and effective as if that resolution was passed in general meeting.

15.8 **Deemed Resolution of Member**

If the Company has only one Member, only that Member's recording of the Member's decision to a particular effect will count as the passing by the Member of a resolution to that effect for purposes of this Constitution and the *Corporations Act 2001*.

15.9 **Validation of Meetings on Short Notice**

Notice of a general meeting may be called by shorter notice than is provided by this Constitution if all Members entitled to receive notice of the meeting agree to that short notice.

15.10 **Calling Class Meetings**

If the capital of the Company is divided into different classes of shares, the Board may, if they think fit, and must on the requisition of Members holding not less than one tenth of the issued shares of the relevant class, immediately convene a general meeting of the holders of shares of that class. The provisions of the *Corporations Act 2001* and this Constitution regarding general meetings apply to meetings requisitioned under this clause.

16. PROCEEDINGS AT GENERAL MEETINGS

16.1 Business of Annual General Meetings

The ordinary business of an annual general meeting includes:

- (a) the receipt and consideration of accounts and reports of the Directors and auditors;
- (b) the election of Directors;
- (c) fixing the remuneration of the Directors and auditors;
- (d) declaring Dividends; and
- (e) any other business required by the *Corporations Act 2001* to be transacted at annual general meetings.

16.2 Special Business

All business transacted at extraordinary general meetings and at annual general meetings other than the ordinary business of an annual general meeting is deemed special business.

16.3 Quorum

If the Company has only one Member, the quorum for a general meeting is that Member present in person or by proxy or if a Member is a company by company representative; otherwise, a quorum will be two Members present in person or by proxy or if a Member is a company by company representative. No item of business may be transacted at a general meeting except for the election of a Chairperson unless the quorum is present at the commencement of the transaction of that item of business.

16.4 Procedure if No Quorum

If a quorum is not present after 15 minutes from the time appointed for the meeting, the meeting will be dissolved, if it were convened by the Members. If the meeting was convened by a Director, the meeting will be adjourned to the same time and place in the following week. If at the adjourned meeting, no quorum is present, the meeting will be dissolved.

16.5 Chairperson

The chairperson of Directors may take the chair at every general meeting. If there is no chairperson of Directors or if he or she is not present at the time appointed for the meeting or is unwilling to take the chair the Members present may choose another Director to be chairperson of the meeting.

16.6 Adjournment of General Meetings

The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting. If the meeting is adjourned for more than 30 days, notice of the adjournment must be given to all Members entitled to receive notice of general

meetings. No business may be transacted at the adjourned meeting except the unfinished business of the original business of which notice was given.

17. VOTING AT GENERAL MEETINGS

17.1 Show of Hands

Every question put to a general meeting is to be decided by a show of hands unless a poll is duly demanded. The chairperson of a meeting may declare that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost. The entry to this effect in the minute book is conclusive evidence of the fact.

17.2 Demanding a Poll

A poll may be demanded before or on the declaration of the result of a show of hands by:

- (a) the chairperson of the meeting;
- (b) at least two Members present in person or by proxy;
- (c) a Member present in person or by proxy representing not less than one tenth of the total voting rights of all Members entitled to vote at the meeting; or
- (d) a Member holding voting shares on which an aggregate sum has been paid up equal to not less than one tenth of the total sum paid up on all the shares carrying voting rights.

17.3 Taking a Poll

If a poll is duly demanded, it must be taken as and when the chairperson of the meeting directs. A poll demanded on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately. The result of a poll will be the resolution of the meeting. The demand for a poll may be withdrawn.

17.4 Casting Vote

Questions will be decided by a simple majority of votes except for Special Resolutions or other resolutions that must be passed by a majority other than a simple majority in accordance with the Corporation Law. If there is an equality of votes, whether on a show of hands or on a poll the Chairperson of the meeting will not have a casting vote.

17.5 Members Entitlement to Vote

Votes may be given personally or by proxy, attorney or company representative duly appointed. Every Member present is entitled subject to any rights or restrictions attached to any shares to one vote on a show of hands and if a poll is taken one vote for each share held by that Member. A Member may appoint a proxy, attorney or company representative (who need not be a Member) to attend and vote at general meetings on behalf of the original Member. That proxy, attorney or company representative is not entitled to vote at the general meeting if the principal is present and votes at that general meeting. The chairperson of the meeting may decide

questions relating to the qualification of any voter and the decision is final and binding.

