

CLAYTON UTZ

Constitution of Mercer Investment Nominees Limited

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Mercer Investment Nominees Limited
Proprietary Company Limited by Shares
ACN 004 717 533
Constitution

Preliminary

1. Definitions

In this Constitution:

Board means the Directors of the Company from time to time.

Business Day means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

Company means Mercer Investment Nominees Limited.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Director means a person who is, for the time being, a director of the Company including, where appropriate, an alternate director of the Company.

Executive Director means a Director who is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

Non-Executive Directors means all Directors other than Executive Directors.

Register means the register of Shareholders kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

Relevant Law means the Corporations Act and, where applicable, the Superannuation Industry (Supervision) Act 1993 (Commonwealth).

Relevant Officer means a person who is, or has been, a Director or Secretary of the Company.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

Share means a share in the capital of the Company.

Shareholder means a person whose name is entered in the Register as the holder of a Share.

2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "includes" in any form is not a word of limitation;
- (e) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (f) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.

3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

Securities

4. Issue of securities

- (a) Subject to the Corporations Act and any rights and restrictions attached to a class of Shares or other securities, the Company may by resolution of the Board issue Shares, options to acquire Shares, and other securities with rights of conversion to Shares on any terms, to any person, at any time and for any consideration, as the Board resolves.
- (b) The Company may issue preference Shares (including those which may be, or at the option of either or both the Company and the holder are, liable to be redeemed) and may convert any issued Shares into preference Shares, if the rights of the holders of the preference Shares are as set out in this Constitution or are approved in accordance with the Corporations Act.

5. Alterations of capital

- (a) The Company may by resolution convert Shares from one class to another, subject to the Corporations Act, this Constitution and the terms of issue of a class of Shares.
- (b) The Company may reduce, alter or buy-back its share capital in any manner provided by the Corporations Act. The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company.

Transfer of Shares

6. Transfers

- (a) Subject to this Constitution and any restrictions attached to a Share, a Shareholder may transfer one or more Shares that Shareholder holds by a written instrument of transfer in any usual form or in any other form approved by the Board that is otherwise permitted by law.
- (b) An instrument of transfer of a Share referred to in Article 6(a) must be:
 - (i) executed by or on behalf of the transferor and the transferee, unless the Board has resolved that the execution of the transferee is not required;
 - (ii) duly stamped, if required by law; and
 - (iii) delivered to the Company, at the place where the Register is kept, together with the certificate (if any) of the Share to be transferred and any other evidence as the Board may require to prove the title of the transferor to that Share, the right of the transferor to transfer that Share, and the proper execution of the instrument of transfer.
- (c) A person transferring a Share remains the registered holder of that Share until a transfer for that Share has been registered and the transferee is entered in the Register as the holder of that Share.

7. Refusal to register transfers

The Company may refuse to register a transfer of Shares where the Board so resolves. The Company is not required to give any reason for that refusal.

Proceedings of Shareholders

8. Written resolutions of Shareholders

The Company may pass a resolution by its sole Shareholder signing a record in writing of that resolution.

Directors

9. Appointment of Directors

- (a) The number of Directors (not counting alternate directors of the Company) must be the number, not being less than 3 nor more than 10, determined by the Directors, but the number so determined at a particular time must not be less than the number of Directors when the determination takes effect.

- (b) A Director need not be a Shareholder.
- (c) Subject to Article 9(a), the Company may by ordinary resolution appoint any person as a Director.
- (d) [intentionally blank]

10. Removal of Directors

Subject to the Relevant Law, the Company may by ordinary resolution remove any Director, and if thought fit, appoint another person in place of that Director.

11. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend (unless the absence is due to ill health) 3 consecutive Board meetings (either personally or by an alternate director) without the consent of the Board;
- (b) resigns by notice in writing to the Company;
- (c) is removed from office pursuant to the Relevant Law or Article 10;
- (d) is an Executive Director and ceases to be an employee of the Company or of a related body corporate of the Company;
- (e) becomes an insolvent under administration;
- (f) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (g) is not permitted to be a director, or to manage a corporation, pursuant to the Relevant Law.