17.6 **Votes by Legal Representative**

A person entitled to be registered as the holder of shares of a deceased, infant or bankrupt Member or of a Member of unsound mind may vote at general meetings as the Member. If that person has not previously satisfied the Directors that he or she is entitled to vote, this must be done at least 48 hours before the meeting at which the person wishes to vote.

17.7 **Votes by Joint Holders**

If two or more persons are registered as joint holders of a share, only one may vote at the general meeting. If more than one joint holder is present at the general meeting, whether personally or by proxy, attorney or representative, the joint holder whose name stands first on the register is entitled to vote. Several executors or administrators of a deceased Member are deemed to be joint holders of the shares of the deceased Member.

17.8 **Disqualification by Non Payment of Calls**

Members who have not paid Calls which are due and payable are disqualified from attending general meetings and from voting whether personally or by proxy, attorney or representative.

17.9 **Appointment of Proxies, Attorneys and Representatives**

A Member may appoint any person as proxy or attorney and if the Member is a corporation, may appoint a representative to attend and vote at meetings on behalf of the original Members.

17.10 **Instruments of Proxy**

Instruments of proxy, powers of attorney and minutes of resolutions appointing representatives must be in the common form or other form acceptable to the Directors. The instrument of proxy, power of attorney and minutes of resolutions must be deposited at the Office at least 24 hours before the time of holding the meeting at which the proxy or attorney or representative proposed to vote.

17.11 **Authority of Proxy**

The appointment of a proxy, attorney or representative is deemed to confer authority to demand or join in demanding a poll. A vote given by a proxy, attorney or representative is valid regardless of the prior death or liquidation of the principal or revocation of the proxy or transfer of the shares in respect of which the vote is given if no written indication of the death liquidation revocation or transfer is received at the Office before the meeting.

18. **DIRECTORS**

18.1 **Number of Directors**

The number of Directors will not be more than ten in number and may be any larger number as the Directors may from time to time determine.

18.1A **Appointment of Directors by Holding Company**

- (a) Where the Company is the wholly owned subsidiary of another company (Holding Company), the Holding Company may only appoint or remove a Director by written notice served on the Company in accordance with clause 18.1A(b).
- (b) Where the company has a Holding Company:
 - (i) the Holding Company must appoint all the directors of the Holding Company (each, a **Holding Company Director**) as Directors of the Company, subject only to receipt of a consent to act as director of the Company from each Holding Company Director; and
 - (ii) a person ceases to be eligible to act as a Director of the Company if they cease to be a Holding Company Director in which case that person must immediately resign as Director or, if that person fails to resign, the Holding Company must remove that Director.

18.2 **Share Qualifications**

The Directors are not required to have any share qualification.

18.3 **Natural Persons**

All Directors of the Company will be natural persons.

18.4 **Vacation of Office**

The office of a Director becomes vacant if the Director:

- (a) becomes an insolvent under administration or makes any arrangement with his or her creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with under any law relating to mental health;
- (c) resigns, retires or is removed from the office of Director; or
- (d) ceases to be or is prohibited to be a Director pursuant to the *Corporations Act 2001* or this Constitution.

18.5 **Other Offices**

A Director may hold any other office in the Company in addition to the Directorship on any terms as to tenure and remuneration and otherwise as determined by the Directors.

18.6 **Appointment by Director's Personal Representative**

If a person who is the only Director and the only Member of the Company:

- (a) dies; or
- (b) 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.

18.7 **Appointment by Trustee in Bankruptcy**

If a person is the only Director and the only Member of the Company and:

- (a) the office of the Director is vacated under paragraph 224(1)(c) of the *Corporations Act 2001* because of the bankruptcy of the Director;
- (b) 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 who has the power of appointment under sub-clauses 18.7(a) and (b) may appoint themselves as Director.

19. **INDEPENDENT DIRECTOR**

The Directors may appoint a person to hold office as an independent Director upon such terms and conditions and for such term as the Directors will determine.

20. **REMUNERATION OF DIRECTORS**

20.1 **Remuneration and Expenses**

Each Director is entitled to remuneration for his or her services as the Directors determine to be paid out of the funds of the Company. Directors are also entitled to be paid out of the funds of the Company, all reasonable expenses incurred in connection with the business of the Company as approved by the Directors.

20.2 **Special Remuneration**

If a Director performs services for the Company which, in the opinion of the Directors exceed the ordinary duties of a Director, the Directors may pay special remuneration from the funds of the Company to that Director, either instead of or in addition to the remuneration already provided for.

21. **DIRECTORS' INTERESTS**

21.1 **Directors' Contracts**

Subject to the *Corporations Act 2001* and to this Constitution:

- (a) Directors are not disqualified from entering into a contract or arrangement with the Company or from becoming or remaining a director of another company which has contracts with the Company;
- (b) contracts or arrangements involving the Company, cannot be avoided on the basis that a Director has an interest in the contract or arrangement;
- (c) Directors are not liable to account to the Company for any profit realised by them as a result of being interested in the contract or arrangement; and

- (d) any Director may attest the affixing of the seal of the Company to a contract whether or not that Director is interested in that contract.

21.2 Declaration of Interest

Every Director who has a direct or indirect interest in a contract or arrangement, and every Director who holds any office or possesses any property which may directly or indirectly create a conflict with that Director's duties or interest, must, before voting, declare the fact and the nature, character and extent of the conflict or potential conflict as required by the *Corporations Act 2001*.

21.3 Secretary to Record Declarations

The Secretary must record in the minutes any declaration made by a Director in accordance with this clause.

22. CHIEF EXECUTIVE OFFICER

22.1 Appointment of Chief Executive Officer

The Directors may appoint one or more Directors to be Chief Executive Officer or Chief Executive Officers for a limited or unlimited term as determined by the Directors.

22.2 Retirement or Removal of Chief Executive Officer

A Chief Executive Officer may be suspended, removed or dismissed by the Directors and another Chief Executive Officer appointed in his or her place. The clauses relating to the resignation and removal of Directors also apply to Chief Executive Officers. The Chief Executive Officer ceases to hold that office immediately upon him or her ceasing to be a Director.

22.3 Remuneration of Chief Executive Officer

The remuneration of the Chief Executive Officer must be determined by the Directors. The remuneration may be by way of salary, commission or profits or partly in one form and partly in another but must not be by way of commission or percentage of turnover.

22.4 Powers of Chief Executive Officer

The Directors may, as they think fit, entrust to and confer on the Chief Executive Officer any of the powers and duties exercisable by the Directors, upon such terms and conditions as the Directors think fit. The Directors may revoke, withdraw or vary all or any of the powers and duties entrusted to and conferred on the Chief Executive Officer.

23. ALTERNATE DIRECTORS

23.1 Appointment of Alternate Director

Each Director may appoint any person to act as alternate Director in his or her place for any period which the Director thinks fit. The alternate Director may be removed or suspended from office by the Director. The instrument appointing or removing an

alternate Director must be in writing duly executed by the Director and served on the Company.

23.2 **Status of Alternate Director**

An alternate Director:

- (a) is competent to exercise all power or duties of the Director who appointed him or her;
- (b) is entitled to receive notice of all Directors' meetings and if the appointor is not present at a meeting, the alternate Director may attend and vote at that meeting;
- (c) ceases to hold office immediately upon the appointor ceasing to be a Director; and
- (d) is not entitled to remuneration from the Company.

24. **DIRECTORS' POWERS**

24.1 **Management of Business of Company**

The management and control of the business and affairs of the Company is vested in the Directors. The Directors may exercise all powers and all things authorised by section 161 of the *Corporations Act 2001* unless this Constitution or the *Corporations Act 2001* require that those powers and things be done by the Company in general meeting. The Directors must act in accordance with this Constitution, the *Corporations Act 2001* and regulations made by the Company in general meeting. Regulations made by the Company in general meeting cannot invalidate an earlier action or decision of the Directors which would have been valid if the regulation had not been made.

24.2 **Directors' Borrowing Powers**

The Directors may exercise all of the powers of the Company to borrow money, to mortgage or charge all or part of the Company's undertaking, assets and uncalled capital and to issue Debentures and give securities for a debt, guarantee or obligation of the Company or of any other person.

24.3 **Appointment of Attorneys**

The Board may appoint any person or persons to be the attorney or attorneys of the Company to do anything the Company may do with the powers and subject to the conditions as the Directors think fit.

24.4 **Appointment of Committees**

The Board may appoint committees consisting of two or more Directors and delegate any of its powers to those committees as they think fit. Clauses regulating Directors' meetings apply to the extent that they are applicable to committee meetings.