12. Alternate directors

- (a) A Director may:
 - (i) without the need for approval of other Directors, appoint another Director; and
 - (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director (but who is permitted by the Relevant Law to act as a director),

as an alternate director of that Director for any period. An alternate director need not be a Shareholder.
- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Relevant Law, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.

- (e) Subject to this Constitution, the Relevant Law, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Article 12(a)) of a Director, to the extent that his or her appointing Director has not exercised them.
- (f) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Article 13(e), the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

13. Remuneration and benefits of Directors

- (a) Subject to any agreement with the Company, the Company may pay to each Director an amount of fees determined by the Shareholders.
- (b) The fees pursuant to Article 13(a) may be provided in cash or any other manner agreed between the Company and the relevant Director. The Board must determine the manner in which the value of any non-cash benefit is to be calculated.
- (c) The fees of a Director are taken to accrue from day to day, except that fees in the form of a non-cash benefit are taken to accrue at the time the benefit is provided to the Director, subject to the terms on which the benefit is provided.
- (d) If any Director, with the approval of the Board, performs extra or special services, the Company may, subject to the Relevant Law and the approval of the Shareholders, pay additional remuneration or provide benefits to that Director as the Board resolves.
- (e) The Company must, with the approval of the Shareholders, pay all reasonable travelling, accommodation and other expenses that a Director or alternate director properly incurs in attending meetings of the Board, committees of the Board, meetings of Shareholders, or otherwise in connection with the business of the Company.
- (f) Subject to the Relevant Law and the approval of the Shareholders, the Company may, or may agree to, pay provide or make any payment or other benefit to a Director, a director of a related body corporate of the Company or any other person in connection with that person's or someone else's retirement, resignation from or loss of office, or death while in office.

14. Interests of Directors

- (a) A Director is not disqualified from being a Director by reason only of:
 - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
 - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except as the auditor of the Company;

- (iv) entering into, or having any interest in, any agreement or arrangement with the Company;
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as the auditor of the Company; or
 - (vi) being a beneficiary of a trust where the Company, or any related body corporate of the Company, acts as trustee.
- (b) Each Director must comply with the Relevant Law in relation to the disclosure of the Director's interests.
- (c) Whilst the Company is a public company, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (d) If a Director has an interest in a matter, then subject to Articles 14(c), 14(e), 14(f) and 14(g) and this Constitution:
- (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) that Director may participate in and vote on matters that relate to the interest;
 - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain any benefit arising in respect of the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Article 14(b), Article 14(d)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (f) Subject to Article 14(g) and the Relevant Law, a Director is authorised to act in the best interests of the holding company.
- (g) Despite Article 14(f), if:
- (i) the Company acts as trustee; and
 - (ii) there is a conflict between the interests of the beneficiaries of the trust and the interests of the Company (or a related body corporate),
- a Director must give priority to the interests of the beneficiaries of the trust.
- (h) The Company waives any duty of confidentiality owed by each Director to the Company in respect of any information obtained by that Director where the Director has a duty to disclose that information in their capacity as an officer of a related body corporate that acts as trustee.

Officers

15. Managing Director

- (a) The Board, with the approval of the Shareholders, may appoint one or more Directors as a managing director of the Company, for any period and on any terms (including, subject to Article 13, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the managing director, the Board may, with the approval of the Shareholders, vary or terminate the appointment of a managing director of the Company at any time, with or without cause.
- (b) The Board may delegate any of its powers to a managing director of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to a managing director of the Company.
- (c) A managing director of the Company must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (d) A person ceases to be a managing director if the person ceases to be a Director.

16. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

17. Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 17(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,

a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.

- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
- (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
 - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

Powers of the Board

18. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 23, a resolution passed by signing a document in accordance with Article 22, or in accordance with a delegation of the power pursuant to Article 15, 20 or 21. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 15, 20 or 21.

19. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

20. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further

delegate) as the Board resolves. The Board may revoke or vary any power so delegated.

- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 23 applies with the necessary changes to meetings and resolutions of a committee of the Board.

21. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

Proceedings of Directors

22. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 22(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 22(a) and is taken to be signed when received by the Company in legible form.
- (c) For the purposes of Article 22(a), the reference to Directors includes any alternate director who is appointed by a Director who is at the relevant time on leave of absence approved by the Board but does not include any other alternate directors.

23. Board Meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by a Director on leave of absence approved by the Board. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.

- (d) A Director or alternate director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (e) A person who attends a Board meeting waives any objection that person and:
 - (i) if the person is a Director, any alternate director appointed by that person; or
 - (ii) if the person is an alternate director, the Director who appointed that person as alternate director,
 may have to a failure to give notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
 - (i) telephone;
 - (ii) video;
 - (iii) any other technology which permits each Director to communicate with every other participating Director; or
 - (iv) any combination of these technologies.
 A Director may withdraw the consent given pursuant to this Article 23(g) in accordance with the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
 - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is 2 Directors entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate director of another Director in addition (if applicable) to being counted as a Director.

24. Chairperson of the Board

- (a) The Board may elect a Director as chairperson of the Board for any period that it resolves, or if no period is specified, until that person ceases to be a Director. The Board may remove the chairperson of the Board at any time.
- (b) Subject to Article 24(c), the chairperson of the Board must chair each Board meeting.

- (c) If at a Board meeting:
 - (i) a chairperson has not been elected pursuant to Article 24(a); or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to chair that meeting or part of the meeting.

25. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Articles 12 and 14 and this Article 25, each Director present in person or by his or her alternate director has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

26. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
 - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
 - (ii) a person so appointed being disqualified or not being entitled to vote, if that circumstance was not known by one or more of the Directors, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except:
 - (i) in emergencies;
 - (ii) to appoint Directors up to that minimum number; or
 - (iii) to call and arrange to hold a meeting of Shareholders.

Dividends and Profits

27. Dividends

- (a) Subject to the Corporations Act, this Constitution and the rights or restrictions attached to a class of Shares, the Board may determine that a dividend is payable on Shares. The Board may fix the amount of the dividend, the time for determining entitlements to the dividend, the time for the payment of the dividend and the method of payment of the dividend.

- (b) Subject to the rights or restrictions attached to a class of Shares, the Board may determine that dividends be paid on Shares of one class but not another class, and at different rates for different classes of Shares.

28. Capitalisation of profits

- (a) Subject to the Corporations Act and the rights or restrictions attached to a class of Shares, the Company may by resolution of the Board:
 - (i) capitalise any amount, being the whole or part of profits of the Company or otherwise available for distribution to Shareholders; and
 - (ii) apply that amount for the benefit of Shareholder in full satisfaction of their interest in the capitalised amount, in the same proportions as the Shareholders would be entitled to receive it if it were distributed by way of dividend or in accordance with either the terms of issue of any Shares or the terms of any plan for the issue of Shares or other securities for the benefit of officers or employees of the Company.
- (b) The Board may fix the time for determining entitlements to an application of a capitalised amount pursuant to Article 28(a). The Board may decide to apply a capitalised amount pursuant to Article 28(a) in any method permitted by law.
- (c) The Board may do all things necessary to give effect to a resolution pursuant to Article 28(a) and 28(b).

29. Distributions of assets

The method of payment by the Company of a dividend or a return of capital by a reduction of capital, a share buy-back or otherwise, may include any or all of the payment of cash, the issue of shares or other financial products and the transfer of assets (including shares or other financial products in another body corporate or trust).

30. Payments

The Company may make a payment of an amount payable in respect of a Share (including a dividend) in Australian dollars or any other currency determined by the Board. The Company may make payments in different currencies to different Shareholders. The Board may determine the appropriate exchange rate and time of calculation of the amount of a payment made in a currency other than Australian dollars. A determination of the Board pursuant to this Article 30 is final in the absence of manifest error.