24.5 **Exercise of Powers outside Victoria**

The Board may exercise all of the powers of the Company in relation to the seal of the Company for use outside Victoria and branch registers.

25. **PROCEEDINGS OF DIRECTORS' MEETINGS**

25.1 **Chairperson of Directors**

The Directors may elect one of the Directors as chairperson of the Board who may chair all Board meetings.

25.2 **Meetings**

The Directors may meet together, adjourn and otherwise regulate their meetings as they think fit. Any Director may convene a Board meeting.

25.3 **Quorum**

Three Directors entitled to vote constitutes a quorum at Board meetings unless the Board otherwise determines.

25.4 **Voting**

Questions arising at Board meetings must be decided by a majority of votes. If there is an equality of votes, the chairperson of the meeting has a second or casting vote. Each Director or alternate Director present in person or by proxy and eligible to vote is entitled to one vote.

25.5 **Decisions of Board**

At any meeting of the Board, all matters will be decided by a simple majority of all Directors present and entitled to vote.

25.6 **Board Meetings by Instantaneous Communication Device**

The terms of this Constitution in relation to Board meetings apply to meetings involving the contemporaneous linking of Directors by radio, telephone or other audio or audiovisual device if:

- (a) all Directors including alternate Directors who are entitled to receive notice of a meeting are given notice;
- (b) each Director has access to and is linked to the other Directors by the relevant instantaneous communication device;
- (c) each Director taking part in the meeting is able to hear each of the other Directors taking part in the meeting; and
- (d) the fact that each Director is taking part must be known to each other Director taking part.

Each Director participating in a meeting involving an instantaneous communication device will be deemed to be present and form part of the quorum until he or she has expressly advised the meeting that he or she is ceasing to participate. A minute of

the proceedings of such a meeting signed by the chairperson of the meeting or Secretary is sufficient evidence that proper formalities were observed.

25.7 **Circular Resolution without Meeting**

Subject to the Corporations Act 2001, a minute of a resolution of the Company determined on without a meeting, which is signed by a majority of Directors eligible and entitled to vote, is as valid and effective as if that resolution was passed in a meeting on the day on which the resolution was last signed by a Director.

25.8 **Deemed Resolution of a Director**

If the Company has only one Director, only that Director's recording of the Director's decision to a particular effect will count as the passing by the Director of a resolution to that effect for purposes of this Constitution and the *Corporations Act 2001*.

25.9 **Defect in Appointment**

All acts done at Board meetings or committee meetings are valid and effective even if it is later realised that there was defect in the appointment of Director or of a person acting as Director or if any of them were disqualified or not entitled to vote.

25.10 **Directors may act if Vacancy**

The Directors or sole Director may act even if there is a vacancy on the Board. If the number of Directors is below the minimum number or below a quorum, the continuing Directors or Director may only act to increase the number of Directors to the minimum number or to convene a general meeting of the Company or of any class of shareholders.

26. **SECRETARY**

The Directors may appoint any person or persons to be or act as Secretary or Secretaries for the term upon the conditions and with the remuneration as they think fit. The Directors may remove a Secretary from office at any time.

27. **MINUTES**

27.1 **Secretary to Enter Minutes**

The Secretary must cause minutes to be entered in the minute book provided by the Company within one month after the relevant meeting of:

- (a) all appointments of officers;
- (b) the names of all persons present at each Board meeting and committee meeting;
- (c) the resolutions and proceedings of all meetings of the Company and of all Board meetings and committee meetings; and
- (d) all declarations made or notices given by a Director of his or her interest in a contract or proposed contract and of his or her office or property as a result of which a conflict of duty or interest may arise.

27.2 **Minutes to be Signed**

Minutes of a meeting signed by the chairperson of that meeting or of the next succeeding meeting will be prima facie evidence of the matters stated in those minutes.

27.3 **Minute Book**

The books containing the minutes of general meetings must be kept at the Office or principal place of business of the Company and made available for inspection by Members.

28. **STATUTORY REGISTERS**

The Company must keep the following registers as required by the Directors or by the *Corporations Act 2001*:

- (a) register of Members;
- (b) register of Debenture holders;
- (c) register of charges;
- (d) register of Directors' interests;
- (e) register of Directors, secretaries and other officers;
- (f) register of substantial shareholders; and
- (g) register of options to take up unissued shares

29. **COMPANY SEAL**

29.1 **Custody**

If the Board determines to adopt the use of a seal for the purpose of execution of documents by the Company, the Board must provide for the safe custody of the Company seal.

29.2 **Use of Seal**

The use of the Company seal, if any, must be authorised by the Board. Each instrument to which the seal is affixed must be signed by at least one Director and countersigned by another Director or by the Secretary or other person authorised by the Director for that purpose.

30. **DIVIDENDS**

The Board may in its absolute discretion declare a Dividend.

31. ACCOUNTS

31.1 Accounting Records

The Board must ensure that the Company keeps proper books of account in accordance with the *Corporations Act 2001* and accepted accounting standards. The books of account must be kept at the Office or other place as the Board thinks fit.

31.2 Statutory Accounts

The Board must cause to be made out for each financial year of the Company a profit and loss account that gives a true and fair view of the profit or loss of the Company for that financial year and a balance sheet that gives a true and fair view of the state of affairs of the Company for that financial year.

31.3 Inspection of Books

The accounting records of the Company must be open to inspection by the Directors. Members who are not Directors are not entitled to inspect accounting records unless authorised by statute, the Board or the Company in general meeting.

31.4 Retention of Books

The Company must retain all accounting records for the minimum period required by law or longer if the Board determines.

32. CHEQUES

All cheques, bills of exchange and promissory notes must be signed, drawn, accepted, made or endorsed for and on behalf of the Company as the Board determines.

33. AUDITORS

The auditor or auditors must be appointed and may be removed and their remuneration, rights and duties must be regulated in accordance with the *Corporations Act 2001*.

34. NOTICES

34.1 Service

The Company may serve a notice on a Member:

- (a) by leaving it at the Member's registered address;
- (b) by posting it by pre-paid ordinary mail to the Member's registered address:
 - (i) if the registered address is outside Australia, to the address within Australia given by the Member to the Company as the address for service of notices; or
 - (ii) if the Member is deceased or bankrupt or otherwise under a legal disability to the address given to the Company by the person entitled under the clause dealing with transmission of shares; or

- (c) by facsimile to the Member's number for service as notified by the Member to the Company.

34.2 Time of Service

Service given:

- (a) by post is deemed received if posted within Australia to an Australian address two business days after posting;
- (b) by facsimile, is deemed received at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee" address;
- (c) after 6.00 pm in the place of receipt or in a day which is not a business day is deemed received at 9.00 am on the next business day.

34.3 Notice to Joint Holders

Notices may be served on joint shareholders by serving notice on the joint holder named first in the Register in respect of the share.

34.4 Entitlement to Receive Notice of General Meetings

Notice of every general meeting must be given to every Member having a registered address or address for service of notices within Victoria, every person entitled to a share as a result of death or bankruptcy of a Member and the auditor of the Company.

35. INDEMNITY

- (a) Every Director and other officer of the Company is entitled to be indemnified out of the assets of the Company against all losses or liabilities which may be incurred as a result of executing his or her office.
- (b) No Director or other officer of the Company is liable for any loss or damage incurred by the Company in the execution of the duties of his or her office.
- (c) The Company may, if it sees fit and to the extent permitted by the *Corporations Act 2001*, exempt or indemnify a Director or other officer of the Company:
 - (i) against liability to third parties;
 - (ii) in defending any criminal or civil proceedings arising out of their conduct as an officer of the Company.
- (d) This indemnity and exemption may, where appropriate, be offered directly or by means of the Company insuring the officer against liability, as the Directors consider appropriate, subject to the *Corporations Act 2001*.

36. **DEADLOCK AND ARBITRATION**

36.1 **Deadlock**

If there is an equality of votes for and against any resolution at a Board meeting, that resolution is to be put to a meeting of the Company convened for the purpose. If there is an equality of votes for and against a resolution at a meeting of Members of the Company then whether that resolution involves an issue of law, fact or policy or management of the Company or other matter concerning the affairs of the Company, it is to be regarded as a deadlock.

36.2 **Arbitration**

In the event of a deadlock, the Company must submit the matter to two arbitrators, one of whom is to be nominated by the shareholders voting for the resolution and one by the shareholders voting against the resolution. If the arbitrators cannot agree as to how the resolution should be determined, the Board will refer the matter to arbitration in accordance with the *Commercial Arbitration Act 1986*, South Australia.

37. **WINDING UP**

If the Company is wound up, the liquidator must test the whole or any part of any property vested in the Company in a new trustee upon such trusts identical to those existing prior to the liquidation of the Company